

# Alaska Criminal Justice Commission

## Meeting Summary

Thursday, January 19, 2017

9:00 AM – 12:30 PM

Jury Assembly Room

Dimond Courthouse, 123 4<sup>th</sup> St

Juneau AK 99801

+ Audio-teleconference

Commissioners: Brenda Stanfill, Stephanie Rhoades, Alex Bryner, Quinlan Steiner, Jahna Lindemuth, Kris Sell, Jeff Jessee, John Coghill, Greg Razo, Trevor Stephens, Matt Claman, Dean Williams, Walt Monegan

Staff: Susanne DiPietro, Barbara Dunham, Teri Carns, Susie Dosik, Staci Corey, Brian Brossmer

Participants: Taylor Winston, Janet McCabe, André B. Rosay, Renee McFarland, Brad Myrstol, Melissa Threadgill, Carrie Belden, Steve Dutra, Cathleen McLaughlin, Jeff Edwards, Fred Dyson, Alysa Wooden, Donald Revels, Karen Cann, Claire Sullivan, Diane Casto, Teri Tibbet, Shawn Phelps, Amy Mead, Sherri Layne, Denali Daniels, Lacy Wilcox, Aliza Kazmi, Steve Williams, Bryce Johnson, Kaci Schroeder, Seneca Theno, Kenneth McCoy, Jeremy Conkling, Brian Wilson, Kara Nelson, Jordan Schilling, Erick Cordero-Giorgiana, Geri Fox, Natasha McLanahan, Nancy Meade, Don Habeger, Chuck Kopp, Rick Allen, Bill Comer, Amory Lelake,

### **Introductions**

Commission Chair Greg Razo called the meeting to order at 9:13 am. He noted that this was a public meeting of the Alaska Criminal Justice Commission, audio-conferenced. Chair Razo welcomed Commission members and guests. Those present and those on phone introduced themselves (see attendance list above).

### **Agenda**

Chair Razo called for any additions to the agenda. Commissioner Sell moved to discuss the statewide bail schedule. Chair Razo suggested adding that agenda item after hearing from the Juneau Reentry Coalition.

Commissioner Jessee asked if Judge Stephens was on the line, so that he could be part of the bail discussion. Susanne DiPietro said that he was in trial and would be in and out, and that Nancy Meade, general counsel for the court system, would also be able to speak to the bail schedule.

Commissioner Lindemuth moved to approve the agenda as amended, and Commissioner Sell seconded the motion. The motion passed unanimously.

### Approval of Last Meeting's summary

The summary from the December 8<sup>th</sup> meeting was approved unanimously.

### Juneau Reentry Coalition Update

Don Habeger, community coordinator for the Juneau Reentry Coalition, gave the Commission an update on its activities. He introduced his steering team: Teri Tibbet, Kara Nelson, and Commissioner Sell.

The Juneau Reentry Coalition hired a community coordinator in late 2015, and began working with DOC at the same time. In 2016 the Coalition conducted a community assessment, looking at community assets, barriers, and gaps in programming and services. The Coalition found that the existing structure could mostly meet the needs of the community, but there were some stress points—for example, there was a tight market for low income housing. The Coalition completed a reentry plan in fall 2016. The Coalition's mission is to provide "connective tissue" to enhance build on existing service capacity. There is a volunteer effort to connect those "inside" to community resources such as job search skills. The Tlingit and Haida tribes teach Native crafts.

The Coalition responded to the reentry RFP from DHSS. They are developing a program promoted by the national coalition of reentry programs—the recovery coach program.

Mr. Habeger asked whether the Commission had any questions.

Chair Razo clarified that the Coalition's approach had been to assess community need and supplement programming but not to start new programs or agencies. Mr. Habeger replied that was correct; they did not want to form a new entity but left the door open to do so.

