

Alaska Criminal Justice Commission

Meeting Summary

Thursday, June 2, 2022

1:00 p.m.

Via Zoom

Commissioners Present: Blaze Bell, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, (Lora Reinbold (Kelli Toth as proxy), Steve Williams, Treg Taylor (Angie Kemp as proxy)

Commissioners Absent: Susan Carney, James Cockrell, Adam Crum, Stephanie Rhoades, Trevor Stephens

Participants: Monica Elkinton, Brad Myrstol, Troy Payne, Kacey Schroeder, Kelli Toth, Travis Welch

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

Introductions, Agenda, Approval of prior Meeting Summary

Commission Chair Representative Matt Claman brought the meeting to order at 1:03 p.m. and called the roll. The commissioners approved the meeting agenda and summary of the March 17, 2022 meeting without objection.

Update on Prior ACJC Recommendations

Chair Claman noted that the successor body to the commission had been approved by the legislature, and that this would be the final meeting of the commission in its current form. The following presentation would therefore serve to wrap up the work of the commission.

Ms. DiPietro presented a set of PowerPoint slides that summarized the 2015 recommendations that the commission made to the legislature, along with the larger context of events during the past six years. She detailed some of the changes in the criminal justice system that could have been related to the new legislation. One projection related to the legislation was to reduce incarcerated population in the state by 21%.

The presentation included a slide showing significant operating budgets changes for the various agencies involved in the criminal justice system. Generally, budgets significantly decreased after 2016 but began to increase in the last two or three years. Ms. DiPietro invited members to comment if the data presented did not adequately reflect an agency's experiences. Ms. Cherot said that the information about budget changes in the past several years did not tell the full story for the public defense agencies, and that she would work further with staff to provide more detail about the actual situation. Mr. Williams suggested that the budget for the Department of Health and Social Services be included. Ms.

DiPietro explained that the charts reflected agency operating budgets as a whole and did not separate out operating expenses for criminal matters as opposed to civil matters.

Ms. DiPietro noted that the incarcerated population reached a low point in 2017 (4,214) and gradually increased to 4,630 in 2021. The portion of the population that was unsentenced increased from 38% in 2015 to 57% in 2021. She noted that with the presence of pretrial supervision since 2017, people on pretrial release had a higher chance of being charged with VCOR (violating conditions of release), and possibly incarcerated with stricter release conditions that they weren't able to meet.

The 2016 legislation gave probation and parole officers greater ability to offer alternatives to incarceration and mandated shorter times to serve for some violations of probation/parole conditions. The number of people incarcerated for probation/parole violations dropped substantially, from about 21% in 2015 to about 9% in 2021. The time served on these charges also dropped. After HB49 removed limits on the time that violators could receive, sentences for violations have more than doubled. Ms. Cherot and Ms. Kemp said that they would look into the situation from their agencies' perspectives.

Ms. DiPietro said that the commission and legislature had also advanced victims' needs through several new provisions for better notification of victims, consultation on plea negotiations, and assistance with obtaining restitution.

The Department of Corrections advised that the incarcerated trends apparent from 2014 and on were profoundly affected by COVID. In this time-period, the incarcerated population was the most unstable in Alaska history. The percent of unsentenced has risen but the change was anything but steady. In fact, it was very unsteady.

However, case filings and dispositions, especially felonies, have changed. Possible reasons include the difficulty of retaining staff and recruiting new staff, and pretrial delays. Mr. Claman also noted that there was some increase in violent crime that appeared to be somewhat localized. He added that one indication of the attorney recruitment and retention difficulties was the sharp increase in trial acquittals once trials started again in January. Ms. DiPietro said that Judicial Council staff would look at the case filings and dispositions further.

Public Comment

The public comment period remained open from 1:20 p.m. to 1:50 p.m. Ms. Dunham noted that Nathan Solano had submitted written comments, which had been provided to the commissioners and were available to others on request. No other public comments were offered.

Recommendation from Victims' Rights and Services Workgroup

Ms. Dunham reviewed the recommendation by the Victims' Rights and Services Workgroup for an evidentiary privilege that applies to victims of violent crime and victim advocates who work with them. The privilege would protect all victims of violent crime (i.e., those offenses found in chapter 41 of Title 11 (offenses against a person) or in AS 18.67.101 (excluding DUI). It would apply to all advocates who are supervised employees or supervised volunteers for any private, public, or tribal

organization that is not a law enforcement agency or prosecutors' office. Advocates would have to meet training standards set out in the recommendation.

Mr. Cleghorn moved that the commission adopt the recommendation and forward it to the legislature. Ms. Kemp seconded the motion, and members approved it, with the abstention of Ms. Cherot.

Update on New Commission

Chair Claman noted that he had sponsored a bill that would continue some of the duties of the commission, per the commission's previous recommendation. His bill was added into HB 291, which was the legislation renewing the Council on Domestic Violence and Sexual Assault. HB 291 passed in the Senate and was concurred with in the House. Assuming the bill becomes law, the new commission, titled the Alaska Criminal Justice Data Analysis Commission, would review and report on the same criminal justice data that the outgoing commission reported on. The new body would not make recommendations unless the legislature specifically requested a recommendation.

[Note: HB 291 was transmitted to the governor's office on June 17, 2022.]

Last ACJC meeting

Chair Claman said that this would be the final meeting of the Alaska Criminal Justice Commission. He thanked members for their work, and said that he believed that the commission accomplished the most when it was able to make consensus recommendations. Mr. Williams added his thanks, and observed that another strength of the commission was its inclusion of all branches of state government, along with Alaska Native representation, municipal government, and the Trust. He thanked the Judicial Council for its staff work. Commissioners Cherot and Cleghorn echoed this appreciation and their satisfaction with having served on the commission. Commissioner Case noted that much of the benefit of the commission came from interagency communication and collaboration, resulting in new projects such as the Crisis Now project. Chair Claman and Ms. Dunham also thanked the Commission staff for their efforts.

Adjournment

The meeting adjourned at 2:12 p.m.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, March 17, 2022

1:00 p.m.

Via Zoom

Commissioners Present: Blaze Bell, Susan Carney, Sean Case, Samantha Cherot (joined at 1:50), Matt Claman, Alex Cleghorn, James Cockrell, Nancy Dahlstrom, Lora Reinbold (until 1:30), Stephanie Rhoades, Trevor Stephens, Treg Taylor (Angie Kemp served as proxy for Commissioner Taylor), Steve Williams (Travis Welch served as proxy for Commissioner Williams)

Commissioners Absent: Adam Crum

Participants: Rebecca Carson, Ingrid Cumberlidge, Monica Elkinton, Dr. Ingrid Johnson, Lizzie Kubitz, Dr. Brad Myrstol, Collen Ouzts, Loren Rancourt, Laura Russell, Sarah Stanley, Kelli Toth, Malan Paquette, Dawn Shewmaker, Victoria Shanklin, John Kuhn

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

Introductions, approve agenda and meeting summary of January 27, 2022

Commission Chair Representative Matt Claman brought the meeting to order at 1:03 p.m. and called the roll. The commissioners approved the meeting agenda and summary of the January 27, 2022 meeting without objection.

Savannah's Act presentation by US Attorney John Kuhn

U.S. Attorney John Kuhn discussed the role of the US Attorney's Office in carrying out the provisions of Savannah's Act (25 U.S.C. 5701-5705), which was sponsored by Sen. Murkowski and designed to improve responses to Missing and Murdered Indigenous Persons (MMIP).¹ In Alaska this will involve coordination among state, federal, and tribal organizations and facilitating tribal community response plans. He emphasized that he looks forward to working with tribes, as well as the other stakeholders to achieve the purposes of the act, which are to clarify, cooperate, and empower. Specific processes will not be mandated from the top down, but tribal stakeholders will be supported in developing robust responses to missing persons that will suit their needs.

Under the act, the U.S. Attorney is required to develop guidelines for interjurisdictional cooperation and enforcement of domestic violence protective orders. It will also create standards for collecting MMIP data that are culturally appropriate and trauma-informed, specify which agency(ies)

¹ A copy of the bill is available at: <https://www.congress.gov/bill/116th-congress/senate-bill/227>

have responsibility for data entry, and develop best practices for cooperative searches. This is happening in all states, in every district that has “Indian Country.”

Comm. Reinbold asked how effective the federal money provided to the state for MMIP has been. Mr. Kuhn said that the U.S. Attorneys’ Offices are strictly limited in their engagement with any funding issues, so he did not have any information about that, but he did know that a great deal of funding had been made available to fund victim services. He added that U.S. Attorneys could not make funding recommendations for states.

Comm. Cleghorn said that he was looking forward to the reports, and asked Mr. Kuhn how tribes could help the U.S. Attorney’s office to carry out the Alaska provisions in the new VAWA bill. Mr. Kuhn said a draft guidelines document should be released by the end of the month; it will be disseminated to law enforcement first, then released more broadly. His office would welcome feedback and suggestions, and the guidelines could be revised according to what is working.

Mr. Kuhn said that Ingrid Cumberlidge, the MMIP Coordinator from his office, would be the point of contact for this work, and that representatives from the national office would be in Alaska in September to work on the project.

Comm. Claman asked about federal limits on investigation of crimes occurring in the state. Mr. Kuhn said because Alaska is a PL280 state, the federal government has ceded enforcement for murder and some other serious offenses to the state. He added that the federal offices do often support the Troopers in their work with investigative and search resources.

Alaska Victimization Survey, Dr. Ingrid Johnson

Dr. Johnson used a PowerPoint presentation to explain the purpose, data set, and methods of analysis for the Alaska Victimization Survey (AVS) for 2020.² The AVS has been conducted statewide every five years starting in 2010. It asks a representative sample of women in Alaska about their experiences with intimate partner violence and sexual violence. Dr. Johnson noted that the presentation did not discuss reports about instances of emotional abuse.

In 2020, 57.7% of respondents reported having experienced intimate partner violence, sexual violence, or both within their lifetimes, and 8.1% had had such experiences within the previous year. New questions in the 2020 survey asked respondents about issues related to the COVID-19 pandemic. Women who had experienced a loss of financial stability or reduced employment due to the pandemic were about twice as likely to report intimate partner violence (IPV) during the first pandemic year.

Dr. Johnson said that there were data that had not yet been published and that the UAA Justice Center was using the data set to answer more questions about stalking, harassment, emotional abuse and psychological aggression. They will also review respondents’ perceptions of their experiences with

² The final report is available here: <https://scholarworks.alaska.edu/handle/11122/12259>.

groups providing services, so that providers understand how their services are being perceived by women in need of them.

Ms. Johnson said that their analyses of the data also showed that women who were potential Mental Health Trust beneficiaries were twice as likely to have experienced interpersonal violence, and were significantly more likely to have experienced sexual assault, and to have had Adverse Childhood Experiences in their past.

Mr. Rancourt, a public observer, asked why men were excluded from the survey. Dr. Johnson said that was a common question often discussed among the researchers at the Justice Center. She explained that the cost of finding a large enough sample for valid results was prohibitive.

ACJC Report on Domestic violence in Alaska

Chair Claman said that the DV Report was before the Commission for final approval. He asked Ms. Dunham to review it for members. Ms. Dunham went through sections of the report that had changed since the commission last saw it in December 2021.

Comm. Cherot said that she continued to have concerns about the section describing mandatory arrest. She recalled that Dr. Payne from AJiC had provided data showing poor consequences for people with mental illnesses who were subject to mandatory arrests. Ms. Dunham said that the report included a lot of the data that Dr. Payne had shared, but added that mandatory arrest has not been studied in Alaska. Ms. Carns said that Dr. Payne had reviewed the report recently, but did not have new data about effects on people with mental health issues.

Comm. Rhoades said that the report did not include recommendations about whether batterers' intervention programs should continue to be mandatory at sentencing. Ms. Dunham said the Commission's DV workgroup had heard from Diane Casto at the CDVSA regarding their efforts to revise the regulations for these programs. The workgroup decided not to change what was in the Commission's report because the CDVSA was continuing to review these programs and they had not finished their work.

Commissioners discussed whether the requirement for a BIP was a mandatory part of sentencing for DV offenses. Commissioners reported different experiences. Ms. DiPietro noted that the statute said that such a program "may" be required as a condition of probation, but that if people were required to complete these programs, they had to complete CDVSA-certified programs for their attendance to be credited. Members discussed the cost of the programs and their length.

Chair Claman asked for a vote on the report. Mr. Welch (for Comm. Williams) moved that the report be adopted, and Comm. Cleghorn seconded the motion. On a roll call vote, Comm. Cherot, Comm. Rhoades, and Ms. Kemp (for Comm. Taylor) abstained. Other commissioners present voted to adopt the report, and the motion passed.

DV Workgroup recommendation to encourage the use of victim-centered assessments

Members considered a recommendation from the DV Workgroup that the legislature provide financial support for communities in Alaska that wanted to implement the use of victim-centered risk assessments in the community's domestic violence response. Comm. Rhoades asked if these would be used for bail or sentencing. Ms. DiPietro said that these are victim-centered assessments, to help provide the best services for victims that can keep them safe and get help that they might need. They might be administered by officers on the scene, or by shelters.

Members asked what victim-centered risk assessments were being used in Alaska. Ms. Dunham said that ODARA had been used in Fairbanks. Comm. Rhoades wondered if this met the Commission's purpose of reducing incarcerated populations.

Chair Claman asked for a motion to approve. Comm. Cleghorn so moved, and Mr. Welch (for Comm. Williams) seconded the motion. On a roll call vote, Commissioners Cherot, Dahlstrom, and Rhoades abstained. The other commissioners present voted to approve. The motion was approved.

Public Comment

Comm. Claman called for public comment between 1:20 p.m. and 1:50 p.m. No public comment was offered.

Next meeting, adjournment

Comm. Claman said that the Commission will meet on June 2, 2022, via Zoom.

Comm. Cleghorn moved to adjourn. Comm. Case seconded the motion. All members approved. The meeting adjourned at 2:46 p.m.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, January 27, 2022

1:00 p.m.

Via Zoom

Commissioners Present: Blaze Bell, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, James Cockrell (Kelly Howell served as proxy), Nancy Dahlstrom, Lora Reinbold, Stephanie Rhoades, Steve Williams (Travis Welch served as proxy for Commissioner Williams), Al Wall (proxy for Commissioner Crum)

Commissioners Absent: Susan Carney, Trevor Stephens, Treg Taylor

Participants: Kelly Goode, Kelly Howell, Nancy Meade, Collen Ouzts, Kelli Toth, Laura Brooks, Adam Rutherford, Don Habeger, Mike Garvey, Andrew Gonzalez, Al Wall

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

Introductions

Commission Chair Representative Matt Claman brought the meeting to order at 1:02 p.m. and called the roll. The commissioners approved the meeting agenda and summary of the December 2, 2021 meeting without objection.

Department of Corrections presentation

COVID-related policies and actions

Laura Brooks, Director of Health and Rehabilitation Services for DOC, reported on DOC's COVID-related responses, and on rehabilitation programs. DOC adopted its first COVID-response plan in March of 2020, and is working on its 52nd update/revision. They have administered thousands of tests with the goal of trying to keep the disease out, but despite that COVID has found a way in. As soon as widespread testing was available, they began testing everyone booking into DOC facilities, and offering tests to all close contacts, anyone with symptoms, and anyone transferring between facilities. Unfortunately, six people have died of COVID in custody; since DOC began offering monoclonal antibody treatments in December 2020, there has been only one death in a person experiencing significant underlying conditions.

They have given about 10,000 vaccinations; about 60% of people are fully vaccinated. In some facilities, up to 80% of those incarcerated are fully vaccinated. Boosters are offered, when available Ms. Brooks emphasized throughout her discussion that vaccines are not mandatory, but are provided for all staff and incarcerated people on request. Responding to a question from Commissioner Reinbold, Ms. Brooks said that no experimental treatments are offered.

Similarly, tests are not mandatory, but are provided for staff, incarcerated people, and visitors on request. They test at intake, any sign of symptoms, and on request.

Commissioner Reinbold asked about copies of the policies in effect at any time that vaccinations or PCR tests were required for anyone.

Ms. Brooks also explained that the costs of medical care declined for a period, but are now higher. DOC has struggled with a nursing shortage, similar to other medical facilities in the state. They have started hiring technicians to help with COVID testing and tracking, and have brought in FEMA nurses as well as some part-time positions. The nursing staff have to deal with a stressful job and have high turnover.

Commissioner Rhoades asked what kinds of tests were offered. Ms. Brooks said it would depend on the situation and what was available. Mostly they rely on rapid tests, which are fairly accurate when a person is symptomatic. They confirm people who are negative on a rapid test but symptomatic with a PCR. If necessary they will bring in a contractor to do large-scale lab testing.

Lawyer and visitor policies

Ms. Cherot asked if any facilities were not allowing attorneys at this point. Ms. Brooks said that some might currently be closed to attorneys if they were in outbreak status. Commissioner Dahlstrom said that other methods of communication were available, including video-conferencing (which has not been used much). Even with open visits (e.g., in Anchorage) not many attorneys were coming.

Commissioner Cleghorn asked about family and other types of visitation. Commissioner Rhoades asked about free family phone calls. Commissioner Dahlstrom said that DOC tried to be flexible. At one time, there were four free phone calls each week. She noted that phone calls were used as a means of barter, and that not all incarcerated people using them.

Rehabilitation and treatment activities

Ms. Brooks said that DOC shut down all treatment programs at the beginning of COVID, and have been re-introducing them with necessary safety measures since then. There are one-on-one options for all treatment programs, with revised curricula. Telehealth options have increased, with limits imposed by internet availability. Group programs for treatment and other reasons have been partially brought back, with adaptations for social distancing. To the extent possible, they are returning services to previous levels. They are encouraging the passage of HB 118 that would permit some incarcerated people to have tablets in their cells.

Public Comment

Don Habberger, Juneau Reentry Coalition, said that the Coalition is interested in HB 118 allowing tablets in cells in order for people to have better access to community services.

Court System Response to COVID, update

Ms. Meade, General Counsel for the Courts said that the supreme court's most recent order allowed jury trials to begin on January 10.

She provided an update to the numbers she reported to the commission at the December meeting: as of January 1, 2022, there were 7,352 open felony cases; compared to January 1, 2020, when there were 5,200..

As of January 1, 2022, there were 12,277 open misdemeanor cases(150 fewer than on December 1, 2021); compared to 9,200 open misdemeanor cases on January 1, 2020 .

In December 2021, there were two jury trials in the Second Judicial District; then trials were suspended for two weeks due to COVID issues. In Anchorage, Presiding Judge Morse suspended jury trials for this week because so many court employees were out because of COVID-related issues. Like DOC, the Court System is generally short-staffed and staffing issues are worse during surges in COVID. Jury trials should resume in anchorage next week.

Statewide, twenty jury trials have been conducted since January 10. The court is hoping for an average of 25/month, about the pre-COVID level. The main constraint they are facing is space. Most courtrooms are too small for necessary social distancing, which has required various adaptations.

Ms. Meade said that some trials have gone smoothly, while others haven't. She gave the example of a Juneau Sexual Abuse of a Minor case in which an attorney tested positive, then a juror, and then the defendant. She noted that the effects of trial delays were felt throughout the courthouse. Limited staff available has meant that clerks were acting as bailiffs for deliberating juries, and were not available for hearings. In addition, because of the way that the Juneau courthouse is constructed, only one trial with an in-custody defendant can occur at a time, because jurors can't see defendants while Troopers are taking the defendant from one place to another. The public defense and prosecuting agencies also are short-staffed.

Workgroup updates

Ms. Dunham reported that two ACJC workgroups are active: The Victims' Rights and Services group, and the Domestic Violence group.

The DV report is close to complete. The workgroup met, and is still discussing parts of the report that it felt needed more research; it will meet again on February 9.

The Victims' Rights and Services workgroup has been working on a potential recommendation regarding victim advocates' testamentary privilege. No meetings are set at this time; the group hopes to complete this portion of its work before the March ACJC meeting.

Introduce new member, Next meetings and Adjournment

Ms. DiPietro introduced Blaze Bell, who will represent victims' interests on the commission. Commissioner Bell said she has worked with STAR, Victims for Justice, and local recovery centers. She has been the victim of a crime and was grateful to be able to bring her perspective to the Commission. Ms. Dunham welcomed her, and invited her to join both of the current workgroups because her background is relevant to each one.

Chair Claman said that the next two meetings are set for March 17, 2022 and June 2, 2022.

Mr. Cleghorn moved, and Ms. Cherot seconded that the meeting adjourn. Members approved the motion unanimously.

The meeting adjourned at 1:57 p.m.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, December 2, 2021

1:00 p.m.

Via Zoom

Commissioners Present: Susan Carney (joined at 2 p.m.), Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, James Cockrell, Nancy Dahlstrom (Kelly Goode served as proxy for Commissioner Dahlstrom) Lora Reinbold (Kelli Toth served as proxy for Senator Reinbold until Senator Reinbold joined at 2 p.m.), Stephanie Rhoades (joined at 2 p.m.), Treg Taylor (John Skidmore served as proxy for Commissioner Taylor), Steve Williams (Travis Welch served as proxy for Commissioner Williams)

Commissioners Absent: Adam Crum, Trevor Stephens

Participants: Karl Clark, Mike Garvey, Kelly Goode, Kelly Howell, Nancy Meade, Chrissie Messer, Collen Ouzts, Laura Russell, Sarah Stanley, Kelli Toth, Allison Leigh, Malan Paquette

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

Introductions

Commission Chair Representative Matt Claman brought the meeting to order at 1:03 p.m. and called the roll. The commissioners approved the meeting agenda and summaries of the October 7 and October 25 meetings without objection.

Election of Chair and Vice-Chair

Chair Claman said that the Commission needed to elect a chairperson. He said that he was willing to continue, and Comm. Cleghorn nominated him for the position. There were no other nominations, and no opposition. Representative Claman will continue to serve as chair.

Chair Claman said that the Commission also needed to have a Vice-Chair, and that Mr. Cleghorn currently held the position. Mr. Cleghorn said that he was willing to continue in the position. Mr. Welch nominated him, and there was no opposition. Mr. Cleghorn will serve as Vice-Chair.

DV report review

Commissioner Case, chair of the DV Workgroup, said that the group had two recommendations for the commissioners to consider, after they had a chance to review the report. The commission would have to approve the recommendations before they could be forwarded to the legislature.

Ms. Dunham began a review of the report, beginning with the Executive Summary.

Public comment

Chair Claman opened the meeting for public comment at 1:33 p.m. Ms. Paquette discussed the effects of use of aliases by convicted people, which could result in lack of victim notification when people are released from incarceration. Ms. Leigh commented that personal information about her had been released as a result of investigation of a Worker's Comp case, and that the courts had not taken steps to protect her from the adverse effects of the release. Chair Claman thanked each one for their comments, and said that people could comment until about 2:03 p.m.

DV Report review (continued)

After Ms. Dunham completed her review, Chair Claman asked for comments, or objections to publishing the report as written.

Prosecution and sentencing (Section H)

Commissioner Cherot suggested an edit to add on p. 46 that there are quite a few DV misdemeanor cases prosecuted at the state level. She said on p. 47 it would be helpful to include the presumptive sentencing ranges for B and C felonies and the recidivist assault statute. There was no objection to the additions and Ms. Cherot agreed to send staff the edits.

Tribal use of civil diversion (Section G)

Commissioner Cleghorn said that tribes could not request use of the Dept. of Law civil diversion process; it had to be offered by law enforcement. He suggested changes to the text to reflect this. He also believed that there were 11 tribes with civil diversion agreements with the state, not 10 as reflected in the text.

Mr. Skidmore said that Comm. Cleghorn was correct about the diversion process; also, the person alleged to have committed the violence could request the process. He recalled supplying staff with the number of tribes with diversion but if Mr. Cleghorn counted 11 tribes he had no objection to changing the number. He noted there were other tribes that were interested in diversion but had not completed the agreement process. There were no objections to changing the text; Mr. Cleghorn and Mr. Skidmore will work together on this.

Comm. Cleghorn noted that the report mentions the number of tribal courts based on the tribal court directory, which in turn is based on a survey that not all tribes respond to. The number might therefore be an undercount. He noted that there was an updated directory that was not published yet. He suggested adding a sentence that the number was likely not complete.

Mandatory arrest findings

Comm. Rhoades said that mandatory arrest (finding #4 and commentary) can harm several groups of people, including those with mental health issues, and those who are in care homes and cannot return to them after arrest. She recommended changing the language in the paragraphs to reflect a 2016 recommendation by the commission (that was not taken up by the legislature), and to include other commentary. Mr. Welch volunteered to work with Comm. Rhoades on this.

Meeting victims' and survivors' needs following an incident

Mr. Cleghorn said that officers could communicate better with people needing help following a DV incident. Ms. DiPietro said that the commission made recommendation 8-2020 that addressed this topic, and Mr. Cleghorn suggested that the current finding should make note of this.

Batterers' intervention programs

Comm. Rhoades said that the report should address the mandates for current batterers' intervention programs because they are inappropriate for many people, including culturally inappropriate for Native people, and cognitively inappropriate for people with some types of mental situations. Ms. Cherot said that they are also prohibitively costly for many people assigned to them. Mr. Case said that CDVSA is reviewing the content and other aspects of existing programs. The DV Workgroup did not have data needed to review them, and had therefore not discussed them.

Comm. Rhoades said that Comm. Cherot made a good point about the cost of participation; not being able to afford attending a BIP led to a lot of probation revocations. She added that while substance abuse treatment is effective, and people have many choices of programs to work with, BIP programs must follow regulations set by the Dept. of Corrections. She wondered whether the Commission should make a recommendation that BIPs should not be mandated as part of conditions of a person's sentence. It seemed to her that it should be decided on a case-by-case basis.

Chair Claman asked if the commissioners wanted further work on this topic. Ms. Cherot said that she had not been able to be part of the work group, and that she would like to comment. Sen. Reinbold's aide, Ms. Toth, said that she would like to see the evaluations that found the Duluth model, which is required for Alaska programs, to be ineffective. Mr. Cleghorn said that he would commit time to working with the DV Workgroup. Chair Claman asked if the commissioners would like to table approval of the report until the next meeting so that staff, commissioners, and workgroup members could review the topic and develop commentary. Members concurred.

DV workgroup recommendations to the legislature

Ms. Cherot asked to comment on the proposed recommendations of the workgroup to the commission. She said that new legislation was not needed for prosecuting either child protection issues, or damage to communications devices; both situations are well-covered by existing state and municipal laws. She added that situations endangering children also are covered under existing laws. She asked for further discussion of these recommendations before making them. Chair Claman said that this discussion could occur during the next few weeks while other issues with the report are being considered.

Jury trial suspensions

Chair Claman introduced Nancy Meade from the court system, who described the court's responses to the COVID pandemic since March of 2020. She also discussed steps that the court is taking to re-start jury trials, and to manage the backlog of cases. She noted that:

- Most jury trials were suspended after April of 2020. The Presiding Judges may grant exceptions when adequate safeguards are in place and case counts are lower; from January through October 2021, about 82 criminal jury trials went forward.
- There are currently more cases backlogged than usual.
 - Right now there are 7,300 open felony cases, compared with 5,100 in November 2019 and 4,400 in November 2018.
 - There are also 12,400 open misdemeanor cases, compared to about 9,100 in November 2019 and 7,600 in November 2018.
- The rate of felony and misdemeanor case dismissals in FY 21 has increased over the rate in prior fiscal years.
 - The rate of guilty pleas for felonies decreased slightly in FY 21 compared to prior fiscal years, and the rate of guilty pleas for misdemeanors has also decreased.

On January 10, 2022, the default will once again be that jury trials will be scheduled and expected to be held in both felony and misdemeanor cases. The court system has been working with prosecutors and the defense bar to ensure that everyone is ready to start up with trials right away on the 10th. Beginning on Jan. 10, there will be no further suspensions of criminal jury trials absent extraordinary circumstances. To handle trials while maintaining appropriate security and COVID safety protocols, the court is using alternative spaces in some locations. In addition, the court may use testing to increase the safety of victims, jurors, and other participants.

Justice Carney added that the court system was trying to be as creative as possible; for example in Fairbanks, they have opened the supreme court courtroom to jury trials because it is large enough for everyone to be distanced. She noted that the court in Bethel had been operating almost as normal.

Several members expressed concerns about the effects of backlogs, as well as the possible problems of re-opening. These included the increased needs for prisoner transport and security concerns (Comm. Cockrell for DPS); concerns about re-entry services, and services for incarcerated people (Comm. Rhoades); concerns about Native disparities, protective orders, and other situations affected by a return to pre-COVID processes (Comm. Cleghorn); concerns about case dispositions (Comm. Cherot); and concerns about testing (several commissioners, including Sen. Reinbold). Chair Claman said that he would invite representatives from DOC, the Public Defender, Dept. of Law, and others to make presentations at the next commission meeting.

Next meetings, Adjournment

Members agreed to meet three times in 2022: January 27, March 17, and June 2.

Chair Claman declared the meeting adjourned at 3:34 p.m.

Alaska Criminal Justice Commission

Meeting Summary

Monday, October 25, 2021

2:00 p.m.

Via Zoom

Commissioners Present: Susan Carney, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Nancy Dahlstrom, Lora Reinbold, Trevor Stephens, Steve Williams

Commissioners Absent: James Cockrell (Kelly Howell served as proxy for Commissioner Cockrell), Adam Crum (Al Wall served as proxy for Commissioner Crum), Stephanie Rhoades, Treg Taylor

Participants: Mike Matthews, Kelli Toth, Nancy Meade, Laura Russell, Sarah Stanley, Travis Welch, Gennifer Moreau, Brad Myrstol, Kaci Schroeder, Tony Piper, Andrew Gonzalez, Teri Tibbett, Katie Baldwin-Johnson, Alys Wooden, Troy Payne

Staff: Teri Carns, Brian Brossmer, Zoe Lowery, Susanne DiPietro, Barbara Dunham

Introductions

Commission Chair Representative Matt Claman brought the meeting to order at 2:02 and called the roll. The commissioners approved the meeting agenda and summary of the previous meeting without objection.

Public comment

Chair Claman noted that written comments had been submitted in advance of the meeting. Faith Myers wrote to advocate for amending House Bill 172 and Senate Bill 124, which would change policies for people who are held for psychiatric evaluation and treatment. Ms. Myers advocated adding patient rights and reporting provisions to these bills. Steven Pearce, director of the Citizens Commission on Human Rights for Montana, Alaska and Washington also wrote to comment on HB 172 and SB 124. He wrote that his organization views the bills as promoting detention and confinement over recovery, and would advocate for revising the bills.

Malan Paquette from Anchor Point called in to comment. She said that she had recently attended public meetings of the Parole Board and the Board of Judicial Conduct. She was concerned that the administrative staff doing investigations for these boards was not professionally licensed through the police standards council. She noted that similar boards require licensing for investigators. Ms. Paquette said she was also concerned about the offender registry and erroneous addresses. DPS staff informed her that they only enter the information the registrant provides. So the quality of the database was based on self-reports. She reviewed the database and saw erroneous addresses, fake businesses, and photos not up to DMV standards. She noted there was also an alias loophole.

