

ACJC Workgroup on Classifications of Crimes and Applicable Sentences
Staff Notes and Member Assignments, April 29, 2015
CIRI Conference Room, 2525 C Street, Anchorage, AK

Commissioners attending: Alex Bryner
Commissioners not present: Kris Sell (had emergency), Quinlan Steiner
Staff present: Susie Dosik, Mary Geddes
Participating: Judge John Lohff (ret.), Kristin Bey, Sen. Fred Dyson (ret.), Dunnington Babb and Regan Williams (Public Defender)

Future meetings: Not yet scheduled but emails will be circulated

The meeting convened at 1:00 PM.

DISCUSSIONS

Controlled Substances Advisory Committee (CSAC)

The Governor has appointed members to the CSAC, and the AG is now convening the Committee. It will meet for the first time in mid-May in Anchorage, and must meet twice a year. It will be a public meeting. Geddes and Susanne DiPietro will attend and provide brief background on the ACJC's related mandates to review drug schedules.

MISC 4

Background was provided on SB 56. SB 56 passed in the Senate but died in House Finance at the close of the session. However, it had appeared that – at least at the close of the session - some law enforcement representatives were supportive of the basic premise of the bill, i.e. to reclassify some of the conduct now sanctioned by MISC 4 to a misdemeanor. An earlier unsigned statement from the Department of Public Safety also suggested agreement with the basic premise: that some first-time drug possessions offenses were more appropriately classified as misdemeanors.

There was some discussion of what amounts would constitute personal use, and whether reduction of MISC 4 to MISC 5 would result in 'net widening,' i.e. actually increasing the numbers of cases in which persons are prosecuted for simple possession. Regan Williams, a defense attorney, disagreed with the idea that MISC4 simple possession cases might not be presently prosecuted. He stated that his recent intake of 53 cases included six MISC4 cases, and simple possession is frequently charged as a felony. Both defense attorneys present also noted that quantities possessed by chronic users rarely involve a single 'nifty-fifty,' just because of the economies, and that drug users are often drug sharers. Those present noted that the Commission may or may not choose to ultimately resolve felony threshold quantities.

Those present did agree that staff should work up a proposal for the Commission for changes to MISC 4 and related sentencing statutes to allow for misdemeanor penalties for simple possession of some controlled substances in some circumstances. Staff should reference others states' experiences with: reducing felony possession to misdemeanors, any available relevant cost-benefit analyses, and evidence-based strategies. Staff will circulate her draft via email to Workgroup members for comments and any re-writing before forwarding it to the Commission. It is anticipated that the Pew-JRI will have information on this topic, and that additional relevant data may be forthcoming from Pew and from Corrections.

Review of Presumptive Sentencing

Geddes reported that Workgroup member Skidmore had previously said that he would excerpt and handout relevant sections of the DOL internal manual by the close of this meeting. If Skidmore does not attend, Geddes will contact him to arrange for email distribution to Commission members. This information will greatly aid the members of the Commission in commencing their review of presumptive sentencing law.

Commissioner Bryner noted that the National Conference of Sentencing Commissions should be able to assist the ACJC in getting its efforts underway. NASC will meet in Alaska in August and ACJC members can reach out to NASC members for guidance. Senator Dyson praised the experience of NASC members and suggested that the ACJC seek out the “best of the best” for counsel.

Bryner also noted that the current sentencing structure is a “giant problem” and that the ACJC can either look at what we have and try to fix it or choose another model altogether.

Increasing Felony Theft Thresholds

Because Commission members and participants had indicated that they were still interested in this topic, Geddes had circulated related information. She noted that, even with SB 64 increase of the felony threshold to \$750, there are still 32 states with higher felony threshold amounts. The majority (of the 32) have a \$1000 threshold. Dyson suggested that the Workgroup recommend an increase to \$1000 even though that amount does not provide for any reasonable cost of living adjustments over time. Bryner asked if any states auto-adjust or tie the threshold amount to various factors; staff did not know. Although there is likely to be continuing resistance to changing this amount, the resistance is likely to come from retailers rather than homeowners because the ability to prosecute burglaries would not be impacted by any change to felony threshold amount.

Staff will seek information from DOC and the courts – if they have it – concerning the numbers of theft prosecutions before and after the change in law under SB64.

Staff will also write up and circulate by email a proposal on this issue.

Possible Reclassification of Misdemeanors

Commissioner Steiner had previously circulated a list of misdemeanor crimes which could be reduced to violations in his opinion. Judge Lohff is still willing to take a look at these crimes but had not received the relevant documents in his email. Staff will provide that documentation to him.

Among the questions asked: how many DWLS are charged each year and how many are appropriate for reclassification to a violation? In how many of the DWLS cases is counsel currently provided?

Commissioner Bryner noted that the prosecution of criminal non-support cases may or may not be related to some federal law requirement. Staff will attempt to answer that question.

The discussion today did not encompass reclassification of recidivist misdemeanor conduct.

There was no public comment.

The meeting ended at approximately 3:15 PM. It is noted that Commissioner Sell called in after the meeting had ended and received a summary from staff.

Assignments:

1. Judge Lohff, and hopefully Quinlan Steiner and Seneca Theno, will review list of misdemeanors and consider if appropriate for reclassification.
2. Staff will research criminal non-support law to understand its relationship to federal law.
3. Staff will prepare a proposal on increasing the felony theft threshold and circulate.
4. Staff will prepare a proposal on reclassifying some MISC 4 conduct to MISC 5.
5. Staff will contact John Skidmore re the DOL description of the presumptive sentencing scheme.