Commissioner Stanfill asked about the capacity for substance abuse treatment in Juneau—she was aware that it was a problem throughout the state. Mr. Habeger replied yes, that was another stress point in system. With enough lead time, they can get reentering citizens into treatment, but the work needs to be done before reentry.

*[At this point Rep. Claman joined meeting and introduced himself as the new ex-officio member of the Commission, just appointed the day before. Chair Razo welcomed him to the Commission.]*

Commissioner Sell asked Mr. Habeger to give an example of how the police might work with the recovery coaches. Mr. Habeger replied that the coaches in the recovery coach program share their lived experiences with others and have two years training. They can work with JPD and come along to help defuse a crisis. Commissioner Sell gave an example of a situation where a recovery coach might have helped. She was working the night shift a couple months ago when she met a known drug user and burglar who really wanted to quit heroin. It was a Friday night and she arranged to get him in to treatment on Monday, but he never showed up. Recovery coach volunteers could be useful in this situation.

Chair Razo noted that the hope was that reinvestment funds could be used for that kind of program—drug users who aren't currently being assisted successfully.

Ms. DiPietro asked whether the Coalition was going to measure its success and track individuals assisted. Mr. Habeger replied that that was the plan, and they would look to ACJC for yardsticks and data points. Grantees such as the Juneau Reentry Coalition are willing to use AKAIMS. The Coalition also has a care coordination council that will also do data tracking to ensure that the programs will hit evidence-based marks. Ms. DiPietro observed that it has been difficult for line workers in such programs to enter data. [Editor's note: The new Recidivism Reduction grants, funded – in part – through justice reinvestment funding, are managed and executed by the Department of Health and Social Services. The Project Manager for those grants has already done extensive work to track performance, including an effort to utilize the AKAIMS system to track this population.]

Chair Razo noted that the goal of the Commission is to make policy recommendations that are evidence-based, and he appreciated effort the Coalition was going to collect that evidence.

Commissioner Stanfill was interested in learning more about the grants to the Coalition. Steve Williams from the Alaska Mental Health Trust explained that the Trust was administering the recidivism reduction grants in partnership with DHSS. Reentry coalitions are working with DOC to connect prisoners to services on the outside. DHSS is helping facilitate the Coalitions. He reminded the Commission that there were coalitions in Fairbanks, Anchorage, and the Mat-Su, among others.

### **Statewide Bail Schedule**

Commissioner Sell explained that the new statewide bail schedule has caused great deal of discomfort and concern, and that its negative effects are being blamed on SB 91. The bail schedule, developed by the presiding judges, is not entirely what the Commission envisioned in terms of criminal justice reform. The Commission's recommendations were to focus resources on violent offenders. However, some violent offenders are being released on their own recognizance (OR) when arrested. Assault 4s are 4s lumped in with other misdemeanors and the bail schedule says to release these offenders OR. It is offensive to the public to have these people released OR, and again, not at all what the Commission envisioned. She explained that the bail schedule is set by set by judges, and not a part of SB 91, but was nevertheless coloring the debate around SB 91 to a great extent. She wanted to know what can be done.

*[At this point Chair Razo noted for the record that Commissioner Williams joined the meeting.]*

Chair Razo asked for an explanation of what exactly the bail schedule is.

John Skidmore of the Department of Law noted that bail schedules are set by the courts, and address release procedures for anyone arrested for a misdemeanor. The bail schedule at issue came out July 12. Ms. DiPietro explained that a court rule authorizes the presiding judges from each judicial district to set a bail schedule.

Nancy Meade explained that the court system had always had a bail schedule as authorized by court rule. It allows for streamlined release procedures by listing the offenses for which an offender can be released OR. Historically, bail schedules were done by district, allowing for different release practices in each judicial district. Last March the presiding judges got together to issue a statewide order, based in part on pretrial release data collected by the Commission. Non-

DV Assault 4 is an OR release offense, but if the defendant is violent there is a provision that arresting officer can always call in for different bail. The court system has an on-call judge 24/7 for this reason. The user note to bail schedule says that if the arrestee is vulnerable or dangerous, the arresting officer can call the on-call judge. The on-call judges report that they often get calls, and usually they will set a different bail. The arrestee is almost always held until the next morning.