Annual Report Review & Approval

Chair Claman noted that staff had circulated a new draft of the report; he reviewed the changes to see if there were any comments or objections.

Commissioner Alex Cleghorn noted that the new language on page 30 was not person-first and suggested rewording it to be person-first. There was no objection to making this change.

Commissioner Steve Williams observed that the numbering of the y-axis in figure 40 was a little confusing, and suggested adding “days” within the axis to make it clearer. There was no objection to making that change if possible within the formatting.

Commissioner Nancy Dahlstrom noted that the Department of Corrections was fine with the new language about restrictions on jury trials, but wanted to make it clear that DOC was opposed to the courts being closed. She didn’t want there to be any confusion on that count. She had to leave the meeting after this point and noted that DOC data analyst Mike Matthews had her proxy.

Commissioner Senator Lora Reinbold said she agreed with Commissioner Dahlstrom on the wording and agreed that the backlog due to the closures was a serious problem. She hoped this Commission could step in with a plan forward if appropriate.

Commissioner Williams moved to make minor changes to how Trust is referenced on pages 58 and 60, suggesting the addition of “(Trust)” to the third paragraph on page 58 and then just using “Trust” on page 62 in the fourth full paragraph. There was no objection to making those changes.

Commissioner Williams moved to approve the report with the minor changes already discussed. Commissioner Sean Case seconded the motion. Chair Claman Called for discussion.

Mr. Matthews said that his office provided most of the data in this report. He had concerns regarding the LSI-R data contained in the report. He said the analysis of this data was based on faulty assumptions, and for that reason DOC couldn’t fully condone the publication of the report. He stated that the same errors were contained in a prior report.

Chair Claman asked if Mr. Matthews was requesting that section be redone. He noted the report was due November 1. Mr. Matthews said he would prefer to redo it. He would recommend removing a few years of data and the LSI-R:SV data.

Susanne DiPietro, executive director of the Alaska Judicial Council and staff for the Commission, said she had thought that staff already had responded to DOC’s concerns, but if that wasn’t the case, more changes could be made. Staff would be able to do this by the end of the week. She also noted that it would be easy to revise the prior report mentioned by Mr. Matthews.

Commissioners Cleghorn and Williams asked Mr. Matthews to explain a bit more. Mr. Matthews said he thought it was a mistake to distinguish between the data for people who are

incarcerated and people who are not incarcerated. He thought this data was misinterpreted, and believed that people may have been wrongly assigned to those groups. For example there was data turbulence in Figure 28 that was a red flag.

There were also flaws built into the LSI-R questionnaire process used by DOC. Some of the data were self-report and some were verifiable; for example the question about having criminal acquaintances is verified by DOC, but the results number should be closer to 100%. Mr. Matthews said he wasn't an expert on DOC's internal process but noted the LSI-R:SV is a screening tool, used to determine whether DOC should then give the person the full version. He said he didn't feel comfortable reporting anything further back than 2016, when the procedures used by DOC to administer the LSI-R became more formalized.

Commissioner Cleghorn said this was a bit into the weeds but thought that it was important to get the data right. Commissioner Williams said he also supported getting data right.

Ms. DiPietro noted the LSI-R analysis in the annual report was required by statute. When staff first started looking at this analysis, they worked closely with a variety of individuals at DOC. She agreed inconsistencies in the data could be due to DOC's procedures fluctuating over time. Chair Claman asked whether the statute required reporting SV data. Ms. DiPietro said it did not. Chair Claman asked if the Commission was comfortable having staff work with Mr. Matthews to address this. There was no objection.

Chair Claman asked if Mr. Matthews had any objection to the language in the LSI-R section. Mr. Matthews said it would be good to get some footnotes in to explain the LSI-R's limitations.

Commissioner Samantha Cherot said she had some broad comments on the report; she did not want to make any changes, but did want to highlight that the report presents a bleak picture. The unsentenced population has increased 50% since 2017, and many institutions are over capacity 50 to 90% of the days. Pretrial supervision and ankle monitoring is being required for a large number of people in the low-risk population, which affects the number of people incarcerated pretrial since they will get picked up for minor bail violations. She thought the report as a whole painted a very bleak picture of the state of the criminal justice system and she encouraged commission members and those present to keep this in mind.

The report was approved (with pending changes as discussed in the meeting) without objection.

The time of the December 2 meeting was set for 1:00 p.m. to 5:00 p.m.

The meeting adjourned at 2:47.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, October 7, 2021

Noon

Via Zoom

Commissioners Present: Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Lora Reinbold, Trevor Stephens, Steve Williams

Commissioners Absent: Susan Carney, James Cockrell (Kelly Howell served as proxy for Commissioner Cockrell), Adam Crum, Nancy Dahlstrom (Betsy Holley served as proxy for Commissioner Dahlstrom), Stephanie Rhoades, Treg Taylor (Jack McKenna served as proxy for AG Taylor)

Participants: Travis Welch (Trust), Kelli Toth (Sen. Reinbold's office), Rachel Gernat (ANDVSA), Kaci Schroeder (Law), Katie Baldwin-Johnson (Trust), Brad Myrstol (Justice Center), Janice Weiss (DOC), Troy Payne (AJiC)

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

Introductions, Agenda, Previous Meeting Summary

Commission Chair Rep. Claman called the meeting to order at 12:05 p.m. He noted that Commissioner Scotty Barr resigned from his position (the victim advocate seat) so that position would remain open until a new commissioner is appointed. Chair Claman also noted that the Alaska Judicial Council, which staffs the Commission, hired Barbara Dunham as a contract attorney to support the work of the Commission on a part-time basis.

The commissioners approved the meeting agenda unanimously. Susanne DiPietro, Executive Director and staff to the Commission, noted that the draft summary of the previous meeting needed to be changed to reflect that Rachel Gernat attended on behalf of ANDVSA rather than the Dept. of Law. So modified, the meeting summary was approved unanimously.

Annual Report Review

Chair Claman explained that he would walk through each section of the draft annual report and would ask for comments or proposed changes. [The notes below reflect the sections that generated discussion; other sections are not mentioned.]

Executive summary

Commissioner Steve Williams, COO of the Alaska Mental Health Trust, noted that the dates on the first chart looked off, and wondered why. Staff noted the chart was from AJiC and was not generated by staff, and they would look into it.

[Later, Dr. Troy Payne from AJiC joined the meeting to explain that the chart was generated from AJiC's dashboard and the dates would change depending on who downloaded it. He could provide the chart with dates that made sense. Commissioner Williams said he thought that would be helpful, and suggested adding short explanation in the narrative.]

Commissioner and Public Defender Samantha Cherot noted the executive summary states that jury trials have resumed, but at the moment jury trials are not happening except for extraordinary circumstances. She thought the report should reflect that, and that in general the report should reference the most current status.

Chair Claman suggested revising the language before final approval of the report at the October 25 meeting. There was no objection.

Senator Lora Reinbold noted the executive summary says that the Commission supports SB 120. She had grave concerns about the bill, and she did not want her name on it. Chair Claman said he thought the executive summary just accurately reflects the Commission's history and the recommendation it made following the passage of SB 120.

Introduction

Chair Claman noted that the introduction listed the current commissioners and that Scotty Barr should probably be removed from the list.

Criminal Justice Data

Commissioner Williams noted the chart on page 12 was the same as the problematic chart in the executive summary and should be similarly replaced.

Chair Claman noted that there was also a reference to jury trials on page 13 and whatever language was used in the executive summary should be repeated here.

Senator Reinbold said that regarding case backlogs, she had heard there are some several thousand cases backed up. She has heard complaints from constituents about people who are on bail waiting for trial are subjected to numerous requirements such as frequent breathalyzers.

Commissioner Cherot said that was the case for more than just a few people. She offered to provide some language to reflect the current state of suspensions. Criminal Division Director Jack McKenna agreed it would be helpful to reference the suspensions. He suggested placing a summary at the beginning of the report, since the issue would be referenced a few times. Commissioner Cherot said that made sense. Chair Claman tasked Commissioner Cherot and Mr. McKenna with drafting language about the suspensions and asked them to send the suggested language to staff by the end of the following week. Ms. DiPietro said that would work for staff, and staff would then send out draft on Oct. 19.

[At this point Chair Claman had technical difficulties; Vice Chair Alex Cleghorn assumed chair duties temporarily.]

Pretrial

Senator Reinbold said she wanted to reiterate that she was very concerned about the pretrial backlog; she thought it was a serious injustice, and wondered if there was anything that could be done, that perhaps the legislature could do.

Commissioner Cherot said that point was well taken, and explained that she and Mr. McKenna were trying to work toward the resumption of jury trials with the court system; that effort was ongoing.

[Chair Claman rejoined the meeting at this point]

Chair Claman noted this section could also be edited to reflect the status of suspensions as discussed earlier.

Commissioner Williams noted there was a section on pretrial supervision, and wondered whether the pretrial supervision office that covers the Anchorage Bowl also included Girdwood, and whether that should be reflected in the report. Betsy Holley, staff to DOC Commissioner Nancy Dahlstrom, said she could find out.

Public Comment

At this point there was an opportunity for public comment but none was offered.

Parole and Probation

Chair Claman noted the chart depicting the parole grant rate showed a steep drop in the grant rate beginning in November 2019 and wondered why that was. Ms. DiPietro explained that the data for that chart was provided by Jeff Edwards, Executive Director of the Parole Board and she could ask him for an explanation. Chair Claman said he thought that would be helpful and Commissioner Cleghorn agreed.

Sex Crimes Processing

Commissioner Cleghorn noted this was the second year the Commission reported this data, and wondered if there was a way to compare this data to the previous year. Mr. McKenna said he didn't have the information at hand but that he could pull up those numbers. Ms. DiPietro explained that staff had compared the Dept. of Law's data from this year to last year, and had observed that the number of cases processed was roughly the same, which made sense because the department had the same staffing level. She offered to send last year's data, or commissioners could refer to last year's annual report.

Chair Claman wondered if the data included in this year's draft report was this the most recent data, noting that the data in the draft report was through June 2020. Mr. McKenna said he didn't think data for this year had been compiled yet. This data ending in June 2020 is new data. Ms. DiPietro added that the data in last year's report was through June 2019.

Commissioner Cleghorn said he was hoping to have a year-by-year comparison of referrals and declinations. Commissioner Williams agreed that would be helpful. Ms. DiPietro said that would be easy to do. It was Law's data but if they were amenable staff could put something together quickly. Mr. McKenna said he would discuss the matter with his staff and let Ms. DiPietro know. Chair Claman asked to resolve the issue by the end of next week.

Commissioner Cleghorn wondered how staffing impacted case numbers. He thought law enforcement made the referrals. Ms. DiPietro said that was correct, but the processing numbers once cases are referred to Law are constrained by staffing levels.

Criminal Case Processing

Senator Reinbold wondered what the defense perspective was on this section, and again wondered if there was anything that could be done to speed the process up. She was concerned that things were getting very backed up in the courts. She really thought action needed to be taken, perhaps through a supplemental budget.

Commissioner Cherot said that there had been a backlog since 2018, and the current backlog was very significant. She thought that there would be numbers from the court system. The essential thing is that the backlog can't be resolved through more trials. The group working on this is looking at alternative resolutions such as settlement conferences with retired judges. There are staffing issues with turnover at all agencies, and there are not a lot of applicants for open positions. She agreed the backlog is extreme.

Senator Reinbold said that she really appreciated the creative approach to resolving the problem and would love to discuss it further with Commissioner Cherot.

Chair Claman said that it would also be appropriate to incorporate the earlier reference to jury trial suspensions here.

Reinvestment at DOC

Ms. DiPietro explained that Commissioner Stephanie Rhoades had informed her that she was not able to attend this meeting but had questions about DOC's reinvestment section, and would like some more information. Ms. DiPietro said she forwarded Judge Rhoades' questions to Kelly Goode at DOC. Chair Claman said it sounded like there might be additional information in this section for the next draft. Ms. DiPietro agreed.

Reinvestment in Violence Prevention

Senator Reinbold said she had had constituents reach out regarding programs for men's rehabilitation as well as mental health programming at Hiland Mountain. She wanted to look at this further and thought there needed to be an assessment to make sure programs are working.

Reinvestment Recommendations

Senator Reinbold said she wanted to prioritize upgrading facilities, and was interested in putting in a capital budget request. This included mental health programming at Hiland Mountain, and she was also interested in improving faith-based programs. She thought this should be included in the reinvestment recommendations.

Commissioner Williams appreciated this suggestion and the suggestion that the Commission look more closely at DOC program outcomes. He suggested thinking about it as a task for the final wind-down period of the Commission. He noted that the recommendations that are included in the draft report have come from committees and previous work and discussion within the Commission.

Commissioner Cleghorn said that he sat on the RRR committee, and recalled that there were discussions about the efficacy of programs in that committee, and there could be more discussions there. He wondered whether the language in the recommendations on page 65 could cover what Senator Reinbold was suggesting. It did not mention specific institutions but did make recommendations for treatment.

Commissioner Cherot echoed Commissioner Williams' suggestions and said she would like to be included in additional conversations on this topic; she thought it was worthwhile, and would like to participate.

Senator Reinbold agreed with Commissioner Cleghorn that the language on page 65 regarding community based providers did address her concerns; she would prefer to drill down some, but thought the language was very good in that section. She appreciate this discussion.

Chair Claman suggested that at the next full plenary meeting a discussion of DOC treatment options could be on the agenda.

Commissioner Biographies

Ms. DiPietro noted that she had pulled some of the commissioner biographies from the internet, so she encouraged commissioners to look at their biographies to ensure they were accurate.

Chair Claman said it sounded like there would be some small changes to the draft report that the Commission would review on October 25, and that meeting would only be an hour. Public comment would start immediately.

The meeting adjourned at 1:16.

Alaska Criminal Justice Commission

Meeting Summary

Monday, August 23, 2021

9:30 a.m. - 12:00 p.m.

Via Zoom

Commissioners Present: Sue Carney, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, James Cockrell, Adam Crum, Nancy Dahlstrom, Stephanie Rhoades, Trevor Stephens, Steve Williams

Commissioners Absent: Scotty Barr, Adam Crum (Al Wall served as proxy for Commissioner Crum), Nancy Dahlstrom (Laura Brooks served as proxy for Commissioner Dahlstrom), Lora Reinbold (Kelli Toth served as proxy for Senator Reinbold), Treg Taylor (Jack McKenna served as proxy for AG Taylor)

Participants: Kelly Howell (DPS), Malan Paquette, Amanda Woody (DBH), Andrew Gonzalez, (AJiC), Nancy Meade (Court), Troy Payne (AJiC), Avram Slone (AJiC), Paula Dobbyn, Austin McDaniel (DPS), Colleen Ouzts (ANJC), Teri Tibbett (Mental Health Trust), Zeke Kaufman (Law), Diane Casto (CDVSA), Becky Tuomines, Rachel Gernat (ANDVSA), Yevgenii Kisarauskas

Staff: Brian Brossmer, Staci Corey, Teri Carns, Susanne DiPietro, Susie Dosik, Zoe Lowery

Chair Claman called the meeting to order at 9:30 a.m.

Introductions

Chair Claman said that Commission Project attorney Barbara Dunham left at the end of July to pursue other work. He thanked her for her work for the commission, and for her service to the state and community, and said that they were giving her an Alaska Mountaineering and Hiking gift card. Commissioners offered their individual thanks, and Commissioner Rhoades noted that Ms. Dunham has offered to mentor women in prison.

Approval of Agenda, and Approval of May 25, 2021 Meeting Summary

Both items were approved by the Commission members with no objection and a unanimous vote.

Domestic Violence Workgroup

Commissioner Sean Case, APD, said that Ms. Dunham had prepared a comprehensive report about domestic violence in the state that included Alaska-specific data by community, programming, and possible recommendations. He noted that disparity in how cases were handled by ethnic background, especially for Alaska Natives may have occurred in part because of ways of handling cases.

Recommendations included:

- Crisis response at the time of DV incidents, with more support for victims and survivors for safety, financial needs, and advocacy. He noted that the Victims' Rights Workgroup is also looking at crisis response programs.
- Risk and lethality assessments, to assist in immediate handling of situations, and for future guidance in determining appropriate interventions for people who have used violence in relationships.
- Closely scrutinizing and evaluating incidents involving strangulation.
- Other recommendations were included in written materials for the commissioners.

Chair Claman said that the Commission members would need more time to review the recommendations. Commissioner Cleghorn noted that restricting firearm access had to be done in a way that considered subsistence needs. Commissioners Case and Cockrell said that enforcing firearms seizures was complex because it involves storage, inventorying, and releasing weapons, requiring staff and funding. Members discussed the complications of federal law and state law not meshing well, and Mr. McKenna said that the Dept. of Law could help with researching the issues.

Commissioner Case said that the DV Workgroup recommended that mandatory arrest provisions in Alaska law be reviewed for places where more discretion could reduce the possible negative effects in some situations. Commissioner Williams forwarded the Commission's 2016 proposed recommendation about domestic violence to commissioners, noting that the commission did not approve it at that time. Dr. Payne said that it is not possible to research the pros and cons of mandatory arrest because no control group is available. He said that in states where mandatory arrest is not a universal policy, random controlled studies have shown that it has negative effects, especially on employment. He added that there are also equal protection issues. Chair Claman noted that mandatory arrest policies may discourage people from asking for help in DV situations.

Mr. McKenna asked about recommendation 1(d) regarding swift and certain responses. Commissioner Case said that diversion models should be considered to provide a swifter response. He also noted that 60% of couples get back together, and remain in relationships. He added that the Municipality of Anchorage is able to provide a swifter response to DV situations than is the state.

ACJC 2021 Annual Report

Ms. DiPietro said that the report prepared by Barbara Dunham, with updates from staff, followed the same template as earlier annual reports. She asked commission members to comment about whether they are comfortable with the template, and whether they see topics that should be added or subtracted from the report. Staff will continue to work on this template, updating the figures, charts, and graphs, and the narrative over the next month. A final draft will be distributed on October 3, to be reviewed at the October 7 meeting.

Commissioner Cherot asked that staff look at the backlog of cases is, if data are available. Ms. DiPietro said that she would check with the Court system to see what data they have.

Use of Force Study

Commissioner Cockrell presented the results of a recent study about Dept. of Public Safety “use of force” policies. The report includes the department’s definition of “use of force,” numbers of events, and outcomes. The PowerPoint presentation is available for review.

Impact of HB5 – revising some sex offense statutes, creating new penalties and other matters

Dr. Payne presented an analysis of sections of the bill for which he had data to discern possible effects on sentence lengths. He said that if the bill passed as it stood, it was possible that 20-40 people would serve more time for offenses that were reclassified from a Class B felony to an Unclassified felony. He said that changing the law in the specified ways would also change how people charged with the offenses and attorneys involved in the cases would respond. Fewer cases might be reported, more mitigators might be filed, and more cases could go to trial. Dr. Payne said that he could not estimate how many cases might be filed under provisions of the bill that made existing legal behavior into criminal behavior.

Chair Claman asked if the bill could have a disparate effect on Alaska Native people charged with one of the offenses affected by proposed legislation. Dr. Payne said that the 165 cases available for study divided about equally between Alaska Natives and Caucasians – 40% for each, with the remaining 20% being other ethnicities. He said that this was about the same ratio of Caucasian to Natives and other ethnicities as exists throughout the justice system. He noted that this was a small number of cases, and cautioned against drawing firm conclusions.

Public Comment

Chair Claman opened a public comment period at 11:00 a.m. No member of the public made comments.

Adjourn

Chair Claman asked for a motion to adjourn. Commissioner Cherot so moved, Commissioner Cleghorn seconded the motion, and members approved it unanimously. The meeting adjourned at 11:35 a.m.

Alaska Criminal Justice Commission

Meeting Summary

Tuesday, May 25, 2021

2:00 p.m. - 5:00 p.m.

Via Zoom

Commissioners Present: Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, James Cockrell, Stephanie Rhoades, Trevor Stephens, Steve Williams

Commissioners Absent: Scotty Barr, Adam Crum (Al Wall served as proxy for Commissioner Crum), Nancy Dahlstrom (Laura Brooks served as proxy for Commissioner Dahlstrom), Lora Reinbold (Kelli Toth served as proxy for Senator Reinbold), Treg Taylor (John Skidmore served as proxy for AG Taylor)

Participants: Kelly Howell, Laura Russell, Allison Leigh, Barbara Johnson, Malan Paquette, Brad Myrstol, Don Habeger, Doreen Schenkenberger, Nancy Meade, Talia Eames, Suzanne Cunningham, Jack McKenna, Rob Henderson, Rachel Gernat, Gennifer Moreau, Yevgenii Kisarauskas, Tony Piper, Teri Tibbett, Geran Tarr, Sandy Martinson, Steven Bookman, Renee McFarland, Alysa Wooden, Jeff Jessee, April Wilkerson, Travis Welch, Katie Baldwin-Johnson

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

Introductions

The agenda and the summary of the previous meeting were approved without opposition.

Data Update

Commission project attorney Barbara Dunham explained that at the last meeting, staff had presented data that included a chart comparing arrests per quarter to court cases per quarter. Commissioners had noted that arrests and court cases had not aligned, and asked staff to look into it. Ms. Dunham explained that prior to 2017, there had been more arrests in the data than court cases, and starting in 2017, there have been more court cases than arrests. In this data, one “court case” could have multiple charges, but one defendant.

Ms. Dunham explained that the trend of more court cases starting in 2017 could be partially explained by Violation of Conditions of Release (VCOR) cases. VCOR is charged when a person who is released on bail violates a condition of their bail release. Starting in 2017, the Pretrial Enforcement Division’s pretrial enforcement officers have been authorized to detain and charge people who are pretrial with VCOR, and these VCORs would show up in the court case data but not in the arrest data.

While the increase in VCORs that are found in court data but not arrest data mark a definite trend since 2017, they do not account for the entire gap between court cases and arrests since that time. More research could probably be done, but it does not seem to be problematic so it would probably not be worth spending more time on.

Dr. Troy Payne from UAA's Alaska Justice Information Center (AJiC) asked whether the gap could also be explained by a lag in data matching between the two data sets, because sometimes it takes time for the court system to send their information to DPS. AJiC will typically ask for data 6 months after the study period for this reason. Ms. Dunham said that could be part of it; the Commission usually receives data from DPS between 4 to 6 weeks after the end of the quarter.

Rehabilitation, Reentry, and Recidivism Reduction Workgroup Recommendations

Employment Recommendation

Commissioner Judge Stephanie Rhoades explained that this recommendation stems from the December plenary meeting when, inspired by public comment, the Commission decided to look into reviving the program. The Commission asked the Rehabilitation, Reentry, and Recidivism Reduction (RRRR) Workgroup, chaired by Judge Rhoades to look into the program.

Judge Rhoades explained that through the Corrections Industries program, the Department of Corrections (DOC) employed people who were incarcerated for various manufacturing and services programs such as making furniture, sewing, laundry, and auto repair. These products and services would be used by state agencies or others. The program sunset in 2005 and was not renewed. Another statute allows DOC to contract with outside organizations for similar projects, but the statute prohibits those projects from competing with local businesses and requires them to pay a minimum wage, making such projects not very feasible. In 2018, a bill to revive Corrections Industries was introduced but was not enacted.

Judge Rhoades noted that the benefits of the program were that it provided skills, work experience, and compensation to people who are incarcerated. The drawbacks were that the programs pay less than minimum wage, which is considered by some to be exploitative, and paying more would not be feasible; even with the sub-minimum wages, the programs did not make money when they were in place pre-2005.

Judge Rhoades said that the RRRR workgroup therefore thought it was best to make a recommendation based on shoring up and expanding existing programming and vocational supports that DOC now offers. The workgroup's recommendations were that (1) DOC should prioritize and expand existing vocational programming and employment efforts, particularly those that lead to meaningful and well-paying employment. Training that is relevant to local opportunities, and that provides a chance to obtain a well-paying job upon release, is the most effective for purposes of rehabilitation and reentry.

The workgroup also recommended (2) that DOC and the Alaska Department of Labor and Workforce Development (DOWLD) expand their existing collaboration. DOWLD formerly placed job specialists within DOC facilities and that was a successful program. The workgroup recommended that this practice resume, if feasible.

Finally, the workgroup also recommended (3) funding a neutral evaluation to determine how many people were successful in using their training or education from DOC to obtain employment upon release.

Judge Rhoades moved that the Commission should adopt this recommendation, and Commissioner Alex Cleghorn seconded the motion. The motion passed without opposition, and the Commission adopted the recommendation.

Sustained Reentry Funding Recommendation

Judge Rhoades explained that this recommendation was suggested by one of the reentry coalitions, and was supported by the rest of the RRRR workgroup. Recent investments in reentry efforts have helped people have a successful reentry, and this recommendation is to sustain stable funding for these efforts.

Judge Rhoades moved that the Commission should adopt this recommendation, and Commissioner Sean Case seconded the motion. The motion passed without opposition, and the Commission adopted the recommendation.

Commissioner Steve Williams reiterated that there was broad support for this worthwhile investment and noted that the reentry coalitions and other groups have made significant inroads in addressing the underlying issues of recidivism. He thought those efforts should continue and should be built upon where appropriate.

Recidivism Definition

Judge Rhoades explained that the Commission has already recommended creating a successor entity to the Commission whose duties would include data collection, analysis, and reporting. Part of that recommendation was that there should be a definition of recidivism in the new entity's statute. The RRRR workgroup was tasked with coming up with said definition, and this task had sparked quite a lot of debate and consideration. At one meeting the workgroup heard a presentation from the CSG Justice Center which was very helpful, and gave the workgroup a lot to think about.

Judge Rhoades said that in the end, the workgroup determined that DOC is very committed to the definition that it uses. DOC's definition is based on the definition that currently exists in the Commission's statute, and that definition will go away when the Commission sunsets. When that happens, DOC may wish to enact its own statute. Judge Rhoades thought it was fair to say that DOC does not want conflicting definitions in statute. The workgroup therefore recommended withdrawing the recommendation that a definition should exist in the successor entity's statute.

However, the workgroup also recommended that the successor entity should adopt the following as a working definition and standard measures:

Definition: "Criminal Recidivism" is defined as the extent to which a person previously convicted of a crime subsequently is charged with or convicted of a new criminal offense, or a violation of probation or parole.

Standard measures: The successor entity should use the following standard methods of measuring recidivism:

The percentage of people who are

- 1) Remanded to the Department of Corrections;
- 2) Convicted; or
- 3) Arrested

For a subsequent technical violation or new criminal offense, after having been

- 1) Convicted of a prior criminal offense; or
- 2) Released from DOC custody after serving a term of incarceration for a prior criminal offense.

Doreen Schenkenberger from Partners for Progress asked why there was a need to track people who are arrested even if they aren't charged. Judge Rhoades said the idea was to include everyone who touches system—arrests can still have negative consequences even if the person is not convicted.

Commission Chair Rep. Matt Claman noted that this definition was different from what was currently in statute. Judge Rhoades said that was correct. The current statute includes only people who have committed felonies and only looks at them three years after release. This definition is intended to be broader.

Chair Claman asked whether the workgroup's suggestion was that the above definition is what the new commission should use as working definition, but it should not be in statute. Judge Rhoades said yes. DOC strongly believed that there should not be two definitions in statute. They had expressed concern that if there was not one standard measure of recidivism in statute, that other organizations might try to compare their recidivism rates to DOC's rates using different measures, creating an unfair comparison. For that reason, DOC now requires its measure in its contracts. But DOC's measure doesn't include people convicted of misdemeanors, and doesn't include people who are reconvicted but not remanded to a DOC facility. The three-year follow-up window is a national standard, but is not as flexible, and the new commission should be able to look at things more flexibly.

Laura Brooks, director of Health and Rehabilitative Services at DOC, said she had just joined the meeting on behalf of Commissioner Dahlstrom. She reiterated that DOC's primary concern is a desire for consistency. A three-year follow-up period is the national standard. DOC wants their measure to be the primary definition. DOC is happy run other analyses where needed, but wanted to make sure that everyone is on the same page with the same measure.

Chair Claman asked whether DOC was comfortable with the new commission adopting the workgroup's proposed definition so long as it was not in statute. Ms. Brooks said yes, DOC thought it was important to have their preferred definition in statute to ensure consistency and to track long-term trends, but that did not preclude other analyses.

Judge Rhoades moved to adopt the workgroup's recommendation, and Deputy Attorney General John Skidmore seconded the motion.

Ms. Dunham asked how the Commission wanted to proceed if the motion was adopted. It was a little unusual since it was a non-recommendation. Judge Rhoades suggested revising the previous [task force] recommendation. Chair Claman suggested that for the sake of transparency it should be in the record somehow. Ms. Dunham suggested that both recommendations could be included in the annual report. The commissioners agreed.

There was no opposition to the motion and the recommendation was adopted.

Judge Rhoades noted that this marked the end of the RRRR workgroup's agenda. She hadn't set any more meetings, and wouldn't unless there was something else the Commission wanted to refer to it. She thanked the workgroup members for their diligent attendance. Chair Claman said the recidivism discussion in particular must have been difficult and he appreciated the group's work.

HB 5 and Related Data Discussion

Chair Claman noted the HB 5 was Representative Geran Tarr's bill, and that she was in attendance. He asked if she wanted to say anything about the bill to start off. Rep. Tarr said no, she thought most people were familiar with the bill at this point.

Commissioner Cleghorn said he asked to put this on the agenda to start to connect some dots. Alaska Native people are disproportionately represented in DOC facilities, and as both victims and defendants in sexual assault/sexual abuse of a minor (SA/SAM) cases. The Commission currently has workgroups looking at the concerns raised in victim listening sessions. He also recalled 2017 report from AJiC on how the involvement of paraprofessional police impacts the outcome of cases in terms of whether they are accepted for prosecution. He believed there is a sexual assault crisis in Alaska; the rates of violence towards women, particularly Alaska Native women, were unacceptable. The Alaska Native Justice Center (ANJC) serves both victims and people in reentry. He wanted to start a discussion on tying these threads together today.

Dr. Brad Myrstol, director of the UAA Justice Center, said that he had conducted that 2017 study in partnership with DPS. The purpose was to try to understand whether paraprofessional law enforcement—VPSOs, VPOs, and TPOs—were a mechanism for accountability, and whether the presence of a paraprofessional in a case could affect the outcome. Alaska is really unique in its use of law enforcement paraprofessionals, large territory, and large number of tribal authorities. The study found that paraprofessionals did make a difference in terms of enhancing the response to SA/SAM cases. It did not find any effect specific to VPSOs, which might be disappointing given the difference in training that VPSOs receive compared to VPOs and TPOs. But regardless, having some form of law enforcement presence in rural communities makes a difference.

Dr. Payne wanted to understand how this was relevant to HB 5 – there was a lot to say on this topic, so he wanted to know what the focus of the discussion was. Chair Claman said that one statistic reported to the Commission for its last report was the case declination rate for SA cases. He wondered if there was a connection between the declination rate and the use of paraprofessionals. At the heart of this is the phenomenon of nonreporting and nonprosecution of SA/SAM crimes. If the system can become more effective, there should be a higher prosecution

rate, and more accountability. Mr. Skidmore said he couldn't speak specifically to the impact on declination rates, but could say that the presence of paraprofessionals is very helpful.

