

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

Commissioners attending: Kris Sell (tel.), Wes Keller (tel), Brenda Stanfill, Trevor Stephens, Quinlan Steiner, Stephanie Rhoades, Fred Dyson (part of the mtg)

Staff present: Mary Geddes, Giulia Kaufman.

Participating: Janet McCabe, Chuck Kopp, (part of the mtg)

Next meeting is Thursday, December 18, 2014, 1:30 to 4:00 PM, at the Snowden Conference Center

This was the first meeting of the Sentencing Alternatives Workgroup.

INFORMATION QUESTIONS

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

DISCUSSION OF WORKGROUP PRIORITIES

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

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

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

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

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

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

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

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

Maybe Anchorage should consider a midtown community court?

RESOLUTION

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

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

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

ASSIGNMENTS

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

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

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

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

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

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

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

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

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

Memorandum

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

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

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

Principles of RJ

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

RJ Practices

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

Outcomes

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

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

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

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

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

Past History with RJ Programs in Alaska

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

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

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

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

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

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

Current Opportunities for RJ in Alaska

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

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

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

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

Attachments:

Studies:

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

Reports:

- [Colorado RJ Legislative Report \(2014\)](#)

Bills:

- [Colorado RJ Bill - HB 13-1254](#)

Helpful Links:

- <http://www.restorativejustice.org/>
- <http://www.restorativejusticecolorado.org/>
- [DJJ Restorative Justice Page](#)