Judge Stephens added that instituting a statewide bail schedule was in the works before SB 91 was talked of. The presiding judges looked at differences in bail statewide, and wanted people to be treated the same throughout the state. They also tried to react to the content and philosophy of SB 91. They have amended the new bail schedule twice since implementation because of feedback. Prior to this meeting he was not aware of complaints, and didn't think other judges were aware either. The bail schedule can be changed if the presiding judges agree. The schedule says that a 1<sup>st</sup> Assault 4 has OR release, but the 2<sup>nd</sup> within 5 years is not OR release. The presiding judges took great pains to point out that if any circumstances so warrant, arresting officers should call. Judge Stephens has been on call since the bail schedule was set and he has been getting calls. He encouraged anyone with concerns to submit something in writing that explains the problem and he will confer with the other presiding judges.

Nancy Meade clarified that SB 91 as passed did not abolish bail schedules. This has been discussed in Pre-Trial Services implementation meetings. Once Pre-Trial Services is up and running, there still needs to be a bail schedule in effect because some arrestees will still need to be released OR in middle of night.

Commissioner Claman said that he had been hearing about issues related to bail schedules at community council meetings in his district. People are mad about DUI arrestees being released OR. But if an arresting officer thinks the arrestee is too intoxicated, the officer can call and the arrestee can be held until the next hearing. This fact is not well known in the public. Commissioner Steiner noted that in the past there was a standing order in Anchorage to hold intoxicated persons until their BAC was below .02. Nancy Meade said that order was no longer in place in the new schedule—instead there was the direction for the arresting officer to call if the arrestee is dangerous or vulnerable.

Judge Stephens said that the reaction to first-time DUI releases stood out to him because the 1<sup>st</sup> district always had OR release for first-time DUI offenders, while Fairbanks had set bail at \$1500. In some districts, the bail schedule called for releasing defendants below a certain BAC, but they have never had this in the 1<sup>st</sup> district. The presiding judges could not come to a consensus on this. Some felt that having a BAC above a certain level was not a crime, while some felt strongly that persons arrested while intoxicated posed a danger. They thought that instructing the arresting officer to call the on-duty judge if the offender was dangerous or vulnerable would solve things.

Commissioner Stanfill said she agreed with Commissioner Sell, that SB91 and the bail schedule were confused in public mind as well as among law enforcement. She wondered if anyone had anyone had trained or informed law enforcement.

Commissioner Sell said that relying on the provision that the arresting officer should call if they think the arrestee should be held on bail, would require a significant shift in culture concerning bail schedules. Most officers assume that if something is on the bail schedule, that's how it should

be handled except in the most extreme cases. This discussion makes the bail schedule sound now like more of a suggestion. Since her early career she has thought of bail schedules as an order from the judge.

Commissioner Lindemuth suggested the Commission invite comment from the law enforcement officers present. The Department of Law has heard a lot of concerns from law enforcement about the bail schedule. There is not complete consistency between bail schedule and SB 91.

Chair Razo said that he would like to hear from law enforcement during public comment.

Commissioner Williams asked to clarify that getting a different bail than what is on the bail schedule is a matter of a simple phone call. That fundamental fact is not well known.

### **Public Comment**

Chair Razo opened the floor to public comment at 10:07.

#### Seneca Theno

Seneca Theno, Anchorage municipal prosecutor, said that both the Municipality of Anchorage and APD support the proposals on the table from the Department of Law and DPS, particularly with regard to the recidivist theft provision and C Felonies. She was happy to offer any input that may be useful.