Dr. Myrstol added that troopers are almost universally involved in these cases as well. The question was whether an additional paraprofessional helps. The study didn't have the right data to get into what exactly it was that helped. But they did get an idea—paraprofessionals were able to help with securing the scene and transportation. That helps with the quality and consistency of the evidence. The study looked at rates of acceptance, not declination, which are not just the reverse of each other; they looked at what helps to get cases in rather than what keeps cases out.

Commissioner James Cockrell said that VPSOs, TPOs, and VPOs were very important to DPS, and they increase the chances of a successful case increase if they are involved. The troopers can provide instructions to the paraprofessionals to preserve or enhance a crime scene until the troopers get there. DPS would not be able to do as much without the paraprofessionals. Commissioner Cockrell agreed with Commissioner Cleghorn that rates of SA and SAM in Alaska are unacceptable. When troopers get involved, they are already too late. He thought there was a need to find new ways to approach the issue.

Chair Claman said that seemed to suggest continuing to increase the number of paraprofessionals working in rural Alaska. Commissioner Cockrell agrees, and added that more troopers were also needed. The issue was more complicated than just adding law enforcement however.

Chair Claman said that HB 5 would change the approach in some SAM cases, and he asked Dr. Payne what data may or may not be available on that. Dr. Payne said his understanding was that HB 5 changes the age ranges for certain SAM offenses. The data needed to estimate the impacts of this would be incident-level victim and suspect ages. Right now the Commission data does not include victim information. The felony sex offense report from DPS can provide a general picture but doesn't provide specifics; he suspected that they had more detailed data.

Mr. Skidmore said it sounded like that idea was premised on reports that had already been made. He noted that with HB 5, new conduct would be criminalized, and doubted whether any data might exist to calculate any impact from that. Dr. Payne said that was a good point. The information would exist where the conduct was already charged as a sexual assault. But if the conduct was not at all criminal before, it would be difficult to estimate the effects of the law.

Chair Claman asked whether DPS had data on victim ages. Commissioner Cockrell said they might, and could check with DPS's data department. Chair Claman wondered if there was data that could help estimate the impacts of this bill, or whether the inquiry would not be fruitful. Dr. Payne said it was hard to know until we go looking. There might be some relevant information in files for investigations that never were prosecuted. That would depend on the quality of the records. He was happy to work with DPS and the Department of Law to see if AJiC can provide an estimate of impacts. It would take time.

Rep. Tarr stated in the chat section that, "It is worth noting these sections of the bill came from STAR, Standing Together Against Rape, because they see these situations all the time. They take the calls from parents who have children being victimized by predatory adults."

Dr. Payne said it would be useful to get a sense of those numbers from STAR, though it might be difficult to get a population-level estimate of the impacts.

Rep. Tarr explained that she just wanted the group to know where the concepts for this bill came from. She worked on it for two years, and in addition to STAR met with other ANDVSA affiliates and held statewide meetings to get feedback. One challenge that she had discussed with Mr. Skidmore was that it was hard to make estimates for conduct that is not criminalized now. Advocates at STAR say they do get these complaints and there is no response from law enforcement. She said she keeps thinking of survivors of these cases. One judge said that SA/SAM cases were comparable to murder where the victim doesn't die. Alaska should improve its efforts in this area, and she didn't think a lack of data should prevent this bill from going forward. Other public safety measures have gone forward without data in the past. The felony sex offenses reports from DPS do have average ages of offenders and victims, and the average age for offenders is much higher than the average age of victims.

Chair Claman asked whether Dr. Payne could get some data from STAR. Dr. Payne said he was happy to reach out to folks to find what's out there. Chair Claman asked if he would look at what is reported but not prosecuted. Dr. Payne said yes, and also what would be recategorized from SA to SAM. There might not be a lot relating to consent.

Chair Claman whether the Commission had any interest in having Dr. Payne look into this. He thought this was in line with the mission of the proposed new data analysis commission. Commissioner Steve Williams said he thought it made sense to see what data is out there.

Commissioner Cleghorn said he agreed this lines up with the role of the new proposed commission. He had been thinking about what the Commission learned in last year's annual report about case declinations, and remembering the report on paraprofessionals, and was thinking there was some sort of connection to this topic. He moved to have AJiC look into what data is available. Commissioner Williams seconded the motion. The motion passed without opposition.

Barbara Johnson from 49th Rising had a question about another part of the bill, relating to the language mandating a faster testing timeline for sexual assault kits (SAKs). She wondered whether this language would mandate the testing of anonymous SAKs or if they will continue to be kept on hold until the survivor/victim decides they want to press charges. Rep. Tarr said that it would not mandate testing. She explained that Alaska was one of the first states to adopt the anonymous SAK option, which allows a victim to get the kit done anonymously within the timeframe required to preserve the evidence, and then they can choose to have it tested later if they want. HB 5 won't change that. HB 5 moves up SAK testing for kits that have already been submitted. She had worked with the state crime lab on this they think they'll be able to get the turnaround time down to less than 6 months in the future.

Use of Force Study

Dr. Troy Payne said he worked on this study with Yevgenii Kisarauskas, research professional at AJiC, and Rob Henderson, assistant professor at the UAA Justice Center. He noted that AJiC is part of the UAA Justice Center. The study was based on files on law enforcement officers' use of deadly force from the Office of Special Prosecutions (OSP) at the Department of

Law. These were the records of OSP's investigation as to whether, in the course of using deadly force, an officer had committed a crime or whether the use of force was justified.

Dr. Payne explained that for this study, the research questions were:

1. Are OSP's case files sufficient to fully describe officer lethal use of force?
2. What can be learned from the information available in the files?

Dr. Payne said that Mr. Kisarauskas went through all of OSP's paper files on incidents of officer use of deadly force between 2010 and 2020, and coded them to answer the research questions. It was really important to note that this study did not analyze officer tactics, or whether the use of force was justified.

The two key findings of the study were (1) that OSP's files were sufficient for OSP's purposes (investigating criminal culpability), but not sufficient to fully describe everything the public might want to know about these incidents; and (2) that mental and/or behavioral health issues were present in most incidents.

The study revealed that there are about nine incidents of potentially lethal force used by officers in Alaska per year, and not all incidents result in death. About half of the incidents took place in Anchorage, Fairbanks, or Juneau. There were more citizens involved in the incidents than there were incidents, meaning that sometimes multiple citizens were involved in one incident. Usually incidents involving multiple people involved a group of people in a car.

Citizens involved were 55% white, 27% Alaska Native or American Indian, 6% Black, and 12% other/unknown. The proportion of people of color was nearly double their proportion in Alaska's general population. Most (82%) of the citizens involved were men in their 20s-40s.

Every file contained evidence of active resistance or an active public safety threat, and 62% of incidents involved citizen use of a firearm, mostly against officers (whether threatened, displayed, or fired). Citizens used firearms against bystanders in a quarter of the incidents. Dr. Payne noted that this information came from officer reports, so it was not necessarily unbiased.

Of the 259 officers involved, over half (158) fired a firearm during the incident, and nearly every incident involved officer use of firearms. Officers used less-than lethal weapons in addition to firearms in a third of the incidents. Officers were injured in 20% of the incidents and seriously injured in 3% of the incidents. Two police K9s were killed. No officers killed were killed (though officers were killed in other incidents during the same time period).

Relating to the first key finding, that the files were sufficient for OSP's purposes, but not to fully describe the incidents, AJiC made recommendations to improve data quality in this area:

- First, there needs to be a comprehensive, systematic data collection and reporting process for officer use of deadly force incidents. The data collection should be
 - Statewide
 - Comprehensive
 - Mandatory
 - Public where possible

- Second, OSP case files cannot be only source of data. Data collection should ideally be done by an agency with research/data expertise.

Data missing from OSP's files included officer data such as the officer's race, age, tenure with the current agency or other agencies, or prior contact with the citizen involved in the incident, data which was missing in at least half if not most of the cases. Other data such as the arrest tracking number and court docket number were also missing in many cases. Dr. Payne explained that the files were compiled to determine whether a crime was committed. These missing data weren't relevant to that investigation, but were things the public would want to know.

Dr. Payne said that the second key finding was that mental or behavioral health issues were present in at least 86% of incidents. In incident was coded as involving a citizen with mental health issues if the file had any indicator of mental illness including evidence of suicidal ideation, delusion, or diagnosed disorders. More than a third of all incidents involved citizens wanting police officers to kill them; files were coded as such if the citizen made affirmative statements of both wanting to die and wanting officers to kill them.

Behavioral health issues were flagged in any incident with evidence the citizen had use substances to the point of intoxication. This evidence was based on officer statements, witness statements, citizen statements, physical evidence, and toxicology results. Drug and/or alcohol intoxication of some type was present in about 2/3 of incidents. Alcohol, methamphetamines, and marijuana were the most common substances found.

Dr. Payne noted that many citizens involved in these incidents were not tested for mental or behavioral health issues, so these may be conservative numbers. The fact that the incidence of mental or behavioral health issues was so common was quite alarming to the researchers.

Dr. Payne added that there was a lot more data from the study he could talk about, and encouraged anyone with questions to contact him. He noted that the Department of Law and OSP were great research partners on this project. Chair Claman thanked Dr. Payne for the presentation and noted that it was timely in relation to national events.

HB 183

Chair Claman explained that he had introduced this bill based on the Commission's December 2020 recommendation and the sunset audit performed last year. HB 183 forms the Criminal Justice Data Analysis Commission. The structure of the new commission would be similar to the Alaska Criminal Justice Commission, with a few small changes to the appointment of the commissioners, as recommended in December: the victim's rights advocate would be appointed by ANDVSA rather than the governor; there would be two peace officers instead of one, and they would be appointed by the Alaska Chiefs of Police; the Deputy AG for the Criminal Division would be appointed instead of the AG, and DHSS voting member. Also (not part of the December recommendation) the bill would add to the new commission membership a person with lived experience who has felony conviction, appointed jointly by the deputy AG and the Public Defender.

Chair Claman noted that the primary purpose of the new commission would be to collect and analyze data, and the term "task force" seemed temporary to some people, so he had decided to call the new commission the Criminal Justice Data Analysis Commission, rather than the Criminal

Justice Advisory Taskforce, as the Commission had suggested in December. He noted that he had put the existing definition of recidivism in the statute as a placeholder, and would likely take that out.

Chair Claman explained that the Commission would begin to sunset at the end of June, and would have a year from then to continue to meet and wind up, which will give the legislature time to take this bill up.

Commissioner Williams said that as a member of the subcommittee that had crafted the December recommendation it struck him that there really does need to be an entity that can look at the system as a whole to see how it is working statewide. Data and analysis is great, but there also needed to be key entities looking at that data to enact change where necessary.

HB 172/SB 124

Commissioner Williams explained that these bills related to mental health facilities and medications were intended to help implement the Crisis Now model for addressing a behavioral health crisis. The need for this legislation was exemplified by a story related by a trooper in the Mat-Su Valley. The trooper encountered a person experiencing a mental health crisis who needed an immediate evaluation for mental health services. To get to the ER, the trooper had to put the person in handcuffs in the back of his patrol vehicle (even though the person was not charged with a crime). When he got there he found that the ER was full, and would not accept the person. The trooper then had to drive around for eight hours, including driving to API in Anchorage, to find a place for this person to go. That was the context for this presentation. Commissioner Williams also wanted to note what Dr. Payne had said—that many people subject to deadly force are in a behavioral health crisis—which is not what anyone wants. He acknowledged that many representatives from DHSS were present today and recognized DHSS as the key partner in this effort.

Commissioner Williams said that currently, Alaskans experiencing a behavioral health crisis are primarily served by law enforcement, emergency rooms, and other restrictive environments. Officers like the trooper in the situation outlined above are not trained in behavioral health crisis response; it is outside their scope of work and reduces their focus on crime prevention and intervention. There are a limited number of Designated Evaluation and Treatment locations in Alaska, and they are often full. Emergency rooms are also not designed for a person experiencing a behavioral health crisis, and can even intensify the crisis.

Commissioner Williams said that a better approach would help address people experiencing a behavioral health crisis quickly, with the lowest level of intervention possible. These bills will help implement a new “no wrong door” approach to stabilization services. With this approach, there will be a 23-hour stabilization center where officers will know that there will be swift and appropriate handoff, and the officers can go back to their necessary duties. With the “no wrong door” approach, anyone can voluntarily walk in to the stabilization center for help, in addition to being brought there by law enforcement or a mobile crisis team.

This effort began with SB 74 in 2016, which allowed DHSS to apply for the 1115 behavioral health waiver for Medicaid. This waiver will allow providers to bill Medicaid for many of the services provided in the Crisis Now model.

The goal with this model is to design and implement a behavioral health crisis response system analogous to the physical health system. Everyone knows 911, and what will happen when you call them for a physical health emergency. The new model will create the same smooth process for people in a behavioral health crisis. In addition to the 23-hour stabilization center (which is like an alternative to the emergency department) there will be a crisis call center (an alternative to 911), a mobile crisis team (an alternative to an ambulance or police car), and a short term crisis residential stabilization center (an alternative to an inpatient hospital).

Commissioner Williams explained that DHSS and the Trust have engaged stakeholders in the process of implementing Crisis Now starting in 2017. They have been in conversations about this with at least 300 organizations statewide, including healthcare providers, state agencies, law enforcement and first responders, Trust beneficiary advocates, nonprofits, local governments, and tribal organizations.

HB 172/SB 124 will facilitate this new continuum of care by making the legal changes necessary to operate crisis call centers, mobile crisis teams, 23-hour stabilization centers, and short-term crisis residential stabilization centers.

23-hour crisis stabilization centers will provide medically monitored crisis observation and psychiatric stabilization services just shy of 24 hours. Anyone can take a person in crisis there to be assessed, and given the appropriate care, avoiding more intensive levels of care (like hospitalization) if possible. A peer support person will be part of the team, which will be recovery oriented.

The short-term crisis residential stabilization centers will be the next level of care up. They will be safe and secure 16-bed facilities licensed by DHSS, and this legislation would allow people to be held there up to 120 hours. That time frame could change as the bill moves through the legislature. The short-term center would also be recovery oriented and aimed at restoring people without the need for inpatient hospitalization.

Commissioner Williams said this model had been operating around the country successfully. In Georgia, the model has been in operation for 10 years, and from the data they have collected in that time, they have found that for every 100 calls received, 90 were resolved over the phone with a call to the crisis call center which led to referrals to appropriate resources. Of the 10 that were not resolved with a phone call, seven were resolved on the spot by a mobile crisis team. Of the three who were not stabilized by the mobile crisis team, two were stabilized at the 23-hour stabilization center. One percent went to the short-term crisis residential stabilization center.

The proposed statutory changes would allow people to be held up to 24 hours at the 23-hour crisis stabilization center, and with an ex parte order, held up to 120 hours at the short term crisis residential center. At any time a person can consent to voluntary treatment for any of these services. A small number would be taken into protective custody to get their crisis resolved at the appropriate level of care in a timely manner.

Commissioner Williams said there was a sectional analysis on the akleg website, along with other supporting documents. The key takeaways were:

- SB124 / HB172 Does:

- Provide law enforcement with additional tools to protect public safety
 - Expand the number of facilities that can conduct a 72-hour evaluation
 - Add a new, less restrictive level of care
 - Facilitate a faster and more appropriate response to a crisis, expand the types of first responders that can transport an individual in crisis to an appropriate crisis facility
 - Create a “no wrong door” approach to providing medical care to a person in psychiatric crisis
- SB124 / HB172 Does Not:
 - Interfere with an officer’s authority or ability to make an arrest
 - Change who has the current statutory authority to administer crisis medication
 - Change current statutory authority for who can order an involuntary commitment
 - Reduce the individual rights of the adult or juvenile in crisis; the parents’ rights of care for their child; or existing due process rights of the individual in crisis

Kelli Toth, staff to Sen. Lora Reinbold, asked if this there would be increased use of psychotropic medication without consent. DHSS Deputy Commissioner Al Wall said these bills would not change who has the authority to administer involuntary medication. They do not address the administration of medication and DHSS did not anticipate that increased use of involuntary medication would be necessary.

Chief Justice Joel Bolger commended Commissioner Williams for his hard work in bringing the project along. He asked if, when a person is transferred to a short-term crisis residential stabilization center, that would involve an ex parte application. Commissioner Williams said that would describe the involuntary process, but anyone could consent to admission or to any of these levels of care. Any involuntary level of care would use the current ex parted process.

DC Wall said that the point of this new system would be to try to decrease involuntary commitments; the idea is to help people get help they need. In other places where this is done, involuntary commitments have gone down, and use of involuntary medications has gone down. A very small percentage of will not be able to make this decision on their own.

Steven Bookman, counsel for DHSS, clarified that the ex-parte petition would be needed to transfer someone from the 23-hour center to the 120-hour center involuntarily. Chair Claman said his understanding was that there would be a different standard for the 5-day hold vs the 30-day hold. Mr. Bookman said that was correct and that the petition must include an opinion that the crisis will resolve in that time.

Ms. Brooks said that DOC had been involved in this process from the beginning. This was an opportunity for people with minor issues to avoid jail. DOC was very supportive of that. She noted that the words “for emergency evaluation” had been taken out. DOC was concerned that without that wording someone can be brought to DOC instead of a 23-hour center if the center is full. This could be discussed later, but DOC did want to reduce those cases as much as possible.

Overall though DOC is very supportive of this concept, which has been proven to work in other states.

Chair Claman noted that these bills were a long way from passage, and there will be time to work on this. Commissioner Williams agreed and appreciated the input.

Public Comment

Malan Paquette from Anchor Point said she was an advocate who was concerned about recidivism, youth remaining in the system, and fraud. She was concerned that crime was compounding, that people commit fraud via name changes, and that CourtView doesn't have aliases. She did not approve of the statute of limitations on forgery. She thanked those present for keeping the system going, and said she appreciated work done to get CourtView back online.

Ms. Dunham noted the Commission had received a written comment from attorney Alison Carter in Fairbanks who was concerned that the backlog of cases due to COVID-19-related delays was a serious access to justice issue and was preventing family law cases involving victims of domestic violence from resolving disputes and putting families in harms' way. Ms. Carter's full letter had been circulated to the victim.

Allison Leigh wrote in the chat section of the meeting that the Commission and/or its members were re-traumatizing victims. She complained of intimidation and threats and said that attorneys commit crimes but they aren't threatened. She did not like the way victims are treated. She said that as a victim she asked the state for help and they could not help her.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, March 11, 2021

10:00 a.m. - 12:00 p.m.

Via Zoom

Commissioners Present: Joel Bolger, Samantha Cherot, Matt Claman, Alex Cleghorn, Nancy Dahlstrom, Stephanie Rhoades, Trevor Stephens, Steve Williams

Commissioners Absent: Scotty Barr, Sean Case, Adam Crum (Deputy Commissioner Al Wall served as proxy for Commissioner Crum), Kelly Howell, Shelley Hughes, Treg Taylor (Deputy Attorney General John Skidmore served as proxy for Acting Attorney General Taylor)

Participants: Leroy Williams, Teri Tibbet, Rachel Gernat, Tony Piper, Rich Curtner, Travis Welch, Paula Dobbyn, Diane Casto, Celeste Hodge Growden, Brad Myrstol, Mike Garvey, Cal Williams

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

Introductions

Judge Rhoades moved to approve the agenda, and Commissioner Alex Cleghorn seconded the motion. Judge Rhoades also moved to add a discussion of recidivism to the end of the meeting. Commissioner Steve Williams seconded the motion to amend. The agenda was approved as amended without opposition.

Judge Rhoades moved to approve the summary of the December 3 meeting, and Commissioner Williams seconded the motion. Commissioners Williams and Cleghorn both had minor technical edits to offer and said they would send those edits to staff. There was no opposition to approving the summary with those forthcoming minor edits.

Access to Digital Technology and Virtual Inreach Recommendation

Judge Rhoades explained that this recommendation had been developed by the Rehabilitation, Reentry, and Recidivism Reduction Workgroup. She wanted to especially thank a subcommittee that worked on the draft; the subcommittee was led by Travis Welch from the Trust, and also included Bobbi Outten, Teri Tibbet, Tracy Dompeling Talia Eames, Will Fanning, Laura Brooks, Jonathan Pistotnik, Don Habeger, Janice Weiss, Alys Wooden, and Adam Rutherford. Judge Rhoades explained that this recommendation built on the previous recommendation to expand computer access for people who are incarcerated. It recommends

that DOC try to expand the use of technology to facilitate virtual inreach activities by community resources that will help with rehabilitation.

Judge Rhoades noted that DOC had a statutory responsibility to provide rehabilitation to inmates. The pandemic made clear that most rehabilitative programming and inreach regarding reentry services available in the community was done by volunteers walking in the door to encourage participation in their programming. It was now clear that the technological barriers needed to be addressed to provide virtual access to these services. Virtual access would also allow for more effective and comprehensive programming and inreach even post-pandemic. The recommendation would ask the legislature to implement the necessary statutory and budgetary changes to accomplish this.

Chief Justice Joel Bolger asked whether DOC participated in the subcommittee. Judge Rhoades said that representatives of DOC worked with the subcommittee and her understanding was that DOC was in agreement with this recommendation.

Judge Rhoades moved to adopt the recommendation and Commissioner Samantha Cherot seconded the motion. Chair Matt Claman noted that Rep. Kreiss-Tomkins had already submitted a bill related to this which he had cosponsored, which would expand computer access for people who are incarcerated. The motion passed without opposition and the recommendation was adopted.

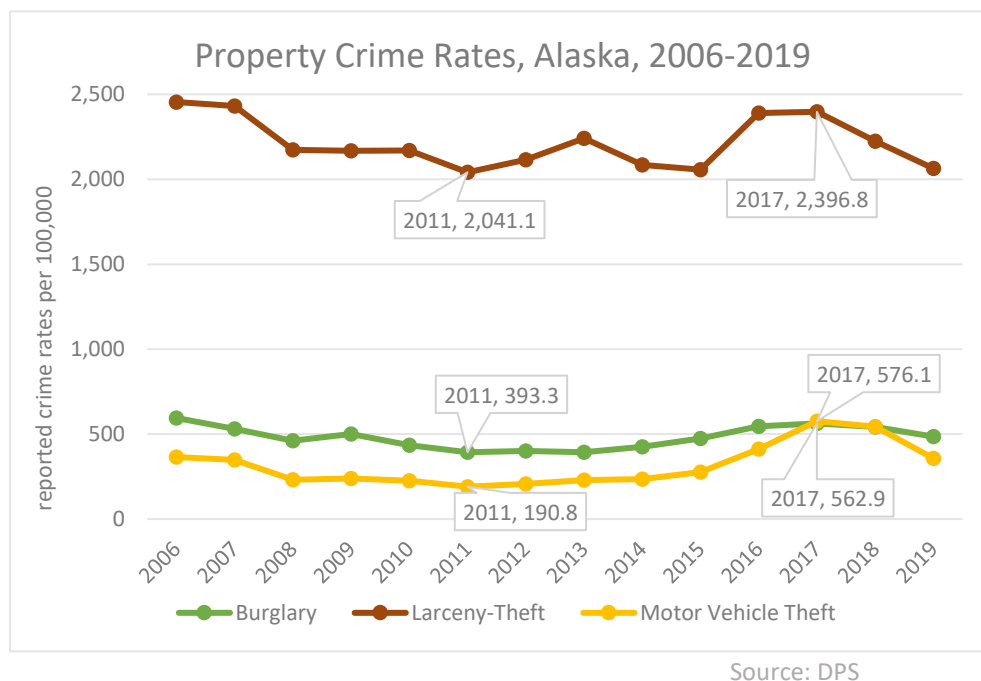
Data Review and Update

Commission project attorney Barbara Dunham explained that she had been asked to review the data the Commission collects and analyzes and to note what additional criminal justice data exists in Alaska. Currently, the Commission regularly receives raw data, or record-level data, from the Department of Corrections (DOC), the Department of Public Safety (DPS), and the Alaska Court System (ACS). The record-level data requires CJIS clearance to access. Staff data analyst Brian Brossmer, who has clearance, receives this data and aggregates it into spreadsheets for easy analysis by other staff.

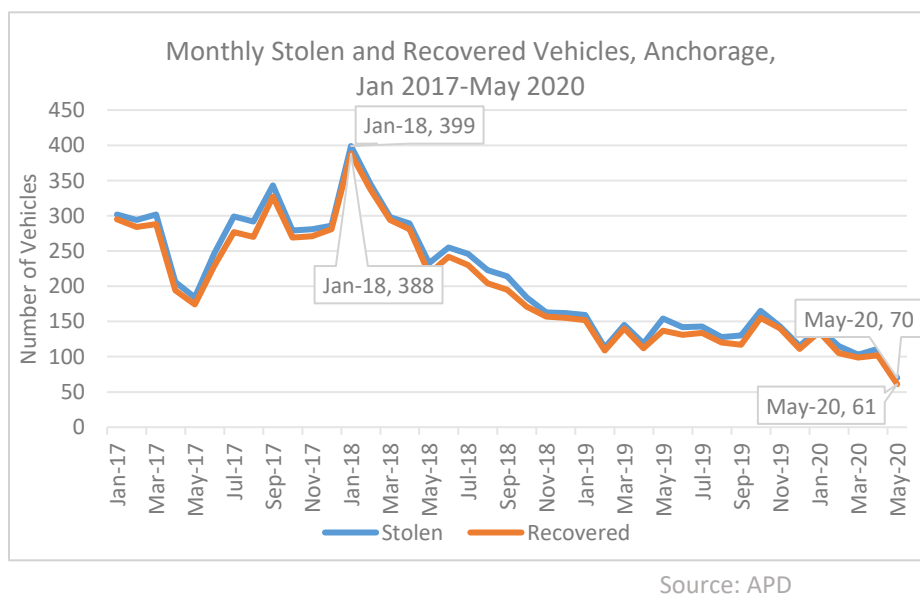
Other data existing data regarding criminal justice in Alaska includes data housed in individual law enforcement agencies, the Department of Law, the Public Defender Agency, the Office of Public Advocacy, DHSS (regarding juvenile justice) and in individual research projects conducted by University of Alaska staff, particularly the UAA Justice Center and the Alaska Justice Information Center. This data is not shared with the Commission.

Ms. Dunham noted that the presentation would look at what data is available in the order of how a criminal case proceeds. A criminal case begins with a crime, which is then reported. Crime

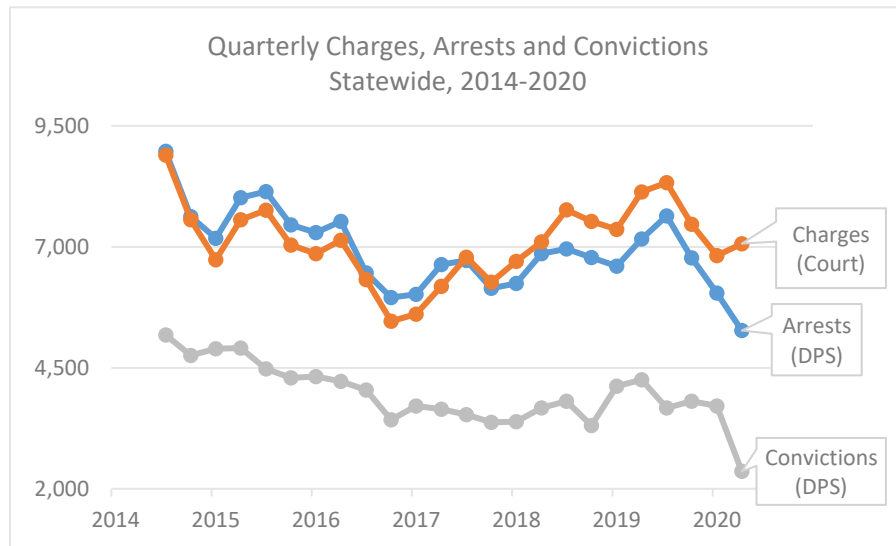
reports are not shared with the Commission, although some information on crime reports is publicly available through the uniform crime reporting (UCR) program. Yearly crime report data is reported by DPS in September of the following year. This is part of the national UCR program. Information on crime reports includes aggregate crime rates, such as this example of property crime rates, taken from the Commission’s 2020 annual report:



Crime report data can also come from individual law enforcement agencies if those agencies choose to share that data. For example, the following chart regarding stolen vehicles was provided by the Anchorage Police Department for the Commission’s 2020 annual report:

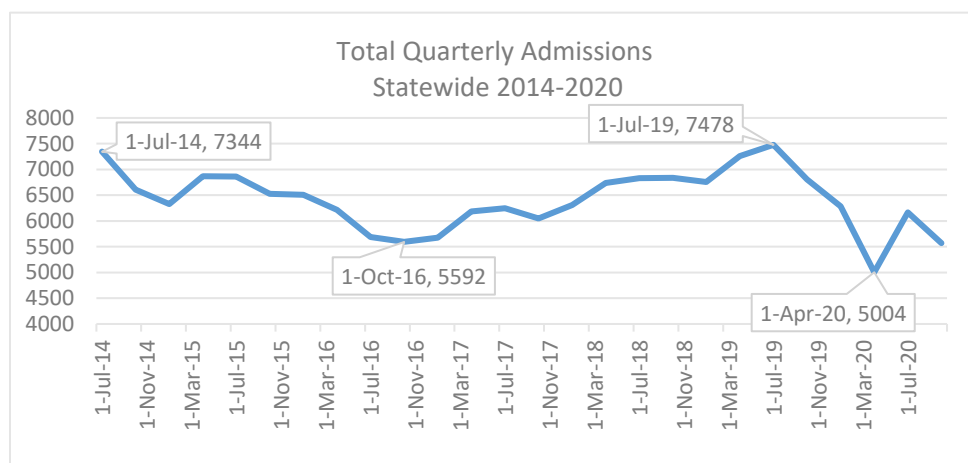


Once a crime is reported, law enforcement may or may not arrest the suspect. The Commission receives record-level data from DPS on arrests, including whether someone is taken into custody or cited and released. This data includes demographic characteristics, date and location of the arrest, and the offense for which someone is arrested. This chart, taken from the 2020 annual report, shows all quarterly arrests statewide compared with charges and convictions (using ACS data).



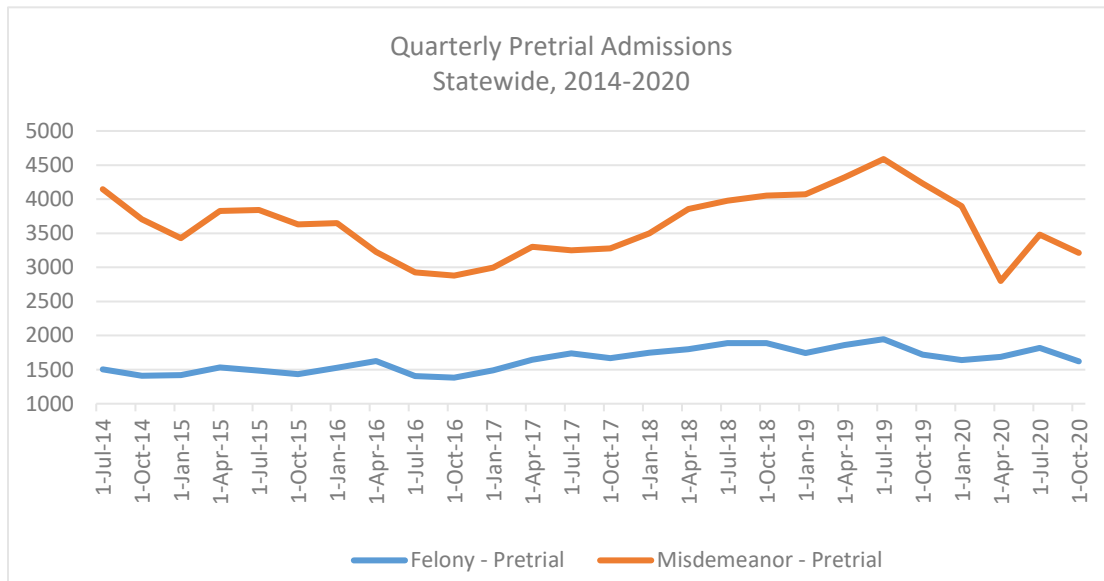
Commissioner Cleghorn wondered why there seemed to be more charges than arrests. Staff noted there could be multiple reasons and Ms. Dunham said they would look into it.

Ms. Dunham explained that when people are arrested and brought to jail on criminal charges, DOC provides the Commission data on those admissions. Admissions data includes demographic characteristics, offense type, and legal status. This chart shows the total number of people admitted (or booked) into a DOC facility each quarter, and includes the quarter beginning on Oct. 1, the most recent quarter for which the Commission has data.



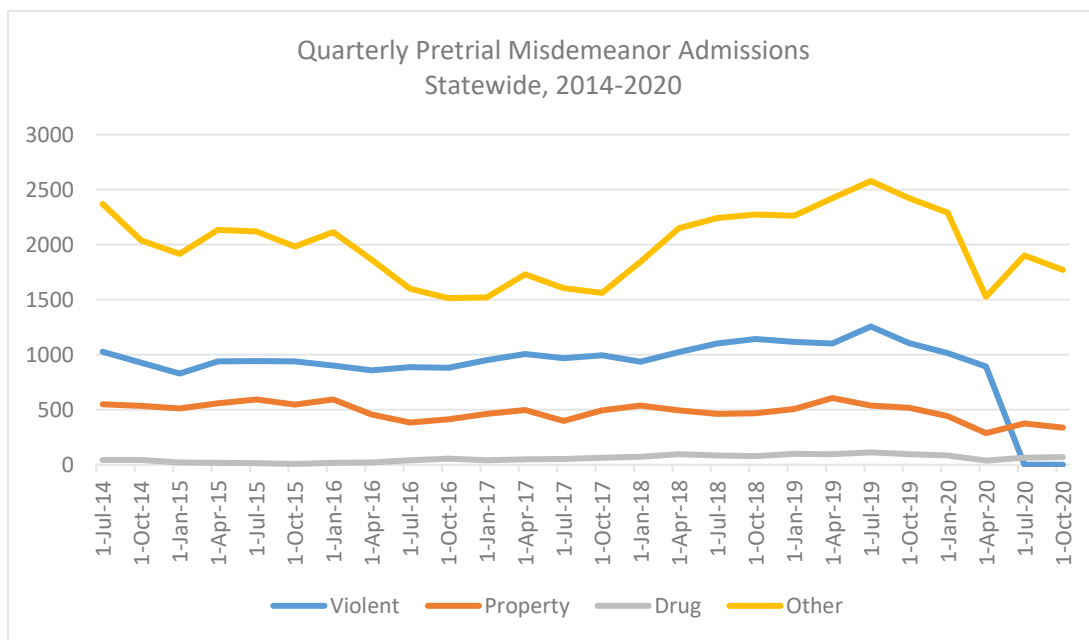
Source: DOC

The data allows the admissions to be broken down by legal status (sentenced vs unsentenced, or pretrial) and offense severity, as seen in the chart below, which shows only pretrial admissions, broken down by offense severity (felony or misdemeanor). The decrease in pretrial misdemeanor admissions for the quarters beginning January 1, 2020, and April 1, 2020 likely reflect the change in bail policies for misdemeanors in response to the onset of the pandemic.



Source: DOC

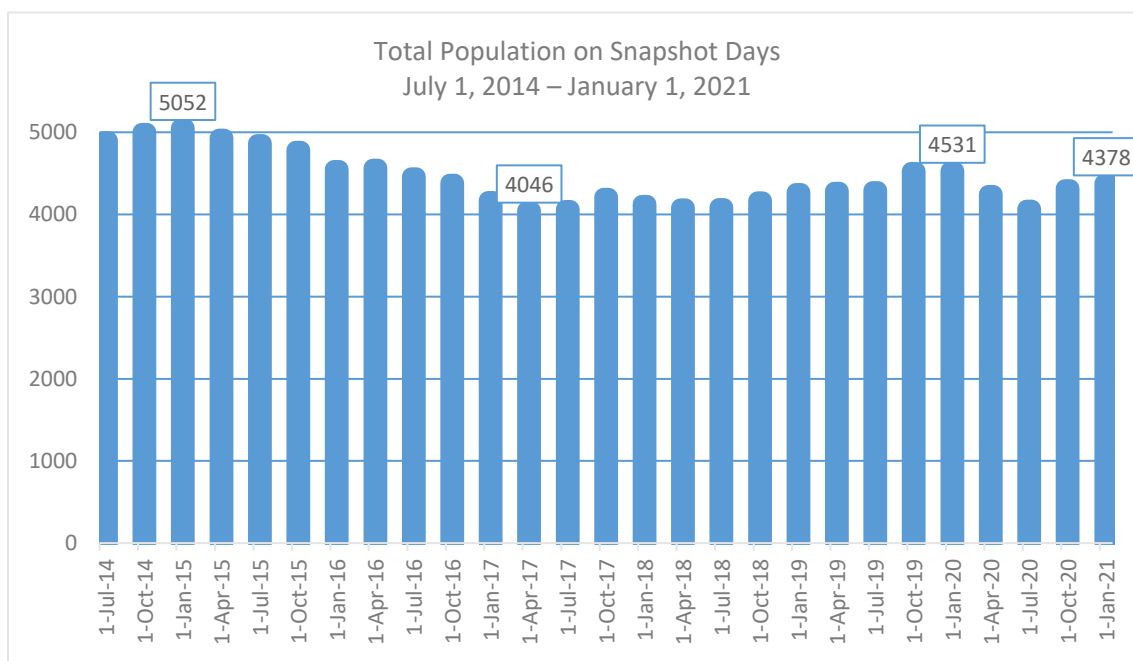
The admissions data can be broken down even further. The chart below shows only pretrial misdemeanor admissions, broken down by offense type. “Other” offenses include things like Violation of Conditions of Release (VCOR) and DUI.



Source: DOC

Ms. Dunham wasn't sure why the pretrial admissions for violent misdemeanors dropped to zero for the most recent two quarters and thought that it might be an anomaly in the data.

Ms. Dunham explained that DOC also sent the Commission snapshot data. While admissions data provide information on how many people enter DOC's doors every day, there are also approximately the same number of people leaving every day. Snapshot data is a point-in-time look at the total population incarcerated in DOC's facilities. Like admissions, snapshot data also have demographic characteristics, legal status, and offense type and severity. The following chart shows the total population on snapshot days at the beginning of each quarter, including the most

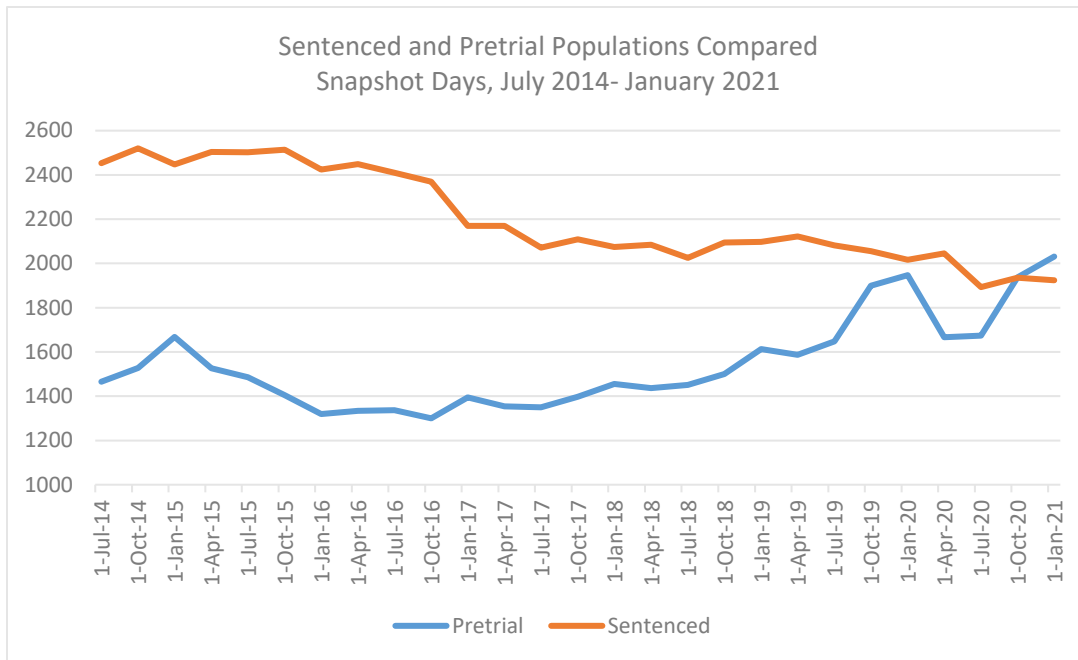


Source: DOC

recent quarter for which the Commission has data, January 1, 2021.

Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, added that the Alaska Justice Information Center also hosts interactive dashboards with this data that are updated regularly. Ms. Dunham noted that DOC also sends emails daily with a basic daily count of everyone incarcerated in each institution. Commissioner Nancy Dahlstrom said that DOC would be happy to add meeting participants to the email list.

Ms. Dunham explained that like the admissions data, snapshot data could be broken down by legal status. The chart below shows the total sentenced population compared to the pretrial population. The sentenced population has generally decreased in recent years while the pretrial population has increased. The most recent snapshot shows that there are now more people incarcerated who are pretrial than those who are convicted.



Source: DOC

Chair Claman wondered whether the increasing number of people who are pretrial was related to the fact that jury trials were on hold during the pandemic. Ms. Dunham said that could be part of it, but this was a trend that started before the pandemic. Judge Rhoades wondered whether people who were released pretrial were being oversupervised by the Pretrial Enforcement Division (PED) and therefore there were more people being arrested for VCORs. Commissioner Samantha Cherot said that the pandemic was extending the time to disposition in many cases, meaning that people were spending more time being supervised pretrial.

Commissioner Cleghorn wondered if there was any kind of standard or goal for the ideal composition of a prison population when it came to pretrial and sentenced people. This was the first time those two lines have crossed, which seemed concerning to him. Ms. Dunham said that she was not aware of any national standard, although people who are pretrial are technically innocent, so in an ideal world that number would be as close to zero as possible.

Ms. DiPietro noted that it was also difficult to compare Alaska to other states, because most other states have county jails that house the pretrial population and therefore would not have comparable statewide data. Commissioner Dahlstrom noted that there are seven other states that have unified systems similar to Alaska, which would make comparisons to some states possible.

Commissioner Dahlstrom added that judges were placing large numbers of people on electronic monitoring right now, and DOC almost ran out of electronic monitoring equipment at one point. If the pandemic subsides further she hopes to attend a conference to be able to see

what other states are doing in this area. Chair Claman noted that before the pandemic the Council of State Governments had a meeting to convene unified system states which focused on rehabilitation which was interesting. The unified system states all seem to have smaller populations that make a unified system possible.

Commissioner Williams asked whether the snapshot population includes people incarcerated in contract jails. Mr. Brossmer said he would assume so, and Commissioner Dahlstrom agreed that was most likely the case. Commissioner Williams said the contract jails were the smaller jails in rural areas and would house a mostly pretrial population, and that might be something to look into.

Chair Claman recalled that one of the reasons for reform was the large number of people being held pretrial, and that the reforms were meant to address that, but the population seems to have increased. Ms. Dunham agreed that the increasing pretrial population was noted in the Commission's 2015 report recommending reforms to the legislature, including the use of a pretrial risk assessment and mandatory release without cash bail (release "OR"). However, those provisions went into effect in January 2018 and were modified after only a few months, in particular removing the mandatory OR provision.

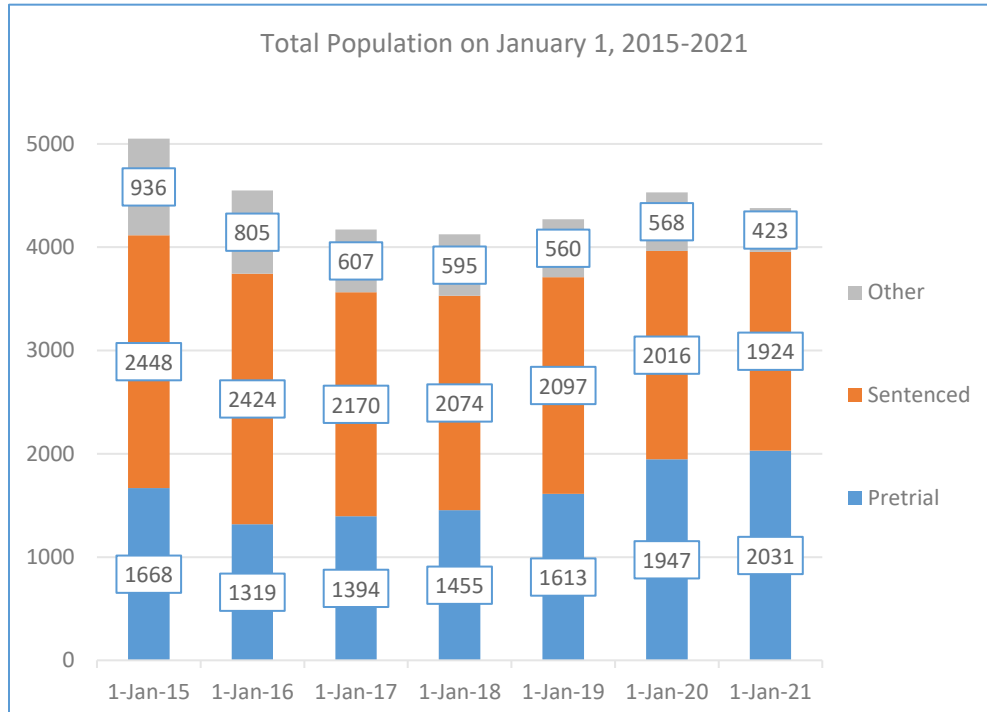
Commissioner Cleghorn wondered if there were limits on how long someone can be held pretrial. Commissioner Dahlstrom said she was not aware of any rules on this, and in some cases it can be a long time. Ms. Dunham noted that there were speedy trial rules designed to get cases heard quickly but those rules could be waived if a party asks for a continuance.

Commissioner Dahlstrom said that the high number of people house pretrial also presented unique challenges for population management. People who are pretrial have different attitudes regarding participation in programming, and can be more volatile.

Judicial Council research analyst Teri Carns said that the Council worked with the court system not too long ago to look at the time people spent on pretrial—it could be 120 days or 180 days, and sometimes just for a PTRP or misdemeanor. She agreed it was one of the drivers behind SB 91. Staff could provide the study.

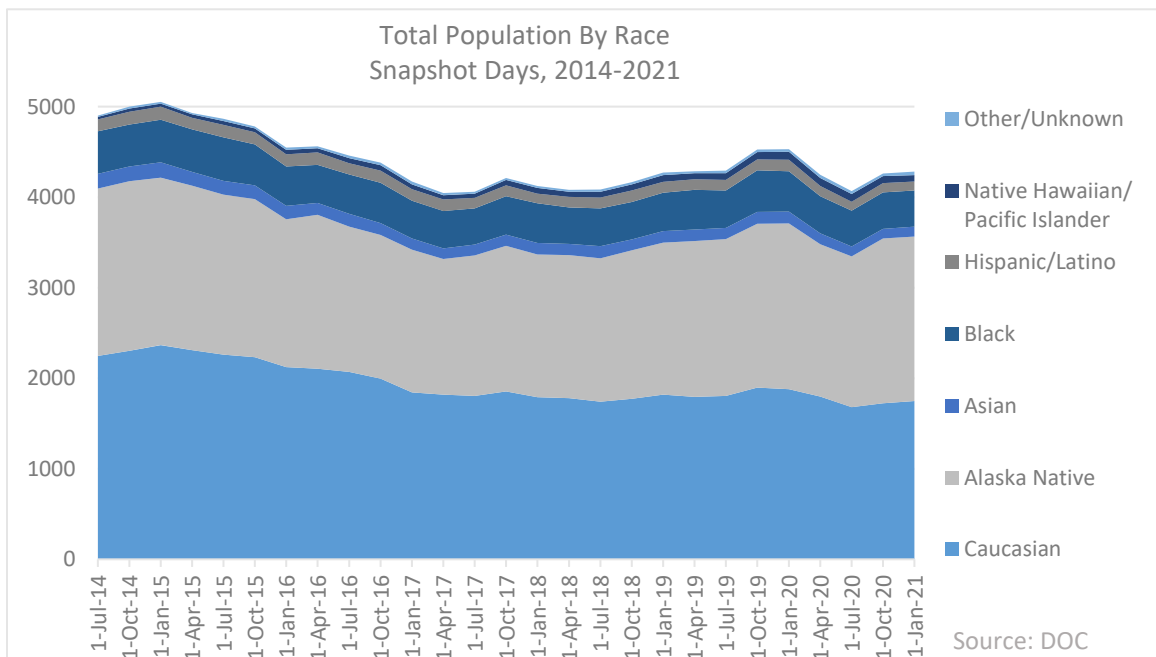
Commissioner Cherot said that further to Commissioner Dahlstrom's comments, people who are held pretrial have also had to face a lack of programming, with no visitation or in person access to attorneys for the last year. Commissioner Dahlstrom explained that access to attorneys is denied in person, but DOC has spent a lot of time to get a Polycom system set up so everyone can be reached that way. It was not ideal, but allowed DOC to keep people safe, which was their primary responsibility. Using the Polycom system, inmates go into a room, can see the discovery and other information their attorney has on a computer, and speak to their attorney on the phone.

Ms. Dunham explained that the following chart was another way of looking at the total population by legal status. In this chart “other” refers mostly to people who are incarcerated for probation and parole violations, as well as a smaller number of people on federal holds or Title 47 holds. For clarity, this chart only looks at snapshot days on January 1 of each year.



Source: DOC

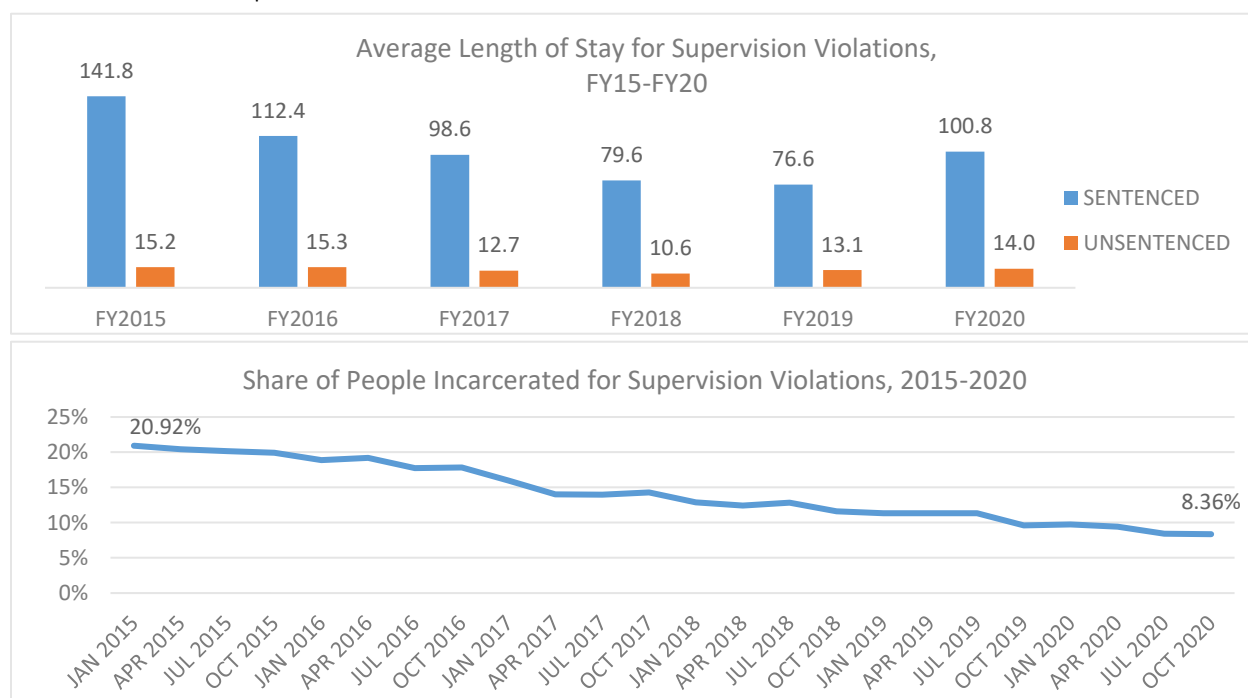
Ms. Dunham said that the total population could also be broken down by race, as seen in the chart below.



Source: DOC

Ms. Dunham noted that the chart shows that Alaska Native people make up an increasing share of the prison population on snapshot days, while Caucasian people make up a decreasing share. Commissioner Cleghorn asked where DOC got the data from race, and whether it was self-reported. Ms. Dunham said in some cases it might be self-reported to DOC staff, but often race information was pulled from APSIN (the law enforcement database). Most of the APSIN information on race came from the DMV, which is also self-reported.

Ms. Dunham said that data on probation and parole, including incarceration for probation and parole violations, was different from other DOC data in that it was not provided at the record level to the Commission. Rather, it was provided to the Commission pre-analyzed by DOC's data analyst. For example, the following charts, taken from the 2020 annual report, showed the average length of stay for probation and parole violations and the share of the prison population incarcerated for supervision violations.



Source: DOC

Commissioner Williams said he wanted to underscore the issue of length of stay as it related to Trust beneficiaries. Both pretrial and on probation, beneficiaries were generally likely to stay twice as long as similarly situated individuals. The Commission's 2015 recommendations weren't necessarily focused on Trust beneficiaries, but were looking to drive down the pretrial population especially for those who are low risk. He noted that Commissioner Dahlstrom mentioned the challenges of managing the pretrial population. He suggested ensuring that this population is incarcerated for appropriate length of time and for the right reasons.

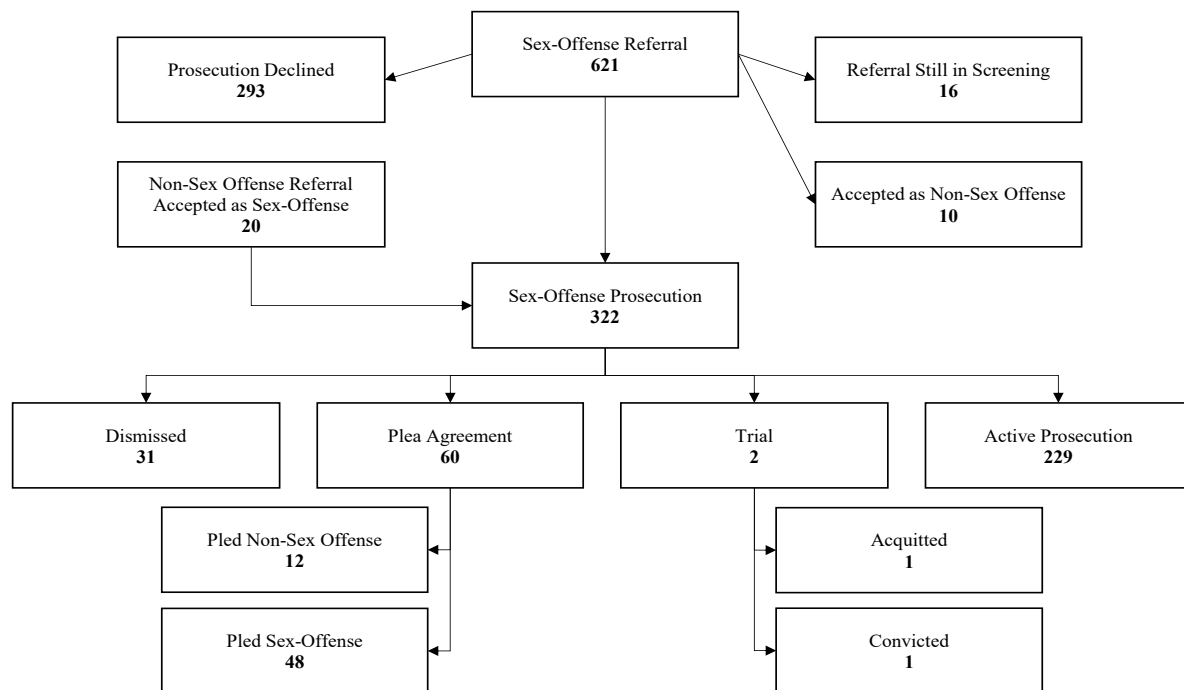
Judge Rhoades wondered if the supervision violation data only related to technical violations. Ms. Dunham noted that the time period covered by this data included periods when there was no legal distinction between technical and other violations and periods when there was. Chair Claman recalled that when the technical violation provision was in effect, the maximum length of stay for those violations was very limited. Ms. DiPietro said that previous data showed that most violations were technical.

Judge Rhoades said she thought it would be worth looking at this more. The purpose of the SB 91 changes was to have swift, certain, proportionate sanctions, and she was wondering whether probation and parole violators were sitting around waiting for hearings now. Ms. Carns asked if staff should look into this and request more data from DOC. Judge Rhoades said she would be interested in knowing what the violations are, and would like to know whether people were being held appropriately, whether they truly need to be incarcerated or were just waiting for a court date. When someone who has been out for a month has worked really hard, and gets sent back for a substantial amount of time, this sets their progress back to less than zero. A short stay is effective, then they can rerelease go back to their plan. Ms. DiPietro thought it would be possible to show this information in a different way—instead of an average, the data could show the number who stayed three days or less, ten days or less, etc. Commissioner Dahlstrom suggested talking after the meeting about getting this information.

Chair Claman said that this discussion demonstrates what the Commission had been talking about in terms of continuing the Commission's data analysis function; he thought it was important given increases to the prison population.

Ms. Dunham continued her presentation. In terms of data on prosecution, the Commission does not collect data on referrals for prosecution or what cases were accepted or declined. The Department of Law does keep this data for cases in the department's jurisdiction, and as of this past year, does share this data with the Commission for sex offenses. The data is analyzed by the Department of Law and their analysis (not the raw data) is shared with the Commission. This was reported in the Commission's 2020 annual report, as seen in the figure created by the Department of Law below:

Diagram of sex-offense case processing, cases referred between July 1, 2018 and June 30, 2019

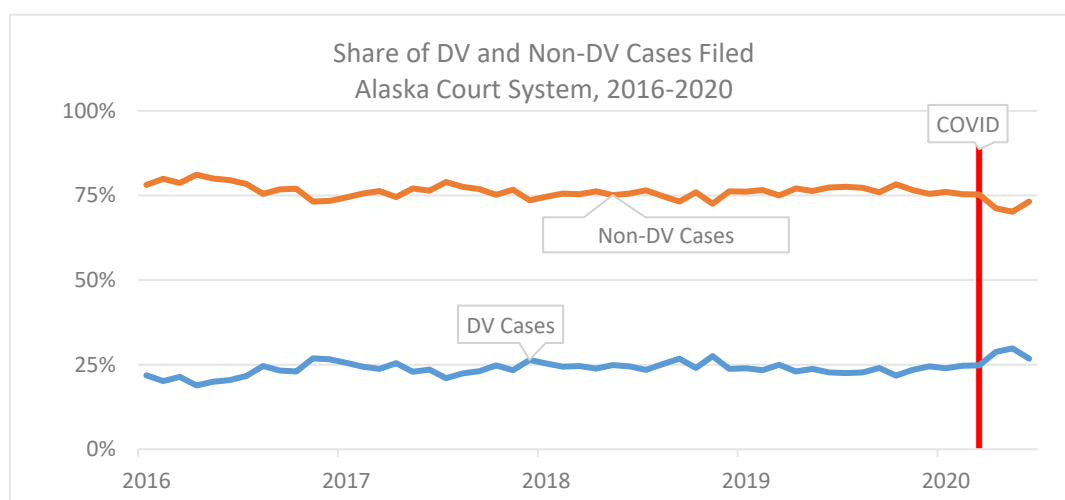


Notes.

1. 621 sex-offense referrals + 20 non-sex offense referrals accepted as sex-offenses = 641 sex-offense case referrals.
2. As of October 8, 2020, 16 sex-offense referrals are still in *screening* status.