#### Taylor Winston

Taylor Winston, director of the Office of Victims' Rights, said that she was very concerned about the bail schedule from a victims' rights perspective. All victims have constitutional right to protection with appropriate bail, the right to be present at all proceedings, the right to be heard, and the right to be informed. The bail schedule is troubling because of the presumption of OR release for assault 4. Victims learning that the offender has been immediately released is contrary to the victim being treated with dignity and fairness. OVR also supports the proposals from Law and DPS.

#### Amy Mead

Amy Mead, the city attorney for Juneau, said that Juneau was the other entity aside from Anchorage that enforces a municipal code. She had not seen the proposals from Law and DPS. She would like the new Pre-trial Services unit to consider municipal entities in implementation. She sees difficulties with mechanics of implementation, and would like to be part of that conversation. Commissioner Williams asked her what the issue was with pre-trial— the concept is about whether a person stays in jail, not how they'll be prosecuted. The purpose of creating the unit was to try to reduce pretrial jail stays. Ms. Mead respond that there has been a difference in how municipal defendants and state defendants are treated; for example, they recently had a defendant from Juneau stuck in Anchorage. Juneau would welcome equal treatment for municipal defendants and state defendants. Geri Fox, director of the Pre-Trial Services unit said that Ms. Theno had already been representing municipal interests in the pretrial implementation group, and that Ms. Mead was welcome to join the group as well. Nancy Meade added that district court judges also participate in the pretrial group, so they are very attuned to municipal issues.

Janet McCabe

Janet McCabe, director of Partners for Progress, gave the Commission a quick update on the Vivitrol pilot program. More and more returning citizens are willing to accept the shot. The acceptance rate at the beginning of the program was about half, and is more like 2/3 now.

Sgt. Jeremy Conkling

Sgt. Jeremy Conkling of the APD, and vice president of the APDEA, said he fully supported the proposals from Law and DPS. Regarding the bail schedule, he echoed Commissioner Sell's point about it requiring a shift in culture: in the academy, they were taught that what a judge says is law, so the schedule is perceived as law. Furthermore, when officers have called in for different bail, they often have been told to follow the bail schedule. Some magistrate judges say they're not allowed to address bail. For example, he recently had a situation where a woman was arrested having crashed her car while driving drunk on her way to pick up her children from daycare. Since it was a first time DUI the bail schedule said to release her OR. The arresting officer called the magistrate and the magistrate told the officer to follow bail schedule and release the defendant OR. Things like this discourage officers from calling.

Commissioner Claman asked Sgt. Conkling to estimate how often magistrates, when called, insist on releasing DUI and Assault 4 offenders OR. Sgt. Conkling was not sure about numbers, as that kind of thing is not necessarily tracked. There is a lot of anecdotal information floating around—things like duty sergeants getting in arguments with magistrates—which has an effect on law enforcement culture. Commissioner Claman asked how much it would change APD procedures to call every time there was a first-time DUI. Sgt. Conkling said that's what they had been doing until the new bail schedule went into effect; they would call for anyone over a .15.

Commissioner Jessee encouraged all departments to collect data on things like this. It is hard to make policy decision on anecdotes, though they are valuable. He would like to know about how many of these issues are problems with the law itself, problems with policy and training, or the result of miscommunication. Regarding calling magistrates for different bail when the presumption is OR release: adding this step creates disparity in bail, a problem compounded by a culture of not calling and discouragement based on anecdote.

Judge Stephens commented that calling a judge for different bail is nothing new, and OR release for most first-time misdemeanors is not new. It was good to hear this information from law enforcement [about the culture surrounding bail schedules]. The presiding judges were just going on their experience. Before there were on-duty magistrates, he was taking calls in the middle of the night—his perception was that officers in Juneau would always call when necessary. It's good to know that isn't the case everywhere. It's appropriate that this was brought to the Commission. The presiding judges wouldn't support holding absolutely everyone. But if people want the presiding judges to change the bail schedule, they can do so quickly (more quickly than the Commission process) if they are convinced it's appropriate. He encouraged emails from APD and JPD, and will pass those on. Will pass on today's information to Presiding Judge Morse, especially the problem of magistrates turning down alternate bail. He welcomed everyone to pass on comments.