Source: Department of Law

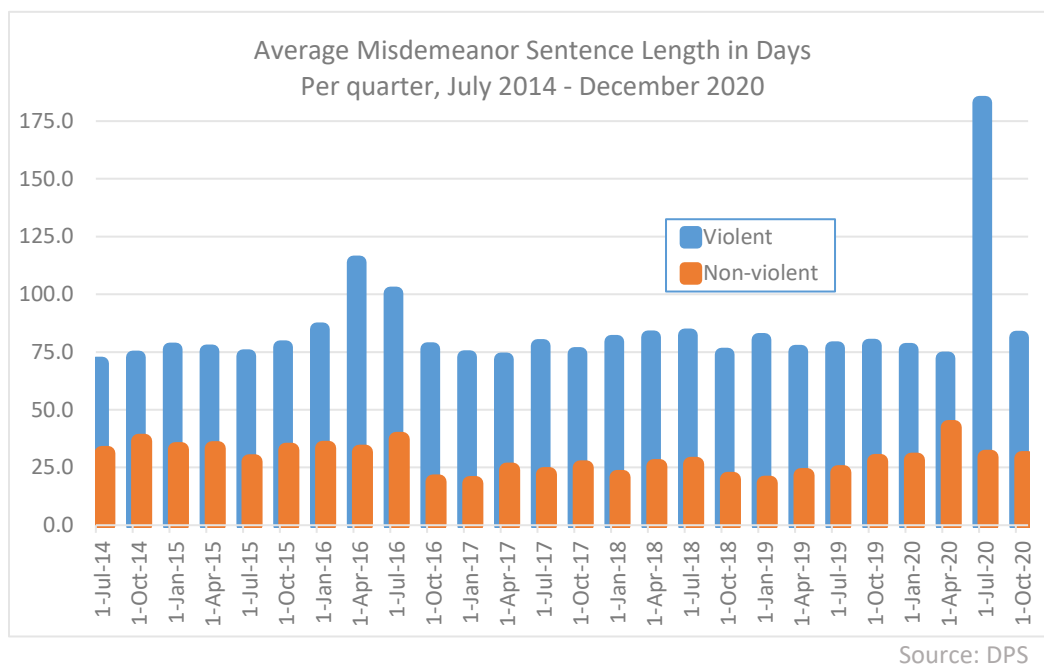
When it comes to cases that are filed in court, the Commission does receive that information from the Court System. The data are record-level data and include the date and location of each charge, the offense severity and statute, and whether there is a domestic violence flag. Ms. Dunham noted that the chart she shared for arrest data earlier in the presentation also showed quarterly charge data, representing the cases filed in court each quarter. An example of the data reflecting cases with a domestic violence was in the chart below:



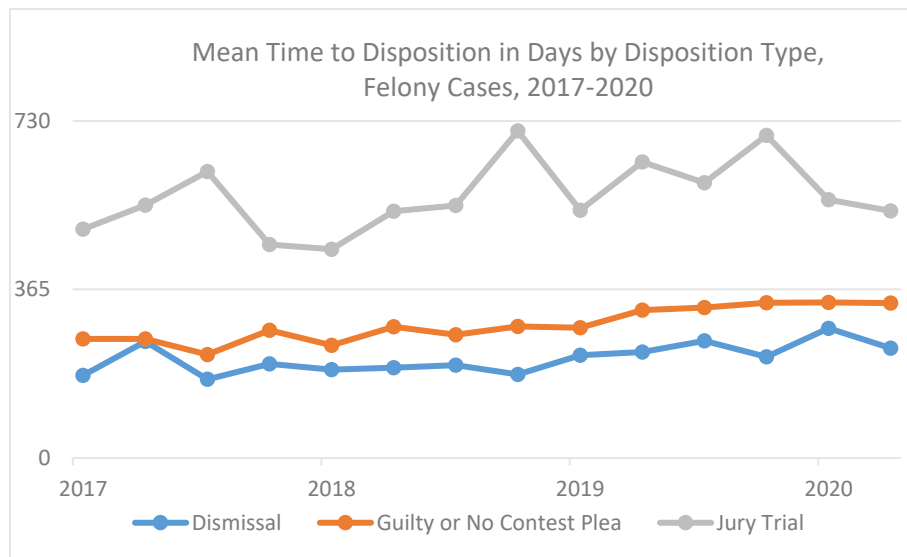
Source: Alaska Court System

Commissioner Cleghorn asked if there was any demographic information available for the charge data, particularly as it relates to domestic violence cases. Mr. Brossmer said that there was not.

Ms. Dunham said that the Commission receives disposition data from DPS, which does have demographic information. In addition to demographics, DPS disposition data includes offense severity and type, disposition type (convict, acquit, dismiss, etc) and sentence length, if applicable. For example, the chart below shows the average sentence length for violent and non-violent misdemeanors per quarter:



Disposition data also includes time to disposition data from the Court System. The chart below looks at time to disposition for felony cases broken down by the type of disposition: dismissal, guilty or no contest plea, or a jury trial (other disposition types are not included).



Source: Alaska Court System

Ms. Dunham explained that the Commission does not receive record-level data for supervision, but has received prepackaged data from DOC related to supervision, including probation officer caseloads and information about parole hearings (provided directly by the parole board).

Finally, Ms. Dunham explained that receiving record-level data from DOC, DPS, and the Court System allowed the Commission to knit this data together to give big-picture analyses such as looking at recidivism, which the Commission has reported in the last two annual reports.

Ms. Dunham noted there was also a great deal of publicly available information, including crime report information from DPS, court data from CourtView, and data and research from the Alaska Justice Information Center. The latter hosted a number of interactive data dashboards (available [here](#)) which commissioners might find interesting.

Recidivism Definition

Chair Claman explained that last fall a subcommittee was working on a recommendation for the continuation of some of the Commission's functions. Those discussions started to get into a definition of recidivism, but the group decided it would be better to send to another committee for further work. The Commission tasked the Rehabilitation, Reentry, and Recidivism Reduction (RRRR) Workgroup with developing a recommendation, but that workgroup has expressed a need for some more direction, and feedback as to what features the Commission was looking for.

Judge Rhoades, chair of the RRRR workgroup, noted that the Commission's recommendation to the legislation on the continuation of some of the Commission's functions included a recommendation that a recidivism definition should go in the definition section of the successor body's statutes. Right now, the only statutory definition is in the Commission's statutes.

Judge Rhoades noted that DOC has been reporting the percentage of inmates (felons) who return to prison within three years for any reason, and for a new conviction. Her understanding was that that definition tracks a national definition, particularly the three-year follow-up period. The definition of recidivism generally is continued criminal justice involvement, and was typically measures using three components: a cohort, a timeframe, and a qualifying event.

Judge Rhoades hoped the Commission could expound on a couple of things. First, what is the purpose of this definition? If the Commission is looking for a statutory definition, what should it be used for? Some desire to be able to compare data, which might be an argument for following a federal definition. But if the interest was more in comparing Alaska to other uniform states, it might be different. If the purpose was to inform policy decisions for Alaska legislators, what will be helpful? For example many people who are pretrial might not be included in recidivism measures, but if they are cycling in and out pretrial they still use a lot of resources. Second, are there other people who definitely want to be included in this conversation? The RRRR Workgroup primarily looks at programming. She thought the current makeup might not really be suited to this task.

[Note: at this point the Commission paused to hear public comment, which is summarized below.]

Judge Rhoades asked whether the purpose of a statutory definition was to compare Alaska to other unified states, and wondered if anyone AJiC would like to participate. Mr. Myrstol said someone from AJiC would gladly join in the workgroup. Judge Rhoades said she also would encourage Ms. Hodge Growden and others in the Alaska Black Caucus [who had given public testimony] to participate in the committee, which welcomes participation. The next meeting will be on April 16.

Ms. DiPietro noted in the interest of providing historical context that the Judicial Council has been looking at recidivism in Alaska for decades. The Council's analyses have included misdemeanants, as have the Commission's last annual reports. The Council's aim is to try to give an idea of the performance of the system as a whole and not any particular agency; the public good is served by getting information on as many people as possible. The Council has typically used a three-year follow up period, which she thought was pretty standard. The issue with having one definition in statute is that one global version might not give you what you want at any given time. Policy decisions might warrant looking at people who have committed felonies or misdemeanors, or people who haven't even served time. They also might warrant looking at why people return to the system. She would suggest a broad definition that is useful for the system as a whole.

Commissioner Williams said it seemed like only looking at people who commit felonies was not really tracking the system as a whole. Having something in statute will help programs know what data to collect.

Chair Claman thought this discussion highlights the challenge, which is that there are a lot of different ways to define recidivism. Alaska needed to have a standard so policymakers can judge trends. Including people who commit misdemeanors is important, but comparing Alaska's data with national data is also important. He suggested looking at other unified states.

Commissioner Cleghorn said he wanted to highlight that a definition should be including all contract facilities, as he didn't want to miss people held in those facilities.

Ms. Carns noted that the Council has in the past gone to great lengths (for example in the 1999 felony process study) to create subsets that were comparable to national databases. Data can be compared to national data, it just needs careful sorting, something the Council is capable of doing. She added that people have rarely make use of national comparisons, and thought that should not be a primary purpose.

Ms. DiPietro agreed, and observed that the issue was not necessarily a definition but the cohort chosen to be studied. Recidivism can be calculated for any given cohort in any way that is useful to people. The Council has been consistent with its definition—different cohorts, but the same definition: remand, reconviction, or rearrest within 3 years.

Chair Claman hoped this discussion had been helpful for Judge Rhoades and wondered whether anyone else should participate in the workgroup's discussions. Judge Rhoades said it had helped, and she was open to anyone else participating. Someone from the Public Defender and the Department of Law would be helpful. Commissioner Cherot and Mr. Skidmore agreed to attend or have a representative attend the next meeting of the workgroup.

Public Comment

Malan Paquette explained that she was from Anchor Point, and had attended previous meetings on the recidivism definition. One thing she had raised, and her biggest concern, was that she didn't want the definition to preclude looking at a person's full legal history when someone is before a judge and getting sentenced. She didn't want the information in front of judges to be limited. It seemed to her they were not looking at a person's entire history.

Leroy Williams explained that he was a member of the Alaska Black Caucus. He noted that the discussion today had referenced people staying in custody for a long time even though they

are charged with minor offenses. He wondered why people in these circumstances couldn't be released on their own recognizance.

Celeste Hodge Growden explained that she was the President and CEO of the Alaska Black Caucus. The last time she attended a plenary meeting of the Commission, she had talked about representation. Representation matters. Given what was happening across the country, she was wondering about representation on the Commission, and whether this was the only opportunity to weigh in on the Commission's work, and whether the Caucus' questions would be answered.

Chair Claman said the public comment period was typically not a place where commissioners would answer questions, but noted the makeup of the Commission is set in statute. He recalled Ms. Growden had raised issue of inclusion in the discussion about the successor body to the Commission. An emphasis on diversity is included in the recommendation for the successor body.

Ms. Growden wondered whether the recommendation specifically called for inclusion of a Black member. Chair Claman said that it continued to include a designee of the Alaska Native Justice Center to ensure Alaska Native representation, and encouraged additional diversity, but there was not a specific reference to other minorities. Ms. Growden said that was unfortunate, because the criminal justice system disproportionately impacts people of color.

Cal Williams noted that in regard to the recidivism discussion, if Alaska relies only on a comparison to other states, it will miss what people need. Some states are known to be tougher or more lenient than others, which is a reason not to compare data. He also noted that not everyone is caught when they commit a crime and that will not be counted as recidivism. People should be treated as individuals.

Future Meeting Dates and Tasks

Chair Claman noted that the next plenary meeting would be May 25, 2021, and Commissioners should let him know if they have agenda items.

Commissioner Williams noted that the Anchorage Daily News was currently running a series of articles on how Crisis Now was improving the behavioral health crisis response system. There were four of six articles out online now, and they will be in print once per week. He said he would send the link to Ms. Dunham for distribution.

Ms. Dunham noted the workgroup meetings scheduled for March 16 had been canceled.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, December 3, 2020

9:00 a.m. – 12:30 p.m.

Via Zoom

Commissioners Present: Scotty Barr, Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Al Wall (for Commissioner Adam Crum), Nancy Dahlstrom, Shelley Hughes, Randi Breager (for Commissioner Amanda Price), John Skidmore (for Acting Attorney General Ed Sniffen), Trevor Stephens, Steve Williams

Commissioners Absent: Stephanie Rhoades

Participants: Lisa Hart, Terria Vandenheuk, Troy Payne, Kaci Schroeder, Nancy Meade, Stephanie Clayborne, Erin Jackson-Hill, Mike Garvey, Kendra Kloster, Andree McLeod, Cal Williams, Celeste Hodge Growden, Helenmarie Matesi, James Stinson, Alysa Wooden

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

Introductions

Chair Matt Claman noted the agenda would need to be amended to include approving the prior meeting summaries. The agenda so amended was approved without opposition.

The meeting summaries from October 15 and October 27 were approved without opposition.

Commission Chair and Vice-Chair

Chair Claman explained that his term was expiring and that he was willing to continue to serve. Commissioner Samantha Cherot nominated him to continue serving as chair, and Commissioner Steve Williams seconded the motion. The motion passed without opposition. Chair Claman noted that there was uncertainty in terms of the leadership of the Alaska House of Representatives, and his chairmanship was conditional on his continued appointment to the Commission.

Commissioner Williams moved to appoint Commissioner Alex Cleghorn to serve as vice chair, and Commissioner Cherot seconded the motion. The motion passed without opposition.

Sunset Recommendation

Senator Shelley Hughes said she wanted to know how the Taskforce proposed in this recommendation would differ from the Commission and what sort of staffing it would need. She

said that she would need to step away from the meeting but her staffer Lisa Hart would continue with the meeting and would take notes for her.

Commissioner Williams explained that the one-page recommendation that had been circulated in advance of the meeting represented the consensus reached by the ad-hoc workgroup. The workgroup's task was to find, what, if any, body would be appropriate to continue the Commission's duties in light of the scheduled sunset. The Commission's statutes as drafted were focused on recent reforms, particularly SB 91, and gave the Commission duties related to those reforms, which have since been changed or repealed.

Commissioner Williams noted the ad-hoc workgroup members were Commissioners Matt Claman, John Skidmore, Alex Cleghorn, Samantha Cherot, and Nancy Dahlstrom, as well as staff. The group met five times. It looked at the Commission's current statutes, and concluded that there was value in having some of the Commission's duties continue, particularly the focus on data, research, and analysis of how the criminal justice system is functioning. The idea was to continue the ability to look at the system as a whole, rather than in agency/organizational silos. The new entity, the Criminal Justice Advisory Taskforce, should represent the system as a whole.

Commissioner Williams explained the workgroup had significant discussion about the Commission's current ability to make recommendations to the Legislature and the administration. The group decided to take that piece out, so the Taskforce would not be recommendations as the Commission has done over the last several years. However, the Taskforce would be able to make recommendations if any of the three branches of government requested a recommendation. In addition, the Taskforce could make recommendations on how funds should be allocated from the Recidivism Reduction Fund. Commissioner Williams reiterated that the recommendations would be nonbinding.

Commissioner Williams explained that the Taskforce would also be required to provide an annual report, so that people would be able to use it in their work, and to provide a continual evaluation of the system.

Commissioner Nancy Dahlstrom said that during the ad-hoc meetings she had raised issues of fiscal responsibility. This data was needed but she did question whether there was a need for a new group. She had concerns about the fiscal implications that Senator Hughes had brought up.

Chair Claman said that one of the things the ad-hoc group had talked about was the legislative audit, which recommended that the Commission should not continue to make recommendations, but did think data collection was essential and should continue.

Randi Breager, special assistant to the Commissioner of Public Safety, said she wanted to echo what Commissioner Dahlstrom said. She agreed that data collection was critical. She wondered whether that was something that required a statute, and also wondered whether the duties could be accomplished via the Alaska Justice Information Center (AJIC).

Commissioner Williams said that was a great question. It was clear that the Taskforce proposed in the recommendation would be a similar body in terms of membership, but the value to that was that when looking at the data, the group would have voices from all over the system. In terms of cost, it would be a cost-neutral approach, and would not increase costs.

Commissioner Claman noted that AJiC had been involved in the group, and that the group had taken a close look at AJiC in terms of staffing. AJiC's real strength was in research, whereas the Judicial Council's real strength was in logistics, and the group had heard a lot from both entities that their current arrangement in working together maximizes efficiency. If AJiC were to take things over entirely it would need staff to do the work that the Commission is doing.

Dr. Troy Payne, director of AJiC, agreed. He also noted that there was a question about whether a statute was needed. The answer to that is yes. Without a statute that authorizes the release of this information, each research project would need a separate data sharing agreement. Having a statutory arrangement allows broad-based policy research, and the Commission (as well as the proposed Taskforce) would be much less nimble without the statutes. Entering into repeated data sharing agreements would be a burden for researchers and the agencies sending the data. When the data sharing is statutorily authorized, it's clear for everyone what is required.

Commissioner Cherot pointed out the proposed Taskforce would have fewer meetings than the Commission, since it would make recommendations only as requested.

Susanne DiPietro, executive director of the Alaska Judicial Council, which staffs the Commission, said that the Judicial Council has a constitutional mandate to conduct research to improve the administration of justice. That has been part of the Council's work for the past 50 years.

Commissioner Williams explained that the second part of the recommendation related to the membership of the Taskforce. The ad-hoc workgroup had discussed broadening membership, but had also discussed the state's fiscal situation, and whether there was another way to broaden the Taskforce's perspectives. The ad-hoc workgroup decided to make slight changes in terms of membership.

The first change was really critical, and the workgroup spent a lot of time talking about it—adding a provision that would ensure representation from rural Alaska. The next change was to make the Commissioner of DHSS a voting member. The third change was to replace the Attorney General with the Deputy Attorney General in charge of the Criminal Division of the Department of Law.

John Skidmore, deputy attorney general in charge of the criminal division of the Department of Law, serving as proxy for Acting Attorney General Ed Sniffen, said that what was really needed in a group like the Taskforce was the perspective of a prosecutor. While the Attorney General is the supervisor of all of the attorneys in the Department of Law, the Deputy AG is the most senior prosecutor and the person who has that perspective.

Commissioner Williams explained that the workgroup also looked at the municipal law enforcement representative. This discussion related to increasing rural representation. The members also noted that technically the only municipality in Alaska is Anchorage. So the workgroup used the word “local” instead, which broadens the options for appointment. The workgroup also decided that the Alaska Association of Chiefs of Police should make the appointment rather than the governor.

Chair Claman said that his understanding was that the Chiefs of Police already appoint people to the Alaska Police Standards Council. Mr. Skidmore said they didn’t, membership of that body is in statute. Chair Claman noted that in any event the Chiefs of Police will have a broad knowledge of rural communities.

Commissioner Williams said the workgroup’s recommendation also called for the victims’ representative to be appointed by ANDVSA. Chair Claman said that this change and the law enforcement change made those appointments more like the appointments from the Trust and the Alaska Native Justice Center.

Commissioner Cleghorn wanted to highlight that the workgroup had a good discussion about rural Alaska. Certainly the Alaska Native Justice Center had concerns in urban areas as well as rural, but their concerns outside urban areas were very different. In rural areas their concerns were more related to a total lack of law enforcement while in urban areas, their concerns were more about disproportionality.

Ms. Breager thanked Commissioner Cleghorn for his comments, and to even further develop rural representation, she suggested expanding membership to include two law enforcement officers to represent rural and urban Alaska. Commissioner Williams said that the workgroup had weighed that idea in depth. The workgroup had also talked about the breadth of information available from DPS and its access to information on rural areas.

Chair Claman said that the workgroup had also discussed trying to reduce the number of members; it was a very wide-ranging discussion, and some proposed expanding the membership, but ultimately the group came to the conclusion that it was difficult to take people off the roster and also difficult to increase its size.

[At this point, the Commission took a break to hear public comment, which is summarized below.]

Commissioner Williams said the workgroup also discussed the fact that there are different definitions of recidivism. There are reasons for that but it can also create confusion. Looking at the statutes for the Commission, the workgroup decided it should be in the definition section of the statutes, and added that to the recommendation. They did not try to determine what that definition should be, since there were a variety of thoughts.

Commissioner Dahlstrom said she thought it was appropriate not to delve into this issue too much at this point. The challenge that DOC has is that there are different definitions of recidivism out there, and researchers have a different perspective, which was appropriate for

research but she was not sure that should be in statute. When people go before the Legislature and testify about recidivism rates using different meanings, it can make their organization sound more successful comparatively. Corrections must use what's in statute right now. It was important to have consistency on this. She thought it would need to get worked out in the Legislature.

Dr. Payne with the AJiC said the important thing was to ensure that the definition used is not limiting.

Mr. Skidmore agreed with Commissioner Dahlstrom that consistency was important. He thought it was important to have one definition. He agreed the current definition was limiting, and thought it should be more robust. But the state should have some consensus on a starting point. If anyone wanted to conduct a different analysis, it would be easier to point out the differences from the standard set in statute.

Chair Claman said he was reminded of what he'd heard about recidivism: that no matter how hard you try, it will be more complicated than you think. That was one reason why the workgroup did not come to a conclusion as to a definition. It might be useful for the Commission to work on that over the next year and potentially provide a recommendation to the legislature.

Mr. Skidmore said that he had been supportive of gathering data throughout this process. He supported this recommendation, but did so knowing that the budget will be an issue. He thought this was one way that data collection can happen and that was the reason why he supported it.

Commissioner Cherot moved that the Commission adopt the workgroup's draft recommendation, and Mr. Skidmore seconded the motion.

Ms. Breager proposed an amendment to include both a rural and urban law enforcement officer.

[At this point the Commission took a break to allow Ms. Breager to compose the wording of the amendment.]

Ms. Breager moved to amend the draft recommendation to include the recommendation "there should be two peace officer representatives, one representing a community of less than 5,000 people." Commissioner Williams seconded the motion. Ms. Breager said she appreciated the earlier comments about rural representation, and she really wanted to ensure the Taskforce would be getting that from rural law enforcement, as their understanding of the data would be informed by very a different experience than an urban officer. A community of less than 5000 would include places like Nome, and the term peace officer meant the person could be a VPO or TPO.

Mr. Skidmore said he supported this amendment. He had proposed something similar in the workgroup, with a population of 2,500, but in looking at population sizes, 5000 was better, as it included communities like Nome and Kotzebue. The phrase "peace officers" would allow any

peace officer from a small community. It wouldn't need to be a chief. He thought this perspective was critical for a group gathering statewide data.

Commissioner Cherot said, as she had expressed during the previous ad-hoc workgroup meeting, that having a rural perspective is key. She noted that the Public Defender Agency was doing a lot of work in its rural defense program. The workgroup had discussed not expanding the membership out of concerns about having too large a group. If the Commission wanted to go in this direction, she would propose adding a member from the Office of Public Advocacy or a public defender working in a rural area.

Commissioner Sean Case said it sounded like the Commission was in agreement to have more rural representation. When Walt Monegan was the DPS commissioner he was able to give some of that perspective. He was concerned that a cap of 5,000 would leave out Bethel. He thought the Commission would want someone outside of Anchorage, Fairbanks, Juneau, but he didn't necessarily want to spell out which cities.

Commissioner Cleghorn said he appreciated the desire to include Bethel. He was also concerned that listing places might leave something off. He would support representation from a hub community, but for very rural parts of the state, the hub is urban. He wanted to make sure that those smaller communities were represented.

Commissioner Williams noted that if one representative was from a community of less than 5,000 as the amendment was written, those smaller communities could be represented. He noted this discussion was similar to what the workgroup had at its last meeting. Using the word "local" made it open to any law enforcement officer statewide. The workgroup kept the number of law enforcement representatives at one knowing that DPS has a statewide presence, and is in charge of VPSOs in terms of the data perspective.

Chair Claman noted that as drafted the amendment would require at least one person from a community under 5,000, but also included the possibility that there could be two.

Ms. Breager thought there should also be someone representing a community of more than 5,000. The urban perspective was not less important, just very different. Regarding DPS, they were not really in charge of VPSOs which are independent and do not necessarily want DPS speaking for them. Rural agencies have their own identities and issues. Their perspective will be very different than that of someone working for a state department.

Commissioner Cleghorn suggested providing more guidance, maybe that the Commission was looking for representation of a community off the road system of less than 6,500—that would include Bethel but not Valdez. Ms. Breager noted that populations can change. Commissioner Williams said that was a good point and suggested using the phrase "off the road system" without putting a specific population. Mr. Skidmore agreed.

Chief Justice Joel Bolger also agreed. Looking at the population of Bethel, it was currently right around 6,500. He didn't see any problem with off the road system and on it. He thought the challenges are more similar among communities off the road system no matter the size.

Chair Claman wondered whether "road system" would include Southeast Alaska; it would depend on whether you include the Marine Highway. Places like Ketchikan, Juneau, and Kodiak are not on the paved road system but are on the Marine Highway. Justice Bolger pointed out that depending on funding, a community's status as being on the Marine Highway was subject to change.

Commissioner Case wondered whether just using the designations of rural and urban would work. Ms. Breager said it made sense and wondered if it would be legally adequate. Chair Claman noted that the Commission was just making a recommendation and the final drafting would be up to the legislative legal drafters.

Commissioner Cleghorn moved to amend the amendment with the phrase "there should be two peace officer representatives, one representing a rural community off the road system and one representing an urban community." Mr. Skidmore seconded the motion. There was no opposition and the amendment to the amendment passed.

Chair Claman asked if there was any opposition to the amendment as amended. Commissioner Cherot opposed and Chair Claman called for a vote. The amendment passed 9-1, with Commissioners Barr, Bolger, Case, Cleghorn, Dahlstrom, Breager, Skidmore, Stephens and Williams voting yes and Commissioner Cherot voting no.

Commissioner Williams noted that he was motivated to vote yes after hearing the public comments and the discussion the Commissioners just had. It would increase the size of the Taskforce, but representation was important.

Commissioner Cherot moved to include a member of the Office of Public Advocacy (OPA) as a member of the Taskforce. The clientele of both the Public Defender Agency and OPA are half rural. If the goal was to have different perspectives and diverse representation on the Taskforce, she thought OPA deserved a seat. She was not part of the original discussion at the formation of the Commission, but she thought it has been an omission for this group as well. Commissioner Cleghorn seconded the motion.

Commissioner Cleghorn said that if the intention is to include a rural perspective, his understanding was that the Public Advocate was here in Anchorage. One idea might be to specify an OPA advocate who practices in a rural area. Commissioner Cherot said she was of two minds; the Public Advocate was a critical member of the criminal justice system and a stakeholder, but she also appreciated Commissioner Cleghorn's idea. The seat could be the Public Advocate or a designee practicing in rural area.

Commissioner Williams said he wanted to remind people that the Commission was exclusive in terms of people invited to the table, and people who provide information to the

Commission. The Commission will often request and receive information from people in other areas. He moved to amend Commissioner Cherot's amendment to include the possibility of a designee as is standard in other seats on the Commission. Justice Bolger seconded the motion and there was no opposition to the amendment to the amendment.

James Stinson, the Public Advocate, said he supported this change. He thought OPA would bring a unique perspective, since OPA also provides other services, such as the public guardians, that intersect with the criminal justice system.

Chair Claman asked if there was any opposition to amendment, and Mr. Skidmore opposed. Chair Claman called for a vote and the motion failed, 5-5, with Commissioners Barr, Bolger, Cherot Cleghorn, and Stephens voting yes and Commissioners Case, Dahlstrom, Breager, Skidmore, and Williams voting no.

Chair Claman called for other amendments or comments on the recommendation.

Judge Stephens said that it was nice to have a larger turnout for public comment, and for the members of the public participating, he wanted to provide some context. The Alaska Criminal Justice Commission was established in statutes, which gives the Commission directions. Under the statutes, the Commission is set to sunset and wind up its affairs by June 2022. An audit process recommended that the Commission not continue in current form, but recognized that the Commission's data collection and analysis function was important. Today's meeting was to respond to that and discuss how things should continue. The audit noted that a lot of the Commission's recommendations had passed in SB 91, which the legislature then modified. So now the Commission was looking at what should happen going forward, keeping in mind the budget. Increasing the size of a successor body to the Commission is a concern because of costs. For him personally, he would welcome having additional members that are not necessarily involved in one of the state agencies or branches of government. He thought some public participants spoke about that today. The reality is that more seats cost more money and the legislation would then have less chance of passage. The importance of the data was really to inform how the state approaches criminal justice issues, including rehabilitation and lowering recidivism rates.

Commissioner Williams thought that the discussions in the ad-hoc workgroup and today illustrated a broad consensus that statewide representation is critical, and thought that the public comments echoed that too. The Commission is important to public, and people who are involved in the justice system in one way or another.

Chair Claman asked if there was any objection to the motion to approve the recommendation as amended. There was no objection, with Ms. Breager and Commissioner Dahlstrom abstaining. The motion passed and the recommendation was approved.

Work Plan and Meeting Schedule for 2021

Commission project attorney Barbara Dunham explained that she had circulated a memo summarizing the Commission's current workgroups and their projects, as well as questions as to how to proceed for the next year. The workgroups were as follows:

- Rehabilitation, Reentry, and Recidivism Reduction (RRRR)
 - Workgroup Chair: Stephanie Rhoades
 - On the agenda: Universal reentry ROI, digital inreach, sustained reentry funding
- Victims' Rights and Services
 - Workgroup Chair: Steve Williams
 - On the agenda: Communication privilege for victim advocates, continuances/pretrial delay, notice for parole hearings, victim navigators, victims' video
- Domestic Violence
 - Workgroup Chair: Sean Case
 - On the agenda: High-risk response teams, coordinated community response teams

Ms. Dunham added that staff needed guidance as to when the workgroups should wrap up their work, whether there were any other topics the Commission wished to take up, whether the Commission should continue to meet on its same schedule, and whether the Commission should issue an annual report for 2021.

Ms. Breager wondered whether, if the Taskforce recommendation was going to be passed by the Legislature, the Commission should look at transitioning to the Taskforce. Chair Claman said that other commissioners have asked same question. His perspective was that the that budget and fiscal issues, along with COVID response, were large looming issues for the Legislature, and he tended to think that things like the Taskforce would not be high on the agenda. It probably wouldn't get taken up until 2022, although he has been wrong before. In the last session, issues like allowing greater use of electronics in jail had broad support, but there was no time to get to it. That was one reason why the sunset statute gives commissions an additional year to wrap up. If the Legislature does act, it would provide an effective date sufficient for the Commission to plan a transition. He thought it was appropriate to set a schedule now, though it might have to change. The plenary meeting dates were set as follows:

Tuesday, January 26
Thursday, March 11
Tuesday, May 25
Tuesday, August 24 (morning)
Thursday, October 7
(Monday, October 25)
Thursday, December 2

Chair Claman asked if the group wanted to add the issue of a statutory definition of recidivism to the RRRR workgroup. Commissioner Cherot said it made sense. Ms. Dunham noted that Judge Rhoades, who could not attend today, had envisioned wrapping up that workgroup by the next meeting in January. Chair Claman said it was important to have DOC representation on

that group. Mr. Skidmore said he'd also like participate for the purpose of addressing the definition question. Commissioner Cherot said she would also attend as available.

Ms. Breager said that another topic to take up was the topic brought up in public comment and by Commissioner Dahlstrom regarding programming and employment in DOC facilities and statutory limitations. Commissioner Dahlstrom said she was referring to the prison industries program, which would take legislation to change. Chair Claman suggested adding that to the RRRR agenda as well.

Commissioner Dahlstrom noted that there are jobs in the prisons, they do not necessarily pay well but there are a lot of coveted positions, and they provide money for the commissary. One silver lining of COVID was that DOC has been able to employ more people in cleaning. Prison industries made furniture, etc. that the public could order. Ms. Vandenhoeck had mentioned making clothes; they were of great workmanship, and sold at events. Commissioner Dahlstrom said she would like to see prison industries start up again, even if they start small. Commissioner Cherot noted that the incarcerated population had made a lot of masks during the pandemic as well. Commissioner Dahlstrom said those were distributed free of charge; the incarcerated population had stepped up to make them and she was very proud of them. They organized in groups, and they were paid. They also made smaller sizes for OCS.

Chair Claman said he was hearing broad support for reviving prison industries, which he also supported. The Commission's usual process is to send these issues to a workgroup.

Commissioner Cleghorn said the Commission had heard from the public comments today that electronic access was important. He noted that digital inreach was on the agenda for the RRRR workgroup. Ms. Dunham explained that the group had already developed, and the Commission approved, a recommendation expanding computer access for the incarcerated population. The remaining agenda item was to discuss how to facilitate remote access for reentry service providers to do to inreach activities, to help prepare people who are about to reenter society.