Bryce Johnson

JPD Chief Bryce Johnson echoed the bail schedule problem. Officers don't take people to jail unless they think they should be in jail—otherwise they would issue a citation. He has numbers that crime is increasing. He also supports the proposals from Law and DPS. SB 91 was a sound idea, but real-world issues have popped up in dealing with it. Juneau has seen a spike in burglary- a 75% increase from 2015 to 2016 in the January-November period of each year. There was a 20% increase in thefts over the same time. Part II crimes are also up. Commissioner Claman asked what Chief Johnson thought was the cause of the increase. Chief Johnson replied that he thought it was a combination of SB 91, the bail schedule, and reductions in prosecutors. He agrees with the notion of getting people to treatment, but you can't get folks to treatment without prosecution. SB 91 shrinks amount of time offender spend in jail, the bail schedule lets people out, and the reductions in Law and Corrections cause problems as well. Commissioner Claman noted that SB91 didn't take effect until July—did Chief Johnson notice a spike in property crime after that? Chief Johnson wasn't sure, but noted that the bill was being discussed before it passed. Criminals know what they can get away with, and discuss these things amongst themselves. Crime was also going up before SB 91, with the reductions in the Department of Law. Commissioner Claman noted that the decline in prosecutions won't change no matter what changes to SB 91 are made. Chief Johnson replied that SB 91 still put in limits which compounds budget problems.

Chair Razo asked about efforts to combat the opioid epidemic in the Juneau area. Chief Johnson said he would prefer more treatment opportunities— they need both carrots and sticks.

Discussion on budget cuts and other issues affecting justice reform

Commissioner Monegan spoke up and apologized for lateness [he had arrived several minutes earlier]. He agreed that the state was caught in perfect storm with the budget crisis and the opioid epidemic. The Commission needs to concentrate on what SB 91 is and what it isn't. Some of this tide was coming in before SB 91 and the bail schedule, but he understood that some of this was compounded.

Commissioner Jessee noted that the Commission was caught in a conundrum. He was concerned that SB 91 was being tagged as responsible for the storm of concerns. He was worried that DOC will be again used as the default public safety mechanism instead of directing resources to prosecutors or to treatment. This is the time when the Commission should be doubling down on justice reinvestment. Reverting back to incarceration was heading in the wrong direction. He reiterated that he was concerned about this, and urged the Commission to proceed with caution. If system hasn't fully adapted to justice reinvestment, then the Commission should address adaptation, not the bill itself. He wanted to be careful to parse out implementation vs. actual problems with the law.

Amy Mead (in response to questioning) explained that JPD doesn't decline thefts. They have offenders who are repeat offenders, for whom judges are declining bail. She agreed with the theory of SB 91 and reducing incarceration but they don't have a lot of alternative options in Juneau. There is no option for community work service, for example. She feels constrained having no options for sentencing alternatives.

Commissioner Steiner asked whether municipal prosecutors will accept drug crimes. Amy Mead said they would not under the CBJ code; assembly would have to adopt new provisions. There has been discussion about this. Seneca Theno said that Anchorage does prosecute drug crimes and they are seeing more now that the state is prosecuting them less.

Judge Rhoades observed that if prosecutors are declining drug crimes, that affects theft crimes because many theft crimes are drug fueled. These offenders still need early intervention, with treatment on demand. This is what needs to happen with the reinvestment money. Treatment on demand could have helped in the situation Commissioner Sell mentioned earlier. There is a need for diversion early in the game.

Judge Stephens said he agrees with proceeding with caution, and collecting data before making major changes. But if problems exist and fixing them could change the way SB 91 is viewed by law enforcement, the public, etc. then they should be considered.

#### Sherri Layne

Sherri Layne, Juneau municipal prosecutor, spoke about the effects of SB 91 in Juneau. There is an offender in Juneau with 11 class B misdemeanor theft cases pending, and judges believe they can't impose bail if there is no jail time associated with the offense. Offenders know that if they never plead out to their cases, they won't have priors and won't get bail. For DUI misdemeanors, they only have 10 days of jail time to hang over an offender's head. CRP (mental health court) participation for misdemeanants is reduced because there is no incentive to participate—it is less of a time commitment to spend a few days in jail.

Chair Razo noted that it was the Commission's practice to make recommendations that are evidence-based. However, there won't be much evidence until time passes. Hearing anecdotes is important to get an idea of what preliminary evidence might look like.

#### Municipal vs. State crimes

Commissioner Claman asked Ms. Mead if Juneau could you enact other crimes. Ms. Mead said the answer was both yes and no. They are required to be consistent with state crimes and penalties. They have some room to create recidivist provisions. In terms of incarceration they will still hit a maximum of 30 days. John Skidmore pointed out that section 113 of SB 91 put additional restraints on the municipalities in terms of comporting with state penalties.

Judge Rhoades stated that section 113 has caused issues in municipalities— often their penalties were very different. She would also endorse the savviness of criminals (regarding their ability to discuss provisions of the law amongst themselves). Unlike in Juneau, however, therapeutic court usage is way up elsewhere—there is a wait list for Mental Health Court in Anchorage. She wondered what was happening that's different in Juneau.

Seneca Theno spoke addressed the Anchorage municipal code. It is about 50% different from state statutes, so the municipality still has its own crimes with their own penalties. A misdemeanors that do not have a state equivalent will still come with a 365-day jail term. This might explain the greater participation in the Anchorage Mental Health Court.

**Break -10 minutes**

### **Proposed amendment to Restitution Report**

Commission attorney Barbara Dunham explained that Ret. Sen. Fred Dyson had proposed additional language to add to the Commission's restitution report, which was sent to the legislature on December 1. The language would foreground Sen. Dyson's proposal to use money from the Permanent Fund Criminal Fund to go to victim restitution first.

Sen. Chuck Kopp then addressed the Commission. He carried legislation with the same idea as staff to Sen. Dyson. That bill in 2014 was addressing law from the 1980s, wherein the Violent Crimes Compensation Board (VCCB) was supposed to get all the money from the Fund. But over the years, this money has also gone to other sources, albeit for programs and services that help victims. The purpose of the proposal is to have money to go to the VCCB first, then to CDVSA, then to DOC. Though it might affect DOC's budget for inmate health care, Medicaid is now covering more of those expenses. The Dept of Law's restitution unit was cut out of last year's budget. This proposal would make the appropriation process more clear, and could also provide more money for treatment. The previous version of this bill passed the Senate, and died in committee in the House. Under this bill DOC will still get the lion's share of the fund, it would just prioritize restitution to victims.

Chair Razo asked for the will of commission. Commissioner Lindemuth thought there was no reason not to add the language and asked if there was any cost to changing the report. Ms. Dunham said it would just require a few new copies. Commissioner Sell moved to adopt the language. Commissioner Lindemuth seconded the motion. Chair Razo called for comment. Judge Stephens commented that it was more difficult for judges to enforce restitution orders these days. The motion passed unanimously

### **Fixes to SB 91**

Chair Razo asks for comment on how to proceed given the time left [with numerous proposed fixes left to discuss]. Commissioner Claman had to leave, but commended Commission on making evidenced-based decisions, and recommended continuing in that vein. Chair Razo echoed this sentiment—the initial agreement was to work using evidence, and also to work on a consensus basis.

Commissioner Williams explained that he was struggling a bit with the process. There was a mishmash of proposals on the table. He appreciated testimony of the police officers there today. He was feeling a little under the gun, and torn down the middle, about making a decision right now. He wanted to know what others thinking about. Every one of the proposals would impact DOC's budget, and he wanted to know the availability of any data to make those decisions. In every other state that has done in JRI, implementation is where the real work begins.