Commissioner Cleghorn noted there was a distinction between web access and electronic access, and he wanted to be respectful of DOC's security needs but did want to make sure that the incarcerated population would have access to programming however that was achieved. Commissioner Dahlstrom agreed. DOC definitely didn't want web access for inmates but did support the idea of facilitating programming and reentry assistance whether via tablet or other means. Chair Claman suggested adding that topic to the RRRR workgroup, and suggested look at the past recommendation and in light of that see whether an additional recommendation was appropriate.

Commissioner Williams moved that the RRRR workgroup should take up the recidivism definition, reviving prison industries, and looking at computer access as relates increased access to rehabilitation services. Judge Stephens seconded the motion and the motion passed without opposition.

Chair Claman asked if the Commission wanted to issue an annual report. Commissioner Williams so moved and Commissioner Cherot seconded the motion. The motion passed without opposition. Chair Claman asked if there were any other thoughts on timing the workgroups' work, and suggested they wrap up recommendations before the next annual report. The Commission agreed.

Public Comment

Celeste Hodge explained that she is the president and CEO of the Alaska Black Caucus, a nonprofit that champions the rights of Black people in the areas of the economy, justice, health, and education. She said she would love to be included and be made aware of these meetings, and she would go to the website to find out more, as she was very interested in this. She said the Commission already knew the statistics when it comes to criminal justice and Black people. She believed this new Taskforce should be diverse. Not just diverse in terms of rural and urban, but it also needs to represent all of the community, including Black people, who can contribute valuable lived experience.

Malan Paquette explained that she was a lifelong Alaskan and was very concerned about recidivism. She thanked the Commission for considering the Taskforce. Some things in the criminal justice system don't make sense. In the sex offender registry, Kenai has 166 offenders compliant, 7 noncompliant. Recidivism is noncompliance. Also, CourtView doesn't display aliases. Recidivism is out of control. Correctional facilities are too dependent on halfway houses.

Cal Williams thought the Commission needed to do a better job with communication and notice for meetings. He thanked the Commission for the work it was doing. He explained that he was on the governor's Correctional Industries Commission some years ago. That involved incarcerated people learning trades, was a net benefit to the state, and gave the individuals skills to use once they were out as well as job connections. This was something that was needed currently. He had been talking to former Commissioner Bill Parker about this. Mr. Williams would support reinstituting correctional industries. He suggested that the Commission should come to Fairview and Mountain View and listen to the people in those neighborhoods.

Michael Garvy, advocacy director for the ACLU of Alaska, said that there had been alarming outbreaks of COVID in Alaska's correctional facilities, and that the recent deaths due to COVID were tragic and preventable. The ACLU has been receiving reports from people who are incarcerated that the facilities lack adequate sanitation supplies and masking. They are also hearing reports that there is no meaningful access to programming for behavioral health, or successful release planning. He wondered if anyone was currently looking into this issue. DOC and the administration could be doing more. People have right to rehabilitation and not to be warehoused.

Terria Vandenheurk from the Safe Alaska Restorative Justice Initiative said that she was a person in long-term recovery and was formerly incarcerated. Looking at the list of people

considered for the Taskforce. She would recommend including individuals with lived experience and who are doing direct services. She is an advocate for restorative justice practices, rehabilitation, and treating people with dignity and respect. She is also the parent of a child who was murdered, but had a different perspective than others might. She believed in rehabilitation, and thought that even prior to COVID the state was not doing enough. The “us and them” mentality should be discarded. People like her should be to be invited to the table.

Kendra Kloster explained she was the executive director of Native Peoples’ Action, and she supported what the other speakers had said. She appreciated the discussion on rural representation and echoed the suggestion to further diversify by ensuring BIPOC representation. She hoped the Commission would take comments about diversifying to heart.

Commissioner Dahlstrom said she appreciated having so much participation in this meeting. She thought the Commission had taken to heart the comments about notice and participation and getting information out there. She was open to discussions with Mr. Williams and Mr. Garvey. She also appreciated the comments from Terria, with whom she had had positive conversations in the past and had learned a lot from her shared lived experience. She has made changes in the department as a result of those conversations.

Commissioner Dahlstrom said she agreed that prison industries was a good program. It was a DOC program, but then a bill was passed in the 90s that largely prohibited it. She has had conversations with people in this group and in the Legislature about this, and would support overturning/changing that law.

Regarding COVID, Commissioner Dahlstrom said it was true that rehabilitation programming and visits had stopped. It was tough to make that decision, but she needed to keep people safe and healthy. DOC has had two deaths, and both people had serious underlying conditions. If there was a way to start rehabilitation and visitation safely she would do it. She continues to work with staff on solutions, and noted that staffing is also challenging, with staff often needing to quarantine. She has been trying to get tablets into the facilities, but that required a new bill which was close to passing last year. DOC also has a very serious responsibility for victim notification. She thought restorative justice could be beneficial for some, for others not at all. She encouraged people to call her office.

Chair Claman said he also appreciated public comment, and noted that the Commission has heard the perspectives of people with lived experience before, and has been very receptive to those comments.

The meeting adjourned at 12:20.

Alaska Criminal Justice Commission

Meeting Summary

Tuesday, October 27, 2020

2:00 p.m.

Via Zoom

Commissioners present: Scotty Barr, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Shelley Hughes, Trevor Stephens, Steve Williams

Commissioners absent: Joel Bolger (ACS General Counsel Nancy Meade served as proxy for Chief Justice Bolger), Adam Crum (DHSS Deputy Commissioner Al Wall served as proxy for Commissioner Crum), Nancy Dahlstrom (DOC Deputy Commissioner Kelly Goode served as proxy for Commissioner Dahlstrom), Amanda Price (Special Assistant Randi Breager served as proxy for Commissioner Price), Stephanie Rhoades, Ed Sniffen (Deputy Attorney General John Skidmore served as proxy for Acting AG Sniffen)

Participants: Merissa Pimenta, Ezekiel Kaufman, Tony Piper, Malan Paquette, Suki Miller

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

Introductions

The agenda was approved without objection.

Draft Annual Report

At the previous meeting, the Commission had approved several sections of the draft annual report. The Commission considered the remaining sections of the annual report as follows:

Executive Summary: Commission Chair Matt Claman noted that, as the Department of Law had agreed, the Commission has one year post-sunset to continue its work and wrap up operations. This was mentioned elsewhere in the report and he suggested adding it to the executive summary. Commissioner Alex Cleghorn said that made sense, and suggested mirroring the language used elsewhere. The executive summary was approved with that change.

Section II. C.: This section had been revised per comments at the previous meeting. Commissioner Steve Williams suggested approving removing the last sentence of the first full paragraph on page 11. This section was approved with that change.

Sections III. A., B., and C. were approved without opposition.

At Section III. D., DOC Deputy Commissioner Kelly Goode explained that she had previously shared her concern with staff that due to the quick timeframe for approving the report, DOC's

analyst did not have time to verify all the data in the report. She noted that the citations distinguished the data and analysis sources and said she appreciated that citation method. She just wanted to let everyone know that the information from DOC in the report might not be exactly what DOC would provide today. She did not have an amendment to propose. Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, asked whether the concern was regarding the analysis performed by Commission staff. Ms. Goode said that was correct; among other things, DOC had concerns about definitions used and whether that aligned with how they would define things. DOC analyst Mike Matthews was going to look over the report, but didn't have time to get through it. Section III. D. was approved without opposition.

Section III. F.: Commission project attorney Barbara Dunham explained that this section was a summary of the report from the Department of Law on sex offense case processing. Law's full report was included as an appendix and the final version will be on letterhead. She noted that there had been a suggestion to add some language about COVID to provide additional information about case processing.

Commissioner Samantha Cherot said she was not sure about adding pie charts in this section, as she was not sure if they added clarity, or would oversimplify complex issues. DPS Special Assistant Randi Breager said it was tricky, because readers may not understand a more complex analysis. Deputy Attorney General John Skidmore said he thought they accurately reflected the numbers and were a good visual, but also agreed that these were complex cases and were difficult to capture in pie chart form. He was not sure that charts could fully capture all of the issues at play. The way that Law set out the narrative in its report was what Law thought was the best way to present things, but he had no objection to the summary and pie charts.

Commissioner Cherot moved to remove the pie charts from the report and Commissioner Steve Williams seconded the motion. Chair Claman called for discussion.

Judge Trevor Stephens said he didn't see any reason to remove the charts, as there was no question as to their accuracy, and some people comprehend things better visually. His recollection from working on the Commission's sex offense report was that the Commission decided to keep this kind of data in.

Ms. Breager suggested adding more contextual statistics, perhaps using DPS' felony sex offense report and the total number of sex offenses reported. Ms. DiPietro explained that unfortunately there was no way to connect those reports to the prosecutions from Law's report. Reporting that information from DPS would give an order of magnitude, but those cases wouldn't necessarily align temporarily with Law's cases. Alaska should be able to get there eventually however.

Commissioner Williams noted that additional narrative could explain that there are a variety of things that can cause delays in the process, and could give a fuller picture. Commissioner Cherot thought that that context was already captured in the narrative provided by Law. Her concern was that the charts oversimplified things.

Mr. Skidmore suggested including language that would reference that further explanation could be found in Law's report. He didn't disagree with Judge Stephens that there are visual learners who would find the charts helpful, but he also share Commissioner Cherot's concerns that the charts don't provide the full context.

Chair Claman called for a vote on the motion to remove the charts from the report. Scotty Barr, Nancy Meade, Alex Cleghorn, Randi Breager, and Trevor Stephens voted no. Sean Case, Samantha Cherot, Kelly Goode, and Steve Williams voted yes. John Skidmore abstained from the vote. The motion to remove the charts did not pass.

Mr. Skidmore moved to add language to this section that the extent of the effect of COVID on case processing was unclear. Ms. Breager said she wouldn't necessarily say the effect was unclear, but that the added time has not yet been measured. Judge Stephens supported this language and wanted to make it clear that the courts are not closed, they are just not doing jury trials, which he would presume has had some impact on these cases. There were other COVID-related issues also effecting time to resolution such as defense attorney access to clients (although DOC was making an effort to facilitate that). He thought the statement was accurate. Mr. Skidmore appreciated those comments, and explained he didn't want to call out any one factor for that reason, as there were multiple impacts on time to resolution. The additional language was approved without opposition.

Section III. F. was approved as amended without opposition.

Sections V. A., V. C., VII, and the Appendices were approved without opposition. The Appendices were approved with the understanding that the biographies were subject to change if individual commissioners wished to modify their own biography, and that the report from the Department of Law would be appended with letterhead.

[At this point Judge Stephens left the meeting.]

Commissioner Williams moved to approve the annual report, along with giving staff the discretion to make technical and minor edits. Commissioner Cherot seconded the motion. The motion passed without objection (Nancy Meade abstained on behalf of Justice Bolger), and the report was approved.

Public Comment

Malan Paquette addressed the Commission with two areas of concern. The first was the issue of aliases. DOC can know people are incarcerated under an alias. Court clerks are not using the alias function, and aliases are not available on CourtView. The second area of concern was that the Criminal Justice Commission and the Judicial Council have only two numbers listed on their website. Ms. Paquette understood that the Commission and the Council have more staff than that. She suggested making contact information more transparent. The Commission was not in the paper directory. It should be more transparent and accessible to the public.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, October 15, 2020, 1:00 p.m.

Via Zoom

Commissioners Present: Scotty Barr, Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Nancy Dahlstrom, Shelley Hughes, Stephanie Rhoades, Trevor Stephens, Steve Williams

Commissioners Absent: Adam Crum (Deputy Commissioner Albert Wall served as proxy for Commissioner Crum), Amanda Price (Special Assistant to the Commissioner Randi Breager served as proxy for Commissioner Price), Ed Sniffen (Criminal Division Director Paul Miovas served as proxy for Acting AG Sniffen)

Participants: Mike Ramsay, Travis Welch, Ezekiel Kaufman, Will Fanning, Troy Payne, Rachel Gernat, Karl Clark, Tony Piper, Troy Payne, Kathy Monfreda, Nancy Meade, Laura Russell, Natasha McClanahan, Alysa Wooden

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

Introductions

Chair Matt Claman suggested rearranging the proposed agenda by moving the preliminary audit report and the Commission's response to the bottom of the agenda so participants would not have to wait through the executive session.

Commissioner Nancy Dahlstrom moved to approve agenda with this change and Justice Bolger seconded the motion. There was no objection and the agenda was approved.

Summary of Previous Meeting

Commissioner Alex Cleghorn moved to approve the summary of the previous meeting and Commissioner Dahlstrom seconded the motion. There was no objection and the summary was approved.

Victims' Rights and Services Recommendation

Commissioner Steve Williams explained that the Commission had previously considered this recommendation at the September 10 meeting. This recommendation, regarding victim-witness coordinators, was the third of three recommendations; the first two recommendations were adopted. Paul Miovas from the Department of Law brought up some concerns about the third recommendation, so the Commission we tabled it. The Victims' Rights and Services Workgroup met a couple of times since then to address those concerns. A reworked

recommendation was drafted following the first discussion, then the workgroup met again to approve the new draft.

Commissioner Williams explained that changes made were to delineate the paralegal role from the victim coordinator role, and to make it clear that the focus is on what the Commission has heard from victims: that victims needed someone to be able to reach out to on a regular basis to receive basic (non-legal) information on the status of their case and to get referrals to services and supports. This role would be different from the paralegal role. The title was also changed to become “victim coordinator” rather than “victim-witness coordinator” also to make things clearer.

Commissioner Dahlstrom moved to approve the recommendation and Mr. Miovas seconded the motion. There was no objection and the recommendation was approved.

Draft Annual Report

Chair Claman noted there were some comments on the draft annual report to work through. The goal for the meeting was to approve the sections of the report that were done and then when the Commission next met, it would approve the other sections. Commission project attorney Barbara Dunham walked the group through the report, noting sections where there had been suggestions for substantive change.

One such section was the recommendation from the Domestic Violence Workgroup to make bail conditions accessible to law enforcement. Randi Breager, special assistant to DPS Commissioner Amanda Price and proxy for Commissioner Price said she had reached out to DPS’ IT department regarding the difficulty of having court personnel enter bail information into APSIN. They reached out to the court personnel in Fairbanks. Court personnel in Fairbanks are entering bail conditions into the court system software, and APSIN pulls from that software. Ms. Breager wanted to make sure the report was technically accurate and did not convey the impression that court personnel were entering information directly into APSIN, or entering information more than once. Chief Justice Joel Bolger noted that the software court personnel were currently using must be replaced. He suggested changing the word “enter” to “provide.”

In the section recommending the Legislature support *Crisis Now* efforts, Ms. Breager suggested adding more language to discuss how *Crisis Now* would be rolled out in rural Alaska and how it should not create increasing disparities in health care treatment between rural and urban areas. Commissioner Williams thought that was a great point, and suggested that he work with Ms. Breager and Ms. Dunham to add some language to that effect. He wanted to assure everyone that the coalition supporting Crisis Now was including rural Alaska in its current efforts. The four urban communities where significant work is being done were the first to come forward to ask for this framework. Not everywhere in Alaska will be able to implement the full model but at least some elements should be available in rural Alaska. Chair Claman said he thought it would take years to implement fully.

Regarding the recommendation for a second-look parole provision, Ms. Breager wondered whether the language used was modeled after another statute. Commissioner Samantha Cherot

explained that she drafted the language, and the concept was from the legislative blueprint from Human Rights For Kids.

In the section containing data the Commission was required to report, a placeholder chart had been inserted with prison population projections that had been calculated in 2014 and 2016. Ms. Dunham explained that the Commissioners had requested a projection and that staff had asked DOC whether they might be willing to provide an updated projection. The analysis required was tricky for a number of reasons. Commissioner Dahlstrom said that members of her team would be providing updated information.

Ms. Breager wondered whether it was appropriate to include an SB 91 projection, which was calculated to support the passage of SB 91, which has since effectively been repealed. It could be confusing since the projection was premised on repealed statutes. Commissioner Dahlstrom thought it could be confusing to some people, but then any of the information in the report could be confusing. DOC doesn't get a lot of questions on SB 91 anymore. Chair Claman said it was the same with the Legislature. He noted that one reason to keep the projection was that it does show what SB 91 was supposed to do and the Commission is supposed to report on the impact of SB 91, so it was consistent with the Commission's statutory obligation. Dr. Troy Payne from the Alaska Justice Information Center noted that typically a projection starts when the data stops. He thought the chart was useful and might be useful with more visual changes.

Commissioner Cleghorn said he was surprised to see the chart depicting the share of the prison population between people who were sentenced, pretrial, and other. He thought that information was lost a bit, and suggested moving it up closer to the first chart to emphasize it.

Commissioner Williams remarked that using the term "admissions" for people remanded to DOC custody might be confusing for the reader, and he wondered whether it might be better to use "booked into a facility." Commissioner Cleghorn said he had a similar thought, and suggested "taken into custody." Commissioner Williams said it would be good to make it clear that admission does not equal convicted. Chair Claman suggested there could also just be a short paragraph explaining what admission means. Ms. Dunham noted that DOC uses the term remand. Commissioner Cherot thought remand or booked made sense.

Ms. Dunham explained that the Department of Law had provided a report on sex offense case processing, which she had not yet incorporated into the annual report. She asked the commissioners to weigh in on how the report should be included. Chair Claman suggested that it could be an appendix. He noted there would be a lot of interest in this information. Commissioner Williams wondered if this information was required. Ms. Dunham said that it was required per HB 49.

Mr. Miovas noted that if there were any questions, the Department of Law had analyzed this data thoroughly, and would probably be in a good position to answer any further questions the commission might have.

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, asked whether a “sex offense prosecution” in Law’s report was the same as charges filed in court. Mr. Miovas said it was. Ms. DiPietro said she couldn’t tell from Law’s report how many cases were felonies and how many were misdemeanors. She guessed only a handful of them were misdemeanors and that distinguishing them would probably not be meaningful. Mr. Miovas said that was correct, and that misdemeanors were a very small portion of the cohort.

Ms. DiPietro said that this may be the first time this type of information would be published. She was concerned that people wouldn’t understand some of the terms used. She appreciated the explanation of the process and it made sense to her but for someone who was not familiar with the process they might get lost, and might jump to conclusions. She suggested adding a little more about the process and noting how many in the sample are misdemeanors.

Mr. Miovas said he would confer with Law’s data analyst, Ezekiel Kaufman, but thought that the information about misdemeanors could be added. If there were suggestions to add language regarding Law’s process, he asked the commissioners to send him those edits. He noted that Law started with a larger document, and tried to whittle it down.

Chair Claman said it sounded like the statute asked Law to report the data to the Judicial Council and asked the Commission to analyze the data. From this report it looked like Law had also done the analysis. Since the Commission was getting a report from Law, the Commission couldn’t really say that the Commission has done the analysis. This gets back to the question of how this information should be included in the annual report, whether in the appendix or the body of the report.

Mr. Miovas said that Mr. Skidmore had been discussing this with Judicial Council staff but he didn’t know that that particular point had been discussed, and was not sure what Mr. Skidmore’s opinion would be. His understanding was that this was what is required.

Commissioner Williams noted that the commissioners were seeing Law’s report now for the first time. He thought this was a good discussion, but it felt like given the Nov. 1 deadline he was a little uncomfortable including the report without a qualification that it was received from Law, or it could be put in as an addendum.

Commissioner Cleghorn suggested including a short summary of the basic information in Law’s report—of 621 referrals, 322 were prosecuted—and attach Law’s report as an addendum to the annual report. The flow chart presentation might be a little confusing.

Commissioner Cherot agreed with Ms. DiPietro that it could be confusing and noted that the number of cases pending was affected by the pandemic since jury trials were suspended. She agreed with summarizing the information in the body of the report and including Law’s report as an appendix. She was concerned that people could reach the wrong conclusions.

Justice Bolger said he didn’t have strong feelings about where the information should go, but as a matter of presentation, thought that the tables listing the offenses included in the analysis

should be put at the end. They get in the way of the more important information which was provided in figure one.

Mr. Miovas said he could check with Mr. Skidmore during the break about the raw data. Ms. DiPietro explained that the Commission's statute requires that the other criminal justice agencies provide raw data to the Commission, which is what the Commission receives with a couple of exceptions. She recalled she did talk about this with Mr. Skidmore and her understanding was that he was open to providing the raw data, though she understood that Law might be concerned. She did assure him that staff have APSIN clearance.

[10-minute break]

Chair Claman asked whether the Commission should be providing more detailed recommendations on how to spend the marijuana funds. Commissioner Williams said he thought that what was in the report reflects on what is being done and what the Commission has intended. He thought this was a key role of the Commission. In terms of detail, he thought what was in there was adequate. He had provided a few comments on this and thought it by and large covered it.

Chair Claman said that statutes seemed to suggest that the Commission having a sunset date of June 2021 really means that the Commission stops work in 2022. He wondered if that was still the opinion of the Department of Law. Mr. Miovas said it was still the AG's opinion. Subsection (b) of the sunset statute is pretty clear. The civil division agrees, and Law still adheres to that provision. Chair Claman suggested modifying the report to reflect that.

Mr. Miovas said that during the break he had looked up the sex offenses processing data statute. He thought the report provided by Law meets the requirements of the statute. The statute asks for numbers, not raw data. He also spoke with Mr. Skidmore during the break, who confirmed one of Mr. Miovas' concerns; Law could probably provide some of the information, but given the nature of the way the data was kept he was not sure that it would be useful, and didn't think it would necessarily provide more than what is already in the report.

Ms. DiPietro noted that subsection (b)(1) of the statute calls for reporting data that doesn't exist yet. Mr. Miovas concurred, and said Law was working on that with DPS. It will be a cumbersome process.

Commissioner Cherot said she thought it would be helpful to give everyone time to digest the report. She wanted to look more closely at it before weighing in. Chair Claman said that the next opportunity to approve this section would be right on the verge of publication, and asked if there was any objection to reserving discussion for the next meeting. There was none. Ms. DiPietro noted that staff could also send the statute for reference. Chair Claman thought the best approach might be to summarize what is required by the statute in the body of the report, and attach Law's report as an appendix.

Ms. Dunham encouraged the commissioners to read their bios in Appendix B to ensure they were still accurate.

Chair Claman suggested moving through each section of the report and approving those that did not have any objection. Commissioner Dahlstrom said she would like to have members of her team look over the report before approving the sections using DOC data. The sections of the report were approved or set aside as follows:

- Executive Summary: Set aside.
- Introduction: Approved.

[Judge Stephens stepped out of the meeting at this point]

- Subsection II (A): Approved except for Recommendation 3.
- Subsection II (B): Approved after changing the word “enter” to “provide.”
- Subsection II (C): Chair Claman noted this was the section that needed wordsmithing on how the recommendations would affect rural Alaska. Commissioner Williams also had some other wordsmithing, and wondered if he should work with commission staff to revise this section. Chair Claman said that would be fine. Commissioner Sean Case asked if the revisions would provide more explanation of *Crisis Now*. Commissioner Williams that would be included. This subsection was set aside.
- Subsection II (D): Approved.
- Subsection II (E): Approved.
- Subsections III (A), (B), (C), (D): Set aside.
- Subsection III (E): Approved.
- Section IV: Subsection on COVID moved up to the top of the section, approved.
- Subsection IV (Statewide crime rates): Approved.
- Subsection IV (Crime in anchorage): Approved with updated data.
- Subsection IV (Criminal case processing): Approved.
- Subsection IV (Data on victims): Approved.
- Subsection V (A): Set aside.
- Subsection V (B): Approved.
- Subsection V (C): Set aside.
- Section VI: Approved.
- Conclusion: Set aside.
- Appendices: Set aside.

Preliminary Report from the Division of Legislative Audit

Chair Claman explained that the Division of Legislative Audit had sent the Commission a confidential preliminary report, which had been circulated along with a draft response. Because the preliminary report was confidential, it would need to be discussed in executive session. Judge Stephanie Rhoades moved to allow Ms. Dunham and Ms. DiPietro to join the executive session. Commissioner Dahlstrom seconded the motion and it was approved without opposition. Judge Rhoades moved to go into executive session for the purpose of taking up the discussion of the preliminary audit report and the Commission’s response. Commissioner Williams seconded the motion and it was approved without opposition.

[While the Commission was in executive session, Judge Stephens rejoined the meeting and Senator Hughes joined the meeting.]

Once the Commission was out of executive session, Justice Bolger moved to adopt the draft response to the preliminary audit report with modifications made in executive session. Judge Rhoades seconded the motion. There was no opposition, and the response was approved.

Chair Claman said the response would be signed and sent to the Division of Legislative Audit the next day.

Next Steps

The Commission agreed to meet again on Tuesday October 27 at 2:00 p.m. to take up the revised annual report draft. A revised draft would be distributed on October 21. If Commissioners had written comments on any section that still needed to be approved, those written comments were due Monday October 26 at noon.

Public Comment

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

Alaska Criminal Justice Commission

Meeting Summary

Thursday, September 10, 2020

9:00 a.m.

Via Zoom

Commissioners Present: Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Shelley Hughes, Trevor Stephens, Steve Williams

Commissioners Absent: Scotty Barr, Joel Bolger (Nancy Meade served as proxy for Chief Justice Bolger), Adam Crum (Laura Russell served as proxy for Commissioner Crum), Nancy Dahlstrom (Kelly Howell served as proxy for Commissioner Dahlstrom), Amanda Price (Randi Breager served as proxy for Commissioner Price), Stephanie Rhoades, Ed Sniffen (Paul Miovas served as proxy for Acting Attorney General Sniffen)

Participants: Brad Myrstol, Eric Boyer, Tony Piper, Gennifer Moreau, Sharon Chamard, Diane Casto, Kelly Howell, Kaci Schroeder, Karl Clark, April Wilkerson, Travis Welch, Katie Baldwin-Johnson, Becky Bitzer, Buddy Whitt, Alysa Wooden, Troy Payne, Angela Hall

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

Introductions

Commission Chair Matt Claman called the meeting to order and asked participants to introduce themselves. Commissioner Alex Cleghorn moved to approve the agenda and Commissioner Steve Williams seconded the motion. The agenda was approved without opposition.

Summary of Previous Meeting

Commissioner Cleghorn moved to approve the summary of the previous meeting and Commissioner Samantha Cherot seconded the motion. Commissioner Cleghorn noted that the last page described the vote on the recommendation on civil detention, but did not contain the result of the vote. He suggested adding the word “approved” for the result of the vote. There was no opposition to approving the summary so amended.

Crisis Now Update

Commissioner Williams explained that the Crisis Now project relates directly to Title 47 but also had significant implications for public safety. Alaska Mental Health Trust staff had put together a presentation to give the Commission a quick update.

Eric Boyer from the Trust explained the recent history of Alaska’s behavioral health crisis response system. Currently, people experiencing a behavioral health crisis are taken to either jail or the emergency

department, neither of which is the best place to stabilize a person experiencing a behavioral health crisis. Crisis Now is a framework for behavioral health crisis response that has four components: a crisis call center, a mobile crisis team, and a stabilization center that has both 23-hour stabilization and short-term residential treatment. The goal is to have a behavioral health crisis response system analogous to the physical health emergency response system.

Travis Welch from the Trust explained that the crisis call center would be better equipped to handle behavioral health crises than 911— and the call center can call 911 if appropriate. The Crisis Now model uses a “no wrong door” approach, taking anyone who calls the call center or comes into the stabilization center.

Mr. Welch added that the model also allows the crisis response to take place in the least restrictive environment as possible. Data from national studies on the model show that on average out of 100 calls to the crisis line, 90 do not need additional service. Of the 10 that do need additional service, 7 are resolved by the mobile crisis response team without further intervention, while two are stabilized at the 23-hour stabilization center and one is stabilized in short term treatment.

Gennifer Moreau explained how the 1115 Waiver for Medicaid fits in to the Crisis Now model. All of the services that the state proposed to be covered by the waiver went live as of May 21, and became permanent as of last week. Many of the services newly covered by Medicaid under the waiver are components of Crisis Now.

The waiver also covers services such as longer-term chronic residential treatment and long-term community support, so people discharged from Crisis Now will remain stable rather than continually cycling through the system. Right now patients with substance use disorder account for a high number of admissions to the psychiatric ER admits, so hopefully the Crisis Now model will cut down on that usage.

As of now, DHSS has authorized a number of providers of waiver services. Multiple agencies have been approved for 23-hour crisis stabilization, mobile outreach and crisis response, and short-term residential. The 1115 waiver and Crisis Now projects are on parallel tracks, and are mutually supportive. The waiver is also flexible and can be modified.

Mr. Welch echoed how important the 1115 Waiver was to the Crisis Now model—it was the primary mechanism to reimburse providers of Crisis Now services. He provided some statistics to give an idea of what impact Crisis Now could have on the current emergency system. In Anchorage, Fairbanks, and the Mat-Su, several hundred calls per year were for behavioral health crises. Many of those people are currently being looped into the criminal justice system and to DOC. These calls can take twice as long for first responders to resolve as other calls for service.

Mr. Boyer explained that the Trust awarded a contract for the management of the project to consulting firm Agnew Beck. They have workgroups to implement the project in Anchorage, Fairbanks, and the Mat-Su but are also looking at rural areas as part of the longer-term plan, which was identified in the consultation report released earlier this year. The project also has systems-focused teams that are looking at the nuts and bolts of implementation of each of the model’s components. The project will work with providers to support them as they stand up the services.

The project was currently in the planning phase. As Ms. Moreau had noted, providers were already starting to stand up services, so this was a key time in the project's development. They hope to move into the implementation phase at the beginning of next year. The Trust was committing substantial resources to start up the project's components.

Randi Breager, special assistant to the Commissioner of Public Safety, said she was very excited about this project. She was glad to hear they were planning to include rural Alaska; one of her concerns was that she didn't want rural Alaska to be left out.

Chair Claman noted that Crisis Now had been rolled out in other states, and wondered how much of the cost is borne by Medicaid/the 1115 Waiver in those states. Ms. Moreau said that funding models vary between states, but generally 60-80 percent of the funding was borne by Medicaid. Commissioner Williams said this would allow Alaska to move towards a more complete psychiatric crisis continuum of care.

Rehabilitation, Reentry, and Recidivism Reduction Recommendations

Commissioner Williams said that the workgroup met three times over the summer with good participation, following the sequential intercept model.

1. Crisis Now

Commissioner Williams moved to adopt the draft recommendation that the legislature support the development of the Crisis Now model. Commissioner Sean Case seconded the motion.

Chair Claman suggested adding a reference to SB 120 which provides the legal structure to allow Crisis Now. Commissioner Williams said he was open to including that as a friendly amendment. The new language would read "Therefore, the Commission recommends that the legislature, following the passage of SB 120..." at the beginning of the third paragraph. Judge Trevor Stephens seconded the amendment. There was no opposition to the amendment. There was no further discussion, and no opposition to the recommendation. The recommendation was approved.

2. CIT

Commissioner Williams moved to adopt the draft recommendation that the legislature increase support and funding for the CIT training model for law enforcement. Commissioner Case seconded the motion.