Ms. Dunham explained that DOC, DPS, and ACS (the court system) were all required to provide data to the Commission for analysis, but that the Commission had just received its initial packet of data from DOC and ACS. It would be some time before staff and AJIC would be able to come up with meaningful analysis.

Commissioner Williams reasoned that any proposal would go through the usual legislative process including a fiscal not analysis, so this would not necessarily be the last time these proposals were discussed even if adopted by the Commission.

Ms. DiPietro said that staff had been able to do some preliminary analysis of the data, but it has only been a few months since SB 91 was enacted. The Commission has ability to get more detailed information, including prison bed impacts, but not today. Staff have also been looking at crime trends and will have a memo on arrest rates—all data is now a few weeks away.

Commissioner Stanfill said she had read through all the proposals and materials. She agreed with Commissioner Claman that the Commission's work is based on evidence and data, and this feels rushed. She would like to hear more discussion.

Commissioner Lindemuth noted that there was 35 minutes left in the meeting, and proposed passing technical fixes now, then look at low hanging fruit as time allows. In terms of legislative revisions to SB 91, the train is moving, and the Commission can get on the train or not.

Commissioner Jessee agreed to that approach and suggested the focus of the February 23 meeting should be to take up data and feedback.

#### **Technical Fixes to SB 91**

Commissioner Lindemuth moved to recommend all the proposed technical fixes (items 3, 6, 7, 12, 18, 20, 21, 22, 23, 24 on the list). Commissioner Steiner asked to pull items 18, 20, and 21 from the list as he believed they were substantive rather than technical. Commissioner Williams proposed a friendly amendment to add two of DOCs proposals to the list of technical fixes.

[At this point the Commission agreed to renumber DOC's proposals to add them to the end of the master list; these proposals became 25 through 28.]

Commissioner Steiner noted that proposal 25 was currently being litigated but ultimately decided not to request pulling it from the list. Commissioner Stanfill had reservations about proposal 27 and that was pulled from the list.

All remaining technical fixes (items 3, 6, 7, 12, 22, 23, 24, and 25) were adopted as recommendations of the Commission.

#### **Substantive fixes to SB 91**

The discussion of the more substantive fixes began with item 1, the proposal from Law and DPS that Violating Conditions of Release (VCOR), which had been made a non-criminal violation in SB 91, be returned to a crime. Ms. DiPietro explained that the original intent was not to stack offenses and jail time on defendants, and also that even if VCOR is only a violation, violators should be held until the next bail hearing. In practice, there has been difficulty holding people who violate conditions of release, and Law's proposal would make it easier for them to be held.

John Skidmore clarified that the proposal was not to go back to way things were before. Previously the crime of VCOR carried either a 365- or 90-day sentence. This proposal was to make VCOR a B misdemeanor, punishable by a maximum of 10 days. He suggested this was a simple solution that addressed concerns of excessive jail time. He was worried that the difficulty in getting defendants

held in jail after they violate conditions of release would do too much damage to public and legislative acceptance of SB 91 before implementation issues could be sorted out.

Commissioner Lindemuth added that this was also a good way to track data on VCORs. Judge Rhoades said that the court isn't now getting violation information in case files, so in that way this change would be helpful, but she didn't agree with a 10-day penalty. She also noted it would have some utility in plea bargaining.

Commissioner Sell noted that part of the intent with the provision in SB 91 was to ensure that the VCOR would open the underlying case, so that the judge could understand the criminogenic drivers of the VCOR and set appropriate bail conditions.

Commissioner Williams noted that VCOR offenders are the kind of person that annoys us: they don't follow the rules. There are a lot of these people in jail. He understood both sides, but the purpose of the process is to get these people out of jail.