Commissioner Williams explained that the Trust has been involved in expanding use of the CIT model for several years. This recommendation recommends that the Alaska Police Standards Council (APSC) get additional funding, and that the CIT response model be expanded, particularly off the road system. The APSC is currently vetting this training for law enforcement agencies, ensuring fidelity to the evidence-based model.

Chair Claman said this related to Ms. Breager's concern noted earlier about including rural Alaska in improved crisis response models. He noted that if it was not possible to have a full crisis center in smaller communities, having access to other services was important. Commissioner Williams agreed, saying that CIT training would be critical for areas that don't have the full Crisis Now model.

Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, asked whether the APSC currently has funds and if the recommendation was that the funding should be increased. Commissioner Williams said yes, right now the APSC was receiving some funding from the Trust.

There was no opposition to the motion. The recommendation was approved.

Public Comment

Angela Hall from the Saving Our Loved Ones Group (SOLO) said she had also submitted a written statement, which she encouraged the commissioners to read. SOLO is in favor of the second look proposal that would be discussed later in the meeting.

Commission staff attorney Barbara Dunham said that the commissioners should all have Ms. Hall's statement in their inboxes, along with comments from Diane Boyd and Adam Barger, also in support of the second look proposal.

Rehabilitation, Reentry, and Recidivism Reduction Recommendations (cont.)

3. Computer Access

This draft recommendation, to allow people who are incarcerated access to computers, had been discussed at the previous plenary meeting. The Department of Corrections wanted more time to revise the draft to ensure that it would not recommend allowing direct internet access. Commissioner Williams moved to adopt the revised draft recommendation and Commissioner Cherot seconded the motion.

Commissioner Williams noted that this discussion began pre-COVID but was even more relevant now. He hoped allowing access would mean that they can be used to apply for services, especially Medicaid, as an electronic application was absolutely critical for timely processing of the application. Likewise, ensuring reentry coalitions and case managers around the state have access to people who will be leaving correctional facilities was also critical.

Kelly Howell from the Department of Corrections said that this was something they have been focusing on at DOC, and was subject of legislation last session. The legislation was meant to amend the "no frills act" which was very restrictive in what prisoners could do. Advances in technology mean that use of computers is much more ubiquitous and essential than when the bill was passed, and could be used for the reentry process. She encouraged support of this recommendation.

Chair Claman asked if DOC's concerns had been addressed. Ms. Howell said yes, the reference to access to the internet had been removed.

Commissioner Cherot noted that the end of the first paragraph referred to access to legal reference materials and wondered whether that would include access to discovery. Ms. Howell said she thought it would include discovery in addition to online legal research tools.

There was no opposition to the motion and the recommendation was approved.

Bail Conditions Recommendation

This recommendation had been discussed at the previous plenary meeting and had been tabled to address concerns raised by Nancy Meade, general counsel for the Alaska Court System. Commissioner

Case moved to adopt the revised recommendation and another commissioner seconded the motion. Commissioner Case explained that after the last meeting, Ms. Meade had suggested language that was added to the second to last paragraph about why the Fairbanks pilot project hadn't already been expanded (namely the cost and the change was very labor-intensive) He also noted that the final paragraph had been amended to encourage collaboration between law enforcement and the courts to make this change happen.

There was no opposition to the motion and the recommendation was approved.

Victims' Rights and Services Recommendations

Commissioner Williams explained that the recommendations from the Victims' Rights and Services Workgroup were contained in a 6-page document that had been distributed prior to the meeting. The document has contextual language at the beginning explaining the reasoning behind the recommendations. He recognized that former Commissioner Brenda Stanfill did a lot of the work to bring these recommendations forward. There were pieces that the workgroup discussed and pulled out of this document that the group will continue to work on. The recommendations before the Commission today were the pieces that workgroup members agreed were most important.

1. Public Outreach Campaign

Commissioner Williams moved to adopt this recommendation, and Commissioner Cleghorn seconded the motion. Commissioner Williams explained that the workgroup believed it important to note that this would be a statewide public outreach campaign, and would be ongoing, rather than just for a designated month, in order to get continual impact.

Chair Claman asked if there was any opposition to the motion, and there was none. The recommendation was approved.

2. Victim Advocates Working in Partnership with Law Enforcement

Commissioner Williams moved to adopt this recommendation and Commissioner Case seconded the motion. Commissioner Williams said he wanted to highlight that the workgroup wanted to make sure that a simple handout or card would be used to connect victims to services, and there was also significant discussion that there also needed to be electronic resources, so that information for victims to get help would be available in multiple formats.

Chair Claman asked if there was any opposition to the motion, and there was none. The recommendation was approved.

3. Remove Dual Designation from Victim-Witness Paralegals

Commissioner Williams moved to adopt this recommendation and Commissioner [?] seconded the motion. Commissioner Williams said that the core of this recommendation was looking at how the Department of Law is providing these services, noting that victim-witness paralegal caseloads can be

overwhelming. The Commission has heard repeatedly from the community that victims don't know the status of their case, and don't know who to call for services. The idea was to separate the victim-witness and paralegal duties so that the victim-witness coordinators can provide information on case status and services. The recommendation also clear that the recommendation said that the coordinators would not be victim advocates.

Paul Miovas, Criminal Division Director for the Department of Law, said he understood the spirit with which this recommendation was intended, and Law always wants to provide the best services for victims. His concern was that this recommendation would actually have a negative impact on victims. Law has 39 victim-witness paralegals for the entire state. In the last two fiscal years, Law has had to replace 74% of those positions, a significant turnover rate. They only have 10 victim-witness paralegals with more than five years of experience. With their pay rate they are not able to retain these employees. This was something Law was trying to address. He was concerned this proposal would result in a reduction in the classification/pay rate for the people who would become victim-witness coordinators, who would probably be paid at the LOA level, making it more difficult to retain them as employees.

Mr. Miovas continued that the victim-witness paralegals apply for the job to do paralegal work, and he wouldn't want to take that paralegal work away from them. Having more resources would be great, but the Commission needed to think about reality. The only way this would work would be if Law were actually able to add positions at significant numbers across the board, which he didn't think would happen in this fiscal climate.

Mr. Miovas added that the way the recommendation is written, he was concerned that it was pushing Law in the direction of becoming victim advocates. A lot of victim care defaults to the prosecution. Prosecutors do not want to turn into a de facto victim lawyer. A prosecutor's job is to pursue justice, not one individual's agenda. Prosecutors don't always agree with the victim. He suggest removing this recommendation.

Chair Claman said he saw this as more of a funding recommendation, and didn't thing the legislature would want to get into the finer details of how to manage the department.

Commissioner Williams thanked Mr. Miovas for his analysis. He observed that the state's fiscal situation was certainly challenging. He thought the Commission's duty was to recommend what was best for the system as a whole. This recommendation was based on what the Commission heard from victims. The workgroup also heard from Dawn Shewmaker, the victim-witness coordinator in the US Attorney's Office, and the recommendation used portions of her job description. He understood the concerns about position classification and funding, and thought they would need to be addressed, although he didn't know if they need to be figured out in detail in this recommendation.

Commissioner Cherot said she was also concerned about unintended consequences, namely that a lot of discovery that pops up in conversations with victims could delay trial. She would support a second look at the language in the recommendation.

Ms. Breager said she would also support further discussion, recognizing that there had already been a lot of discussion on this and she and Mr. Miovas were late arrivals to the discussion. She didn't think the Commission would want to forward something without regard for foreseeable consequences, and thought the Commission had a responsibility to put forth feasible options.

Mr. Miovas added that the part of the recommendation that suggested Law conduct a reevaluation of needed resources and employees was something Law was constantly doing, and they have had a lot of conversation about this exact thing already.

Chair Claman said he was hearing some support for bringing this back to the workgroup, and noted the Commission could vote on the recommendation now or the motion could be withdrawn; either way it could go back to workgroup.

Commissioner Williams said that if this were to go back to the workgroup, he would ask for active and consistent participation in workgroup, particularly from the Department of Law. The workgroups put in a lot of work to create well-intentioned recommendations and then find out later that there are other pieces to consider. Individuals who work in victim services have been active in the workgroup and see this as a need. He would like some commitment, so that the workgroup can come back with something well informed. He understood that there had been a lot going on.

Mr. Miovas said he would be actively involved in discussing this and have conversations about this at Law. There were a lot of things going on, but this was a very important issue, and he wanted to be kept involved. Ms. Breager said she would also commit to joining the conversation, noting that she only recently became the proxy for this group.

Commissioner Williams asked whether, if he took the recommendation off the table today, there would be an opportunity to reconvene the workgroup and then bring a revised recommendation back to the full Commission, or if the group would need to wait for another year.

Chair Claman said the next meeting would be on October 15, and that meeting's primary purpose was to review the annual report. He noted that previous recommendations were worked on between the previous meeting and this meeting and then came back and passed with no opposition, so it was possible to get done for this annual report.

Commissioner Williams asked if Ms. Breager, Mr. Miovas, and Commissioner Cherot would all be able to get together before the October 15 meeting. All three said yes. Commissioner Williams said he withdrew his motion regarding recommendation three, and would schedule a meeting in the very near future for the workgroup to look at this recommendation.

Youth Justice Recommendations

Commissioner Cherot explained that the Youth Justice Workgroup met several times over summer, and the group included commissioners Cleghorn and Barr, along with other stakeholders. The

group also heard testimony from members of SOLO on the effect of long term incarceration of youth, and from the organization Human Rights for Kids.

Included in the materials for today's meeting were a memo circulated with background prepared by Renee McFarland, as well as a legislative blueprint from Human Rights for Kids. The workgroup discussed three proposals from the blueprint that did not reach consensus. The materials for today also had the minutes of the last workgroup meeting which outlined those proposals and the positions of everyone in the workgroup.

She encouraged the Commission to let her know if there was any appetite for additional discussion of the proposals that did not reach consensus. There was a lot of movement on this topic around the country. Children are very different from adults, and less culpable. She thought it was possible the group could have made progress on setting a minimum age for the discretionary waiver. She encouraged the commissioners to read the materials distributed today. The workgroup did a lot of work, but really only reached consensus on the safety valve provision.

Second-Look Parole Provision

Commissioner Cherot explained that there had been a lot of support in the workgroup for a parole provision that would allow people who had been given long sentences as minors to be eligible for parole after serving 15 years of incarceration. The Departments of Law and Corrections didn't object to the recommendation going to the full Commission. Commissioner Cherot moved to adopt this recommendation, and Commissioner Williams seconded the motion.

Commissioner Cherot explained that the draft recommendation contemplates that if a person commits offense prior to age 18 and is given a lengthy sentence upon conviction, that person would be eligible for parole after serving 15 years. It does not mean the person would automatically be released, just that they would be eligible to go before the parole board.

Mr. Miovas wondered whether, if this were to be passed, it would be located within the discretionary parole statutes, or would be a new provision. He thought he and his colleagues would support this provision with the caveat that they would want the same possibility for the ability to argue for parole restrictions for egregious circumstances that exist in the discretionary parole statutes; he would feel better if they could address outliers that way.

Commissioner Cherot said the workgroup hadn't discussed where the statute would be located, and assumed that if there were any legislation on this, it would be something to discussed with the legislators.

Chair Claman wondered as a practical matter how many crimes this would apply to. Commissioner Cherot said it would apply to more serious offenses that are autowaived—unclassified, A, and even B felonies can carry long sentences depending on priors. The discretionary waiver cases would also be the more serious crimes. If a person was convicted of homicide as a child, under current law that person would not even go before parole board until they had served 30 years. Mr. Miovas noted that certain sex offenses carry mandatory consecutive sentences which can make for very lengthy composite sentence.

Chair Claman asked if there was any opposition to this recommendation. Ms. Meade said she would abstain from this vote on behalf of Chief Justice Bolger. Judge Stephens said he would also abstain.

There was no opposition to the motion other than the two abstentions. The recommendation was approved.

Future Meeting Dates and Tasks

The next plenary meeting set for Thursday, October 15, was scheduled to start at 1:00 p.m.

Alaska Criminal Justice Commission

Meeting Agenda

Thursday, August 27, 2020

12:00 p.m. – 4:30 p.m.

Via Zoom

Commissioners present: Scotty Barr, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Nancy Dahlstrom, Shelley Hughes, Stephanie Rhoades, Trevor Stephens (until 1pm)

Commissioners absent: Joel Bolger (Alaska Court System General Counsel Nancy Meade served as proxy for Chief Justice Bolger), Clyde Sniffen (Deputy Attorney General John Skidmore served as proxy for Acting Attorney General Sniffen), Adam Crum (Deputy Commissioner Al Wall served as proxy for Commissioner Crum), Amanda Price (Special Assistant Randi Breager served as proxy for Commissioner Price), Steve Williams

Participants: Rachel Gernat, Angela Hall, Diane Boyd, Kaci Schroeder, Sophie Jonas, Tony Piper, Al Wall, Laura Russell, Alys Wooden, Brad Myrstol, Natasha McClanahan, Troy Payne, Adam Barger, Teri Tibbet, Randi Breager, Karl Clark

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

Introductions

Chair Claman called the meeting to order. The agenda was approved without opposition.

Approval of Prior Meeting Summaries

The meeting summaries for March 9, March 31, May 28, July 21, and July 28 were approved without opposition. The May 28 meeting summary would be amended to recognize that Commissioner Alex Cleghorn had become the ANJC designee in lieu of Greg Razo.

Annual Report Outline, Deadlines

Commission project attorney Barbara Dunham walked through the outline of the annual report, noting what data had been reported in the past and encouraging Commissioners to weigh in on any particular data points they'd like to have included in the report. There were data that the Commission is statutorily required to report related to SB 91, but the Commission has also included supplemental data in past reports such as data related to crime rates.

Senator Shelley Hughes thought there was a lot of interest in looking at the prison population in terms of violent crime including domestic violence. She would also like to include crime rates, and perhaps look at the capacity of prisons and halfway houses. Chair Claman wondered whether a discussion on

capacity would be included in the section talking about supplemental data such as crime rates or in the section discussing the prison population data. He recalled that the Commission had had a detailed presentation from DOC at one of the meetings in Juneau earlier this year on facilities that were over or under capacity. It might be helpful to pick snapshot days to see trends. His impression was that there have been changes in terms of whether facilities are over capacity related to the changes in the bail schedule and thought there may be a way to report that.

Dr. Troy Payne with the UAA Justice Center and the Alaska Justice Information Center (AJiC) noted that AJiC now has a dashboard online that has prison populations and capacity (the link for which is [here](#)).

Sen. Hughes thought that the capacity data should be in the section discussing the general prison population. She also wondered whether it would be possible to have projections for the prison population rates in the future based on current rates. Ms. Dunham said that the Commission had reported projections that were made in the past based on 2014 data trends as well as how SB 91 was expected to affect the prison population. Susanne DiPietro, executive director of the Alaska Judicial Council, noted that those previous projections were done with the help of DOC's data analysts and the Commission would have to reach out to DOC for help with that; she agreed new projections would be interesting.

Ms. DiPietro also suggested it might be useful to have a section on how the pandemic has affected the criminal justice system. The various agencies have made a lot of changes. Chair Claman asked if there was any objection to that. John Skidmore agreed that it would be interesting, though he was not sure how much there would be in the way of data or statistics yet. Obviously there has been some impact; he thought everyone was struggling to capture it. Chair Claman agreed that getting good data was always a challenge when less than a year has passed but thought it was worth trying.

Commissioner Alex Cleghorn asked whether the section on crime rates could include information on victims as a whole and victims by race. Ms. Dunham explained that in some instances, data on victims was kept, most notably in the Department of Public Safety's annual supplemental report on sex offenses. For other types of crime, data on victims was not typically collected or reported.

Dr. Payne added that data is often collected for suspects but not victims. Dr. Brad Myr Stol, director of the Justice Center, said that information was available for homicides, which AJiC reported in a [full report](#) and in a [fact sheet](#). He added that Dr. Ingrid Johnson of the Justice Center was currently collecting data for the victimization study. Dr. Johnson expects to finish her study by the end of the year and hopefully report results in the spring.

Ms. DiPietro said that staff could work with AJiC to develop an inventory of what information on victims was available.

Chair Claman noted that the last report had data on auto thefts in Anchorage, and thought it would be interesting to have follow-up on that. He also recalled that the Commission had in the past made recommendations on crisis intervention centers and suggested including an update on the progress on that, noting that some legislation had also been passed.

Ms. Dunham noted that the annual report has typically included a section on savings and reinvestment, although there has not been much to report in the way of savings. She wondered if this should still be included. Chair Claman said he was not hearing any call to remove the section and noted that it was statutorily required.

Ms. Dunham explained that she hoped to receive all material for the report by September 24 and encouraged the Commissioners to send any suggestions to her by that date. She would send the final draft of the report to the Commission on October 1, and the Commission would discuss it at the October 15 plenary meeting. The final report was due on November 1, a Sunday, so it would be sent to the Legislature on October 30. There was time between the October 15 meeting and October 30 for an additional round of revision and a meeting if necessary.

Ms. DiPietro reiterated that staff encouraged Commissioner input into the annual report. She noted there was also a new requirement from HB 49 that the Department of Law provide the Commission with data, which could hopefully be included in this report. Mr. Skidmore said that Law was working on gathering that data and he was also hoping it could be included. The statute required data on the number of reported sex offenses referred for prosecution, the number of sex offense cases filed, and how they were resolved. Chair Claman agreed it would be a good goal to get that data into the report.

Senator Hughes said that she has had inquiries on sex trafficking, as well as labor trafficking, and wondered if there was any data on that being tracked. She was hearing about it from Alaskans and it was also part of the national discussion. She recalled that Covenant House was part of a research project that showed high rates in Anchorage. She wondered if there was anything related that could be put in the report.

Ms. DiPietro said that sex trafficking was a crime, so the Commission's data would show how often it was charged. Dr. Payne said that was not a great way to get at it, since in recent years, there had been only one arrest for sex trafficking. Its prevalence was extraordinarily difficult to measure. Ms. DiPietro noted that could be reported as an issue. Her understanding was that people who study this problem believe it is far more common than is reported. Dr. Payne said that anecdotally, from speaking with prosecutors, the difficulty in charging the crime of sex trafficking is because of the way the statute is written, and it is often easier to prove other crimes. He was not sure there was an easy fix to that. For example, running an illegal brothel was also a crime, and easier to prove than trafficking.

Mr. Skidmore said that the offense of trafficking involves elements that are not easily identified or proven, because they are not objective. Sen. Hughes wondered if there should be a way to look at this problem. She liked Ms. DiPietro's idea that the report could mention that the idea needs to be explored; her impression was that law enforcement officers think trafficking is a much more prevalent problem than people realize. Chair Claman said he didn't hear any opposition to that idea. Ms. Di Pietro recalled there was a task force devoted to this topic, and she thought staff could gather up any available information.

Judge Stephanie Rhoades said that on different note, it has come to her attention that there are a lot of people with mental illnesses who are assigned to pretrial electronic monitoring (EM) and are not able to maintain the equipment, which has to be plugged in and charged daily. This is especially challenging for defendants with mental illness who are homeless. Also if a defendant is taken to a hospital,

the device has to be cut off, which costs money. PED can arrest them for not charging the equipment or having it cut off, and her understanding was that there have been quite a number of those arrests. She wondered if there was a way to report how many people are assigned to EM, what their assessed risk level is, and how many are arrested for not being able to operate the EM equipment.

Commissioner Dahlstrom said that DOC did have some information on that, and she would be happy to get it together. She hadn't personally heard about anyone being hit with a bill because their bracelet was cut off at a hospital, that was something she would want to look into. In the last several months with COVID, the numbers of defendants on EM have increased tremendously, since judges seem to be electing to EM use rather than hold people in jail. Chair Claman wondered if it would be possible to get that information together by the deadline for the report. Commissioner Dahlstrom said she would make every effort.

Judge Rhoades said she had also heard of someone with a psychotic disorder who was assigned a bracelet that talks, and that person ended up decompensating. Commissioner Dahlstrom thanked Judge Rhoades for bringing this to her attention and said she would look into these items and report back.

Public Comment

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

ACJC Sunset Date

Chair Claman said that as staff were preparing the memo for the next agenda item, one piece of research that came out of that was that the sunset statute allows the Commission to continue performing its duties past the sunset date. According to the Attorney General's opinion from the 1990's, circulated for today's meeting, the actual end date is one year later, allowing the Commission to wind up its affairs, and it can continue its work in that time. This also gives the legislature another year to decide what to do with the Commission.

Sen. Hughes wondered if the administration had any comment. Mr. Skidmore said he hadn't analyzed the issue, and would look into it, but didn't want to offer an opinion today. Chair Claman said what he took away from the AG opinion was that there were multiple instances of the legislature taking that additional year to extend various boards and commissions. Sen. Hughes wondered whether that means the legislature would need to fund the Commission for another year.

Ms. DiPietro noted that funding for the Commission is in the Judicial Council's budget, which is part of the judiciary budget process.

Chair Claman asked if it would be reasonable to ask for the Department of Law's current view on this by the Oct. 15 plenary meeting. Mr. Skidmore said it would.

Future of ACJC and Approach to Recommendation

Ms. DiPietro said that the memo that had been circulated tried to take the discussion that the group had had over the course of the last few meetings and flesh out some ideas that were on the table.

If there's anything else the Commissioners are interested in, staff can always look into it. Ms. Dunham noted that the focus of the memo was on the data collection function and how to keep that going. She walked the Commission through the memo, which explained the history of the Commission, options for keeping the Commission's data collection function (continue the Commission as-is, modify the Commission's statute, or use another body to supervise this function), and issues to consider.

Chair Claman noted that if the Commission wanted to make a recommendation on this, the usual process would be to create an ad-hoc workgroup to develop a recommendation to bring back to the full commission. He wondered if the commissioners had thoughts on that process and whether there was interest in having a recommendation ready for the annual report, or if this was something the Commission should discuss later.

Commissioner Cleghorn said he appreciated the memo on the history of the various criminal justice groups, and noted there were parallels to similar bodies relating to Alaska Native justice issues—various bodies doing the work over the years, with some overlap, but little continuity. The lack of continuity makes it hard to be consistent with progress. He thought it was important to have something in statute regarding data collection—it was important to have this body in statute in 2014, has anything changed? Looking back at over 40 years of reports on Alaska Native justice, having groups end and then new groups start really halted progress.

Commissioner Samantha Cherot echoed Commissioner Cleghorn's comments. In terms of a recommendation, she thought it would depend on whether the Commission can continue for another year past its sunset date. If so, there is time. If not, it might be more important to recommend something now. She also noted that one of the other bodies mentioned in the memo hasn't met in over year, and thought that highlighted the value of having a body in statute, with the structure of having a staff to keep the body going.

Sen. Hughes said that to answer the question of what has changed since 2014, she would point to the budget, the drop in oil prices, and the fact that SB 91 was nearly unanimously repealed. During that process, she and Rep. Claman and others emphasized the continued need to do the work that the workgroups are now doing. There is also the auditor's report. She thought things were stacked against the Commission. Whatever happens, it was not all for naught; she thought that idea of rehabilitation has been brought to the forefront. She thought the Commission might have to acknowledge realistically that it will sunset.

Mr. Skidmore said that one thing that jumped out to him was that the data function has consensus. Collecting, analyzing, and distributing data were already tasked to AJiC, and he thought they were an appropriate body to carry that function forward. If information comes from the Commission, it may carry with it preconceived conceptions of the Commission. AJiC's reports have been very helpful. Putting together a steering committee wouldn't be difficult. He thought the most important thing was to find a consensus on this—identifying the common goal and what everyone could support.

Randi Breager from DPS echoed Mr. Skidmore's comments—DPS has been having similar conversations about using an existing body, and also a body that is flexible and can follow trends; it would be best to have a robust team to be able to look at whatever comes up.

Commissioner Sean Case asked the legislators what they prefer in terms of sources of information for considering criminal justice legislation. Chair Claman said it was important to have information that is as objective and reliable as possible. He noted that the Commission's statute requires information to be reported; before, providing the information was voluntary. Legislators ask the agencies for information, and ask people from the University to report on federal data. The broad answer is that they rely on a number of different sources, but accuracy is very important.

Sen. Hughes said that objective information is the starting point. There are also political considerations, and the sense they get as to what the legislators are hearing from constituents as far as what can be done. Along with the data, she was always curious to hear from commissioners, and from organizations working at the ground level. She noted that there could always be a person working in a department that is really on point but eventually they might leave; that was one reason to have the function in statute.

Chair Claman said he didn't necessarily share Sen. Hughes' view that the Commission has been rendered ineffective by the repeal of SB 91. He has heard from some legislators that their impression is that the Commission tells the legislature what to do, although that doesn't reflect reality. He also noted that AJIC was housed in an entity that is facing substantial budget cuts. He thought it was very important for the data collection function to continue. He agreed with Mr. Skidmore that the Commission should find consensus. It may not need to be detailed with every piece hammered out. This was a timely topic for the legislature to consider in the next session, but it may not be critical to include in the Commission's annual report.

Commissioner Case said he would like to see a recommendation sooner than later instead of letting this discussion float into next year. He thought it would be helpful for the Commission to develop a recommendation. He moved to make a recommendation to legislature as a Commission as to what to do with the Commission by the end of the year. Mr. Skidmore seconded the motion. Chair Claman called for discussion on the motion.

Commissioner Cleghorn wondered whether it would be possible to amend the Commission's statute if there were sideboards, and a consensus could be found. The thought the part that the Commission didn't have agreement on was the policy recommendations. Chair Claman thought that getting into the details of the statute would be a challenge. It might be more effective to make a general recommendation. Commissioner Cleghorn asked if there was any consensus that the Commission should move forward without policy recommendations.

Mr. Skidmore said he seconded the motion with the understanding that the Commission should get to consensus by December 3. He was not sure at this point what the common ground should be, and didn't think that needed to be decided today. Chair Claman said he saw Commissioner Cleghorn's inquiry as being whether anyone was still interested in the recommendation function. He asked that if anyone thought that the Commission should have responsibilities above and beyond data collection, they should speak up.

Commissioner Cherot said she did. Commissioner Cleghorn said that the Commission was tasked with both looking at the data and making recommendations based on that data. He wasn't around during

the SB 91 discussion, but has been part of other bodies charged with making recommendations but not decisions. He didn't think Commission was expected to always carry the day in terms of the decision. It was interesting to hear about what is different from when the Commission was formed, but still thought the ability to give recommendations based on data was useful regardless.

Commissioner Case asked whether, in looking at the memo, it was safe to say that everyone was looking the realm of option 3 (data collection function overseen by a new/different group). Chair Claman said it sounded like it could be option 2 (modify the Commission statute) or option 3. He didn't think it needed to be decided today. The question would be considered by the ad-hoc group.

Commissioners Cherot, Cleghorn, Skidmore and Dahlstrom volunteered to be part of the ad-hoc group. Chair Claman thought those four would be representative and effective. He was happy to join in if the ad-hoc group so desired but didn't think it was necessary. Chair Claman said the motion on table was that the Commission would make a recommendation on its future and the future of the data collection function by the end of the year. He thought that would include approval of forming the ad-hoc group to come up with a recommendation for the December meeting. There was no opposition to the motion and the motion was approved.

Domestic Violence Workgroup Recommendations

Commissioner Case said that two recommendations from the Domestic Violence (DV) Workgroup had been circulated. He wanted to pull the recommendation about community crisis response teams back into committee, as he thought it was too broad. There was no objection.

The other DV recommendation was to make bail conditions accessible for law enforcement. Commissioner Case said this was a thorny problem for law enforcement. There is a pilot program in Fairbanks to have court personnel enter bail conditions in to APSIN, which is working for law enforcement though he couldn't speak for the courts. He noted that that violating conditions of release was considered significant enough that the legislature returned it to a crime after decriminalizing it. It would help to have the conditions listed in APSIN.

Nancy Meade, general counsel for the court system, said that the pilot project in Fairbanks has not been deployed further for a very good reason, and was actually under review. Entering the conditions in APSIN takes a tremendous amount of staff time, and supervisors need to audit the information. Fairbanks is challenged with staff turnover for in-court clerks, and the Fairbanks model requires two in-courts when otherwise the court would only need one. There might be other ways to get around this. Already the court is already sending this information to DOC, and could also distribute it to DPS which is primarily responsible for APSIN. Commissioner Case noted that the recommendation left it open as to the method used, so it didn't necessarily require the Fairbanks model.

Ms. Breager said DPS would be interested in having ongoing conversations about this. It was very important for law enforcement to have access to bail conditions. Chair Claman asked if either DPS or DOC would have the resources to input the data. Ms. Breager and Commissioner Dahlstrom said they wouldn't. Ms. Breager suggested delivering the recommendation to the legislature and it would be up to them as to how to achieve its goal.

Ms. DiPietro wondered if it would be reasonable to add a sentence that the recommendation should or might require additional resources. It sounded like no one was staffed to carry it out but everyone agreed it was a good idea. Judge Rhoades said she thought the Commission's job was to make policy recommendations and the legislature's job was to figure out how to carry out those recommendations and fund them. She suggested adding a sentence to the effect that everyone agrees this is a good idea, and should be funded. Ms. Meade suggested amending the last paragraph to state that the Commission recommends that the courts and law enforcement agencies work together to make this possible.

Mr. Skidmore moved to adopt the recommendation and Commissioner Cleghorn seconded the motion. Chair Claman called for amendments. Judge Rhoades proposed amending the recommendation with something along the lines of what Ms. Meade had suggested. She thought the main problem was the language that the "court system ensure that" this conditions are entered and suggested returning to this at the next meeting with a reworded version. Ms. Meade noted that if there is a statute that says that agencies or courts "must" do something but they can't because of funding, that could be a problem. Judge Rhoades added that there should also be language that this be funded.

Chair Claman suggested tabling the motion to allow Commissioner Case to work with interested parties to reword it, then take it up at the next meeting as an amendment. Commissioner Case agreed and said he would work with Ms. Meade to reword the recommendation. Mr. Skidmore said he withdrew the motion and would work with Commissioner Case and Ms. Mead to refine the draft. He did think it was very important to make this recommendation, it was long overdue.

Rehabilitation, Reentry, and Recidivism Reduction Recommendations

Computer Access

Judge Rhoades said that the first recommendation to come out of the Rehabilitation, Reentry, and Recidivism Reduction was to amend the law to allow people in prison greater access to computers. Commissioner Cleghorn moved to adopt the recommendation and Commissioner Cherot seconded the motion.

Judge Rhoades noted that there was a bill introduced in the last legislative session to do just this. It wouldn't mandate direct inmate internet access, but would allow DOC to use computers to deliver services. This was especially important with COVID, since people can't gather together in a room. Chair Claman noted that COVID was also what prevented the legislature from getting to the bill.

Commissioner Dahlstrom said she had concerns with this. There had been a bill that would introduce tablets. There are some fine lines between tablets and computers; she was concerned that prisoners having internet access would create new victims. She was supportive of giving them access to tablets with specific apps or tasks such as applying for Medicaid.

Judge Rhoades said she was confused because had there had been a DOC representative who she thought approved this draft recommendation.