Commissioner Steiner agreed that the purpose of the VCOR process was to have bail addressed in underlying matter. He wondered if the Court System fix (to add language to the bail forms ordering bail revoked if the person violates conditions of bail) is working. Nancy Meade confirmed that that language is now preprinted in the bail order form. In terms of data tracking, she noted that violations are recorded in APSIN— not in the usual window, but that information is accessible. John Skidmore pointed out that remanding someone for VCOR and filing a citation for VCOR are two separate steps—if the citation is not filed, it will not be in APSIN. Commissioner Steiner asked why it was more of a barrier to file a violation than a crime. Mr. Skidmore replied that filing a crime is a one-step process, which is folded into original case. It might be possible to get that to work with a violation, but it would be more complicated. The idea with this proposal is to let implementation go more smoothly.

Commissioner Sell moved to adopt the proposal (item 1 on the list). Commissioner Monegan seconded the motion.

Judge Stephens said he wanted to clarify that the motion was to return VCOR to a crime as a B misdemeanor punishable by up to 10 days in jail. He said the court system has done what it can do, and it seemed like the bail form fix won't solve the problem in every case. Commissioner Steiner said he was not sure that the bail form fix wasn't working. He encouraged the Commission to let that process happen.

Commissioner Williams said these folks occupy a lot of bed space. Their crimes snowball, and they could end up spending much more time in jail. The whole purpose of justice reinvestment is to find something else to do with these people. He would like to find another way forward.

Judge Rhoades pointed out that even under SB 91 as it is now, defendants who violate conditions of release are still being held, albeit for a short time – just a day or two. She would be comfortable with a shorter time, just enough to get them to the next bail hearing. Judge Stephens asked if she was moving to amend the proposal to 5 days. Judge Rhoades was not sure if she could amend Law's proposal

Commissioner Monegan said that the jail time was a bargaining chip; with less jail time, that reduces the weight of the chip. Judge Rhoades said that it was not a good chip. She wanted to see

an end to the practice of having defendants plead to VCOR rather than an underlying charge that couldn't be proven.

Commissioner Lindemuth said that Law was open to a friendly amendment. They were not looking to increase bed time, they just need enough time to hold the defendant until the next hearing.

Ms. DiPietro offered some data on VCOR charges. In [] 2000+ charges were filed for VCOR, and 68% of those were dismissed. Judge Stephens said he was concerned about the effect that would have on the risk assessment. Judge Rhoades said that it will show up if it is charged. She suggested amending the jail time to 10 days with 10 suspended. Judge Stephens pointed out there needed to be some possibility of jail time. Commissioners Sell and Monegan agreed. John Skidmore said they needed to get beyond weekends and holidays. Judge Rhoades changed her amendment to 5 days. Commissioner Lindemuth said that would satisfy the public safety concern. The amendment passed.

Chair Razo expressed his concerned about horsetrading days in jail. It was not evidence-based.

Chair Razo called for a roll call vote. Commissioner Jessee: yes. Commissioner Sell: yes. Commissioner Lindemuth: yes. Commissioner Steiner: no. Commissioner Monegan: yes. Commissioner Williams: no. Chair Razo: yes. Judge Rhoades: yes. Commissioner Stanfill: yes. Judge Stephens: yes.

#### **DOC request for a JRI Coordinator**

Commissioner Williams moved to recommend that DOC hire a JRI coordinator using grant money. Commissioner Lindemuth seconded the motion. Ms DiPietro explained that it would be JRI implementation grant money. Nancy Meade asked whether the coordinator would be able to work on non-JRI SB 91 provisions. Commissioner Williams said the grant was probably not that narrow. Melissa Threadgill of CJI said she also didn't think it was that narrow, and they can try to include that in the request.

The motion carried unanimously.

#### **Future Meeting Dates & Tasks**

Regarding the rest of the proposals, Chair Razo suggested that the Commission could have another meeting to discuss them. He noted it was the Commission's responsibility to adequately review them. He proposed a video teleconference for 2-3 hours in the near future.

There was no objection.

The meeting adjourned at 12:47.