Sen. Hughes thought there were ways to confine access to get around this, technologies that could be employed.

Commissioner Dahlstrom said that her other concern was that DOC's facilities are very old, and need rewiring. She has looked into this and it would take years. She would ask to pull this recommendation and talk to Laura Brooks. Chair Claman said the Commission could return to the recommendation at the September 10 meeting.

Judge Rhoades noted the purpose of the recommendation was not to specify how to do this, but to address the "no frills bill" that prevents the use of computers and tablets. The purpose would be to remove that bar, not to dictate how DOC should regulate computer use. She was not opposed to postponing consideration so DOC could get internal alignment on this.

Commissioner Dahlstrom observed that when the no frills bill was drafted, computers were considered a luxury. Now they are essential to modern life. Officers have to be in the room at all times when a prisoner is using a computer. They don't want the prisoners to disassemble them to make weapons. She wanted to take a further look at this, and wanted to be sure she didn't have any safety concerns.

Chair Claman noted that the legislature doesn't have the ability to micromanage state agencies—new legislation would need to give the department substantial regulatory authority. Commissioner Cleghorn withdrew his motion. Chair Claman said this would be back on the agenda for September 10.

Civil Detention

Judge Rhoades explained this recommendation was a policy statement that people who are on Title 47 should not be held in DOC facilities unless awaiting transportation to an appropriate facility. She moved to adopt the recommendation. Commissioner Cherot seconded the motion.

Commissioner Cherot proposed an amendment. The recommendation stated that people under Title 47 holds should only be in DOC facilities while awaiting transport. She proposed stronger language—"awaiting immediate transportation"—because "waiting for transportation" can be indefinite; people in this population can be and have been held for a long time. She also suggested adding "to be arranged by DHSS."

Judge Rhoades seconded the amendment. There was no opposition to the amendment. The amendment was adopted. Chair Claman called for discussion on the motion as amended.

Commissioner Dahlstrom said she was not opposed but wanted to know DHSS's opinion. DOC has had instances of people in this population waiting in DOC facilities for a long time and it's not a good situation.

Laura Russell from DHSS said that Title 47 already called for DHSS to arrange transportation so she didn't think that addition was necessary. As far as adding "immediate," she thought that the phrase "as soon as is practicable", which was already in there, was sufficient. Immediate might not be possible, and she thought "as soon as is practicable" was better and clearer.

Chair Claman noted the Commission already adopted the amendment. Judge Rhoades agreed that “to be arranged by DHSS” was not needed. Commissioner Cherot moved to reconsider the amendment, and Judge Rhoades seconded the motion. There was no opposition to the motion to reconsider. Judge Rhoades moved to amend the amendment by striking the words “to be arranged by DHSS.” Chair Claman noted the amendment on the table was just to add the word “immediate.”

Ms. Russell said that DHSS did not support the amendment because they considered it redundant. Sen. Hughes agreed it was redundant.

Chair Claman asked if there was any opposition to the amendment among voting members. Ms. Mead said that as proxy for Justice Bolger, she was abstaining. The Commission observed that Judge Stephens had not been present since 1pm. The other voting Commissioners present had no objection to the amendment and the amendment passed.

Chair Claman called for discussion on the main recommendation, as amended. Ms. DiPietro asked if the group wanted to use the phrase “suffering from a mental disorder” and wondered if the more usual phrase would use the word “experiencing.” Judge Rhoades thought that in this case the word suffering was apt, and noted that no one from the Mental Health Trust opposed the wording in the workgroup discussions.

There was no opposition to adopting the recommendation with Ms. Meade also abstaining from this vote. The recommendation was approved.

The meeting adjourned at 3:12 p.m.

Alaska Criminal Justice Commission

Meeting Summary

Tuesday, July 28, 2020

4:00 p.m.

Via Zoom

Commissioners Present: Scotty Barr, Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Adam Crum, Nancy Dahlstrom, Trevor Stephens, Steve Williams

Commissioners Absent: Kevin Clarkson (Deputy Attorney General John Skidmore served as proxy for Attorney General Clarkson), Shelley Hughes, Amanda Price (Deputy Commissioner Leon Morgan served as proxy for Commissioner Price), Stephanie Rhoades

Staff: Barbara Dunham, Susanne DiPietro, Staci Corey, Susie Dosik

Chair Claman began the meeting and opened the floor for public comment, but no comment was offered.

Commissioner Alex Cleghorn moved to go into executive session for the purpose of discussing the legislative audit management letter. Commissioner Steve Williams seconded the motion.

Once out of executive session, Justice Bolger moved to approve the draft response to the management letter from the Division of Legislative Audit, and Commissioner Williams seconded the motion. Mr. Skidmore moved to amend the motion by eliminating the paragraph beginning with the phrase “The letter does not recognize” from the draft response. Commissioner Dahlstrom seconded Mr. Skidmore’s motion.

Chair Claman noted there had been discussion on this issue in the executive session and called for a vote on Mr. Skidmore’s motion. The motion failed 4-6 with Commissioner Barr, Mr. Skidmore, Commissioner Dahlstrom, and Mr. Morgan voting yes and Justice Bolger, Commissioner Case, Commissioner Cherot, Commissioner Cleghorn, Judge Stephens, and Commissioner Williams voting no.

Chair Claman called for a vote on Justice Bolger’s motion. The motion passed 7-3 with Commissioner Barr, Justice Bolger, Commissioner Case, Commissioner Cherot, Commissioner Cleghorn, Judge Stephens, and Commissioner Williams voting in favor and Mr. Skidmore, Mr. Morgan, and Commissioner Dahlstrom voting against.

Chair Claman said he would sign and submit the response in the next couple of days.

Commissioner Cherot moved to adjourn, Commissioner Williams seconded the motion, and there was no opposition.

Alaska Criminal Justice Commission

Meeting Summary

Tuesday, July 21, 2020

10:00 a.m.

Via Zoom

Commissioners Present: Scotty Barr, Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Nancy Dahlstrom, Shelley Hughes, Trevor Stephens, Steve Williams

Commissioners Absent: Kevin Clarkson, (Criminal Division Director Paul Miovas served as proxy for AG Clarkson), Adam Crum (Deputy Commissioner Al Wall served as proxy for Commissioner Crum), Amanda Price, Stephanie Rhoades

Participants: Travis Welch, Carmen Lowry, Kaci Schroeder, Angela Hall

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

Commission Chair Matt Claman said the purpose of the meeting was to discuss the Commission's response to the management letter sent by the Division of Legislative Audit. Because the letter was confidential, this discussion would take place in executive session.

Chair Claman opened the meeting up for public comment, noting that the public comment period would remain open; if anyone wishing to make public comment called or logged in to the meeting after the executive session began, the Commission would hear their comment after coming out of executive session.

No public comment was offered.

Commissioner Steve Williams moved to go to executive session to review the letter from the Division of Legislative Audit to discuss the Commission's concerns and potential responses. Commissioner Alex Cleghorn seconded the motion.

Chair Claman asked if there was any objection to Susanne DiPietro and Barbara Dunham joining the executive session as staff. There was none.

Once out of executive session, Chair Claman summarized the discussion, saying that the Commission had agreed to continue to work on a response to the auditor's letter over the course of the week, and would meet next Tuesday at 4 to take up a revised draft. That meeting would also involve going back into executive session to discuss the revised draft, then submit the approved response to the Division of Legislative Audit. Commissioners would need to send any written comments to staff by noon Thursday, and staff would send a revised confidential draft by the end of the day Friday. And the Commission would need to request an extension of time to from Legislative Audit to send a response.

Justice Bolger moved to adjourn the meeting and Commissioner Williams seconded the motion. The meeting was adjourned without opposition.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, May 28, 2020

9:00 a.m. – 1:30 p.m.

Via Zoom

Commissioners Present: Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Shelley Hughes, Stephanie Rhoades, Brenda Stanfill, Steve Williams

Commissioners Absent: Kevin Clarkson (Deputy Attorney General John Skidmore served as proxy for Attorney General Clarkson), Adam Crum (Deputy Commissioner Al Wall served as proxy for Commissioner Crum), Nancy Dahlstrom, Amanda Price, Trevor Stephens

Participants: Greg Razo, Pauline Henriques-Perry, Kelly Cunningham, Don Habeger, Alys Wooden, Tony Piper, Nancy Meade, Angela Hall, Talia Eames, Brad Myrstol, Troy Payne, Lizzie Kubitz, Travis Welch, Triada Stampas, Jon Woodard, James Stinson

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

Meeting Agenda

Commissioner Razo moved to approve the meeting agenda and Commissioner Williams seconded the motion. The motion passed without opposition.

Updates from Workgroups

Rehabilitation, Reentry, and Recidivism Reduction Workgroup

Judge Stephanie Rhoades explained that she was the new chair of the Rehabilitation, Reentry, and Recidivism Reduction Workgroup given that previous workgroup chair Greg Razo was leaving the Commission. The group's next meeting was set for June 25, and she planned to work with Commission staff attorney Barbara Dunham to chart the workgroup's work plan. She anticipated the group would meet monthly, and she was hopeful the group could develop recommendations by the next plenary meeting.

Commissioner Greg Razo thanked Judge Rhoades for taking over. He confirmed that he was stepping down and would be replaced as the Alaska Native Justice Center (ANJC) designee by Alex Cleghorn. He thought most of the Commissioners had had the chance to meet Mr. Cleghorn already. ANJC has been growing in recent years, and now has a great set of attorneys. Mr. Cleghorn is their lead attorney and has been an attorney practicing in Alaska for a number of years. So he asked Mr. Cleghorn to consider stepping in, and he agreed to do so. Today would be Commissioner Razo's last meeting. He was thankful for his years of service and the great work the Commission has accomplished. He said he would continue to be in touch with Mr. Cleghorn and the Commission as necessary.

Youth Justice Workgroup

Commissioner Samantha Cherot said that the Youth Justice Workgroup met recently and heard from a national and Alaska-based groups on youth justice issues. One of those groups was Human Rights for Kids, which has developed and championed a number of reforms that have received bipartisan support in state legislatures. Based on the discussion at the last meeting and some of the materials the workgroup has gathered, the workgroup will work on developing recommendations, and she also hoped to have those recommendations ready for the next meeting.

Victims' Rights and Services Workgroup

Commissioner Brenda Stanfill, chair of the Victims' Rights and Services Workgroup, said that the workgroup had been meeting for quite a while and had developed four recommendations. The group still needed to work out the details but it should also be ready by the next plenary meeting.

Domestic Violence Workgroup

Ms. Dunham explained that the chair of the Domestic Violence Workgroup, Commissioner Sean Case, would be arriving late to the meeting and offered to give an update in his stead. The DV workgroup had identified two areas for recommendations at its last meeting: ensuring bail conditions are accessible to law enforcement, and coordinated community response teams.

Updates re: CIT Training Standards and Title 12/Competency

CIT Training Standards

Commissioner Steve Williams explained that in March the Alaska Police Standards Council (APSC) met to standardize the Crisis Intervention Training (CIT). Travis Welch, program officer with the Alaska Mental Health Trust, worked with the APSC to come up with a standard curriculum for CIT, which was adopted in March. The curriculum consists of a weeklong training based on the Memphis model of de-escalation.

Commissioner Stanfill asked if there in-state trainers. Mr. Welch said that there were now four certified trainers in the state; any new trainers will have to meet certain criteria. Commissioner Stanfill said she thought CIT was critical, and wondered if there was a plan in place to get more trainers. Mr. Welch said that the APSC had grant funding available to send people to become certified trainers.

Commission Chair Matt Claman wondered how this model would interface with the crisis intervention centers that were being developed. Commissioner Williams said that officers will be receiving training on how to divert people to the centers if they are available in their location.

Mr. Cleghorn wondered whether, now that VPO training is provided by tribal entities, there was any plan to provide VPOs with CIT. Commissioner Williams said that local law enforcement agencies who are doing CIT will often extend those training opportunities to other law enforcement agencies. Mr. Welch

added that with the APSC grant, agencies can request funds for CIT, which will cover the officer's training, travel, and covering the officer's regular shifts while the officer is gone.

Commissioner Williams said he could circulate the new CIT policy to the Commission, as well as information on the funding Mr. Welch mentioned.

Title 12/Competency

Commissioner Williams said that there had been two bills to amend Title 12 that were introduced by the governor during the last legislative session. Neither bill moved, and both bills will die since this year is the end of the 2-year legislative session. He will keep an eye out whether there are any similar bills introduced next year. One bill was about psychiatric commitments, using DOC as a temporary holding spot. The other was related to competency issues and qualifications of evaluators. He thought that with the advent of Crisis Now, there will be discussions as to how API can hold forensic patients.

DC Al Wall noted that there was a new CEO at API, Noel Rea. DHSS was looking at the spectrum of treatment in the psychiatric response system. New DHSS deputy commissioner Clinton Lasley will replace him as contact for that, and DC Wall suggested including DC Lasley in future discussions.

Ms. Dunham noted that the topic of Title 12 and competency was something the Commission had flagged last year for discussion at some point this year. She wondered whether the Commission wanted to take any action on this topic.

Commissioner Williams said he missed the last meeting of the Rehabilitation, Reentry, and Recidivism Reduction Workgroup, which he saw as a successor group to the Behavioral Health Standing Committee, and he wondered if this was something the Rehabilitation Workgroup could look at. He noted that these issues can't be looked at in isolation— they relate to the work being done with Crisis Now.

Judge Rhoades thought it would be good for the Commission to decide what the workgroup's tasks are. She thought the Rehabilitation Workgroup was focused on rehabilitation behind the walls, reentry planning, and back end intercepts—what happens after people are incarcerated and models of incarceration. She was not sure that group was geared toward Title 12, which more related to "front door issues" and people who have not been convicted of a crime, and about insufficient resources to evaluate people for competency and restore them. She considered it a wholly different set of issues. They were very closely looked at before, and essentially stem from the issue of not having a fully functional psychiatric hospital. The Behavioral Health Standing Committee and other groups have looked at it and there were also recommendations. She thought the work has fundamentally been done. She thought the Commission could either jump back in and update the existing recommendations, or decide that it can't achieve that within the year that is left of the Commission.

Chair Claman thought Judge Rhoades was correct that revisiting these issues is a big task, and had been the subject of a lot of thought and consideration. Given that the Commission will sunset next year, he wondered whether the Commission was interested in going so far as to start a workgroup to look at these issues, or wait to see if there is more legislation introduced next year, possibly pulling together something at the last minute.

Judge Rhoades thought it would be nice to get an update on where things stand; there have been lawsuits on this topic, and some participants on the Commission were parties. Chair Claman thought that might be an appropriate topic, even just an update on the various lawsuits for the August meeting.

Commissioner Williams agreed on getting an update on lawsuits regarding API and related issues, and also an update on what is going on with Crisis Now and how that relates. Chair Claman said that made sense, and also thought it would be good to learn more about SB 120, related to authority to use Crisis Now centers as an alternative to arrest, and administering psychotropic medications. Getting updates on these issues would put the Commission in good shape when the Legislature is back in session.

Update re: Prisoner Access to Medicaid Enrollment

Ms. Dunham explained that the Commission requested some follow up on this topic at the last plenary meeting. She had circulated a memo from Mr. Welch. She noted that there are two issues to accessing Medicaid enrollment while incarcerated: one is that people may not know they need to renew their enrollment or are eligible to enroll; the other is that because people who are incarcerated are not allowed access to computers for the purpose of Medicaid enrollment, they have to fill out applications on paper, and there is a backlog in processing the paper applications.

Regarding the latter issue, there had been a bill introduced in the recent legislative session that would have granted access to computers for people who are incarcerated, and while the bill did see some movement, it failed to make it out of committee before the legislature left. Regarding the former, there are service providers who help people get enrolled, but right now all services are being conducted via telephone if at all. The people who have reentry plans or reentry case managers will often receive help, but it is difficult to identify who will be released soon, and many people with shorter sentences will not be eligible for reentry planning or reentry case management.

Mr. Welch agreed, noting that it was very difficult to do inreach into DOC facilities right now, so service providers can't go in and help people with the physical application. Once someone is released, providers like Partners for Progress can help people fill out the application online, although the person will need state ID—and anyone who has done a reentry simulation knows how difficult that can be. Unfortunately we won't really know how to proceed until the COVID crisis is resolved, and until people who are incarcerated have access to computers, efficiency in getting people processed will be low.

Commissioner Stanfill said that at the last Rehabilitation Reentry and Recidivism Reduction Workgroup meeting, the workgroup heard about the "no frills bill" that restricted internet access for people who are incarcerated. She wondered if the law meant that people who are incarcerated can't access the internet at all even without a PO. Mr. Welch said that was DOC's interpretation, that they can't access the internet unless it's for employment, education, or vocational training. So other purposes will need legislation amending or replacing that statute.

Chair Claman said that the House Judiciary committee heard the bill that would amend the statute, and recalled that DOC's position was that they don't have regulatory authority to change internet access, and that they needed a statutory change.

Senator Hughes said that the Senate also had conversations about this during session, and they were looking for ways to amend the statute; she was disappointed it didn't get done in time.

Data: Follow-up from Previous Meetings, Prison Population

Ms. Dunham explained that in previous meetings, Commissioners had asked for additional information following staff data presentations. She had prepared that information for today's meeting.

The first subject for follow-up was the data on race and ethnicity presented at the December 2019 meeting. The data presented at that meeting showed an increase in the proportion of Alaska Natives held in prison compared to the proportion of Caucasians over the last five years. Alaska Natives were disproportionately overrepresented in the prison when compared to the percentage of Alaska Natives in the general population while Caucasians were underrepresented. Black people were also overrepresented in the prison population although the share of Black people in Alaska's prison population had remained steady.

Commissioners had asked to see this data broken down by violent and nonviolent offenses. The data showed a slight increase in the number of Alaska Natives and Black people incarcerated for violent crimes over the last five years (with a sharp uptick for Alaska Natives in the two most recent quarters.) The number of Caucasians incarcerated for violent crimes varied but the overall trend stayed steady over the last five years, with a slight uptick in the two most recent quarters.

Conversely, the data showed a significant decrease in the number of Caucasians incarcerated for nonviolent offenses over the last five years, with rates holding roughly steady since 2017. There was a moderate decrease in the number of Alaska Natives incarcerated for nonviolent offenses, followed by a slight increase in 2017. The number of Black people incarcerated for nonviolent offenses decreased slightly. Ms. Dunham observed that the data seemed to indicate that the reforms of 2016 benefitted Caucasians more than other groups.

In response to a question regarding race effects of the pretrial risk assessment tool. Dr. Troy Payne of the UAA Justice Center explained that the tools worked to predict pretrial failure equally among Caucasians and people of color; however, people of color are more likely to be held pretrial, controlling for other factors.

Commissioner Sean Case asked about the recent spike in the number of Alaska Natives incarcerated for violent crimes, wondering if any specific crime was driving that increase. Ms. Dunham said she did not know but staff could examine that. She added that the race data should be viewed with caution for a number of reasons, including the fact that assignment of race to an individual by DOC personnel is not foolproof, and it is difficult to assign causation to trends in criminal justice data.

Ms. Dunham explained that staff had also compiled follow-up data for people in custody pretrial. In March, the Commission looked at data showing that sentenced individuals are decreasing, while the pretrial population has been increasing since an initial decline in 2015. The increase has been significant over the past few quarters.

Nonviolent misdemeanor admissions have been increasing, following an initial decrease. The question at the March meeting was whether these could be related to charges of Violation of Conditions of Release (VCOR). The Commission's data show that admissions for VCORs did contribute to the increase in nonviolent misdemeanor admissions after the Pretrial Enforcement Division came on line at the beginning of 2018. The data show an increase in admissions of about 300 people. VCORs account for some but not the majority of the increase. However, the data presented only includes admissions for VCOR when that was the most serious charge, potentially undercounting the effect of VCORs. Dr. Payne pointed out that VCOR combined with another crime should be examined because it might have an additive effect, though that would be a complex analysis. Ms. Dunham agreed it would be very complex, noting that PED also monitors defendants for new crimes as well as VCORs, which could affect the trend.

The next topic was supervision. At the January meeting, the Commission asked for the most common supervision violations. Violations related to drugs and alcohol and absconding were the two most common. The top ten violations were fairly constant over 2017 – 2019. Chair Claman asked about the drop between 2017 and 2018 in the total number of individuals violated for drugs and alcohol. Ms. Dunham said that the total number of individuals under supervision had dropped significantly during those years, resulting in fewer violators overall. Violations per person fluctuated a small amount, but were roughly around 5. The data do not show which violations resulted in confinement, but Ms. Dunham offered to ask DOC.

The Commission also wanted to know more about earned compliance credits. The number of individuals receiving earned compliance credits was significant in 2017, then decreased slightly in 2018. There was a large drop between June and July of 2019, which is when HB49 changed the earned compliance formula to ten days for every thirty days of compliance. Senator Hughes said she would like to see the ability to give credits for individuals who take steps to improve themselves such as signing up for a class, either within DOC or while on supervision. She thought that earned credits could be an effective way to incentivize them. Commissioner Rhoades said that the RRRR group had discussed about how to incentivize participation in any program, and expected that work group to bring forward proposals.

In January, the Commission had asked about remands in Anchorage, specifically how many remands were accounted for by the same group of high utilizers ("friendly faces"), and by misdemeanants. Data provided by DOC showed that the average stay at Anchorage Correctional Complex of misdemeanants decreased from 2017 to 2018. However, the average number of remands per person increased slightly between 2017 to 2018. Dr. Payne commented that the data probably reflects a small number of individuals who are being remanded numerous times. He noted that a distribution chart would help illuminate the data. Judge Rhoades agreed that a relatively small number of people are very high utilizers of DOC, and other social services. She noted if those individuals could be identified, they could be targeted with better programming.

DOC data was used to show a profile of a high utilizer/friendly face given the pseudonym "Fred." This individual had an average of 25 remands per year, and was remanded over a 16.5 year period 414 times for a total of 5.86 years in prison. Many of the remands were for Title 47 holds. The estimated cost of this incarceration was nearly \$350,000. Ms. Stanfill said in her experience an individual such as "Fred" would be homeless some or most of the year. She noted that the cost estimate put forward by DOC did

not include the costs to law enforcement, the courts, and service providers. Ms. Rhoades asked what number of individuals across the state fall into the “friendly faces” category. Are there any common features of these individuals that could be targeted with specific resources for programming or incentives?

Dr. Payne noted that the Municipality of Anchorage has a project that attempts to estimate the costs to public resources of small numbers of individuals with large problems (Pay for Success). Chair Claman reminded that the example of “Fred” was an extreme case, and we do not know how common that profile is. A similar example provided by DOC of a person with the pseudonym of “Nancy” showed a large number of Title 47 holds. Commissioner Rhoades wondered whether the Title 47 holds were drug or mental illness holds.

Chair Claman suggested asking DOC what would be feasible in terms of putting together additional information, and this discussion could be scheduled for the August meeting. Ms. Stanfill asked also whether LSI-R scores would be reasonably available for these individuals. Dr. Payne offered to work on this data question for the August meeting. Mr. Williams noted that Crisis Now is also undertaking a similar analysis and it may be that the information requested could be gleaned from several sources.

Ms. Dunham said is sounded like the research questions were what number of people fall into this category, the extent to which they use public services, and whether there is any correlation with LSI-R scores. She was not sure there would be scores for this group since the LSI-R is typically done for people who are staying 90 days or more at a DOC facility. Judge Rhoades added that it should involve looking at where in the state this population is located and whether there are any common features of individuals in this group—to the extent that might shine a light on how to incentivize treatment.

Commissioner Williams recommended that the Commission change its nomenclature/labeling from “High Utilizer” to “Friendly Faces”. This change in language is happening in other locales nationally; particularly, as it relates to individuals experiencing behavioral health issues as well as other social determinants of health (employment, housing, access to health care, transportation, family and other community supports that if absent, increase the likelihood of criminal justice involvement).

Finally, Ms. Dunham presented some information about the prison population. She noted that there were several ways to get information on the prison population directly; one was AJiC’s interactive prison population dashboard; the other was the daily count sheet sent out by DOC. In recent months, the prison population has decreased from 97% of max capacity on 2/28/20 to 86% on 5/27/20. However, pretrial facilities are still at maximum or over maximum, during the last two weeks especially. Also, the data show shifts in sentenced versus unsentenced percentages. The change in the bail schedule adopted by the court system due to COVID is probably driving the unsentenced changes, but it is not clear what is driving the decreases to the sentenced population. Senator Hughes asked whether the decreases to the population are affecting DOC’s plans for reopening the Palmer Correctional Facility.

Marijuana Taxes + Recidivism Reduction Fund

Chair Claman noted that in recent meetings the Commission wanted to know more about how money from the Recidivism Reduction Fund was being spent. He had circulated a memo about where the

funding is going, which he believed was fairly self-explanatory. Marijuana revenues have increased steadily. One question was why some of the Recidivism Reduction funds for DHSS went to the Pioneer Homes last fiscal year. He did not find out why but it appears that was a one-time allocation. Going forward, funding is targeted, and he didn't think it would happen again. This memo was just intended as an update from the last meeting.

Commissioner Stanfill noted that half of the marijuana tax receipts go to the Recidivism Reduction Fund, and wondered whether the programming for the Boys and Girls Club was part of the Fund. Chair Claman said that 50% of the marijuana tax receipts went to the Recidivism Reduction Fund, and 25% went to the Marijuana Education and Treatment fund. The latter fund is what funded the Boys and Girls Club programming Commissioner Stanfill was referring to.

Kelly Cunningham from legislative finance explained that both funding sources could be tapped for a grant to the Boys and Girls Club; it would be up to the grant office within DOC. The Marijuana Education and Treatment fund is intended for after school programs. She noted that the Marijuana Education and Treatment fund was administered through the public health division while the Recidivism Reduction Fund was administered through the Behavioral Health Division.

Senator Hughes recalled that Senator Giessel was behind the Marijuana Education and Treatment Fund. She wondered whether that Fund had to be specifically for talking to kids about marijuana use. Ms. Cunningham said that would be a question for the grant administrator. Chair Claman said to clarify that the Fund had issued grants and that the Boys and Girls Club was one organization that had applied for the grants. Ms. Cunningham said that was correct.

Commissioner Stanfill noted that in FY2020, receipts from marijuana taxes were projected to be \$23.3 million. It looked like the state would not be spending all 50% of those receipts through the Recidivism Reduction Fund for FY20, and she wondered if that would roll over. Ms. Cunningham said it would, anything that remains in fund at the end of the year stays there and is available to spend, subject to appropriation. Chair Claman said that it was his reading that appropriations this year were actually over what was anticipated to be collected. Brenda suggested connecting with Ms. Cunningham offline for more questions about where money going.

Commission Sunset: Ideas for the Future

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, said she thought everyone was aware that the Commission was scheduled to sunset next June. The Commission was working on the sunset audit with legislative audit right now. The question for the group going forward was whether any of the work the Commission has been doing should be picked up or continued.

Ms. DiPietro had been thinking about data function a lot. The Commission's ability to receive data from the three departments has been very useful. Commission staff get quarterly data from each of the agencies and knit it together, and there has not previously been one entity that can do that to provide the big picture of what's happening in the criminal justice system.

The data collected is listed in statute at AS 44.19.645. Before the Commission, AJiC and the Judicial Council have both done studies on the criminal justice system, but what is new and improved with the Commission is the ability to get the data on an ongoing basis and be able to work with the data all the time in order to respond to questions from Commissioners, legislators, and others quickly without having to ask for data for each request.

Chair Claman said his general sense was that there was not a lot of support to extend the Commission as is, but the research and data functions have become helpful at various levels of policy and he thought that was important. He thought the Commission needed to make a recommendation for the legislature as to how to move forward. That was also a secondary question: how did the Commission want to approach this in terms of making a recommendation; should it be discussed in the next few meetings, and if so how detailed should the recommendation be?

Commissioner Stanfill said that she thought the Commission has done a lot of amazing work and she was sad that it doesn't have the support to go on. Hearing many voices at the table today was an example of how helpful and powerful it was to bring different perspectives together; she heard things from individuals on the Commission that she wouldn't have thought of otherwise. The Commission has done more than just analyze data. She was happy to have that part continue, but wanted to be vocal about the power of this group coming together to work on these topics. The Commission has done hours and hours of well-researched work. She thought the legislature did a good thing putting the Commission together.

Commissioner Williams wondered what might be driving the lack of support for the Commission. Chair Claman said that his impression was that most folks perceived that SB 91 came from the Commission, so different perspectives on the changes made by SB 91 and its subsequent repeal colored people's impression of the Commission. For that reason Commission recommendations don't carry much weight, and legislators don't think of the Commission as a resource to the extent it could. The research from national data and trends in Alaska's data, etc. has enormous value but he didn't get the sense that others in the legislature necessarily agree.

Senator Hughes agreed that SB 91 was viewed as a Commission thing. She thought that turning the Commission's focus this year to things like recidivism reduction and DV would generate more interest, as things that could be useful. She wondered whether the audit was also looking at the work of the workgroups too. Ms. DiPietro said it was yes. Senator Hughes thought that maybe the audit could be pivotal, and could resonate with the legislature, and it was possible that the Commission could be continued. She thought that with the fiscal crisis and COVID there was really more of a need for looking at cost-benefit analysis. She was not going to throw in the towel at this point.

Commissioner Williams said that the work of Commission was focused on very complex issues. If it was going to be effective, it needs to be some kind of inter-departmental, community- connected body that can hear diverse perspectives. Otherwise decisions are made without that broad input. It was unfortunate that the people were that latching on to one product from the Commission; there was another whole body of work to look at in terms of recommendations. There was also the benefit of bringing people together; things are resolved at meetings that might not be identified or discussed otherwise. Any organization needs to think about its mission and how to move forward in positive way.

He thought there needed to be an entity to do this work, whether through the Commission extending the sunset date, or some other way—it would be good to keep talking about these issues.

Chair Claman thought that in the end, the Commission needs to decide. Part of the reason it was on the agenda was that it needs to be a fairly robust discussion among the Commission. He thought that whatever the path forward was, it should be a recommendation. If the Commission decides that it wants to continue, it need to show why and also develop a focus. It could be different from what it is now. Presenting options for the legislature would probably be important. He definitely didn't want to put off this discussion to March; hopefully the Commission can come up with a path forward, and hopefully come up with legislative support. He noted that people have asked about the Criminal Justice Working Group, but that body was largely executive branch employees—less diverse, with a different mission.

Senator Hughes said that if there was support for a group like the Commission to continue, why not continue this Commission? It could be renamed; instead of the Criminal Justice Commission, which connotes SB 91, how about the Alaska Crime Reduction Commission or something similar? Something that connotes what the workgroups are focusing on. It would better define the current mission, and might fit better with what the public and governor want.

Chair Claman said he would have staff draft a framework for a path forward. The comments from today would help, and there would need to be more discussion; he thought having something to look at would help.

Annual Report: Funding and Policy Recommendations

Ms. Dunham noted that for last year's annual report, the Commission had come up with plan for the work the Commission wanted to accomplish in the following year. She wondered if the Commission wanted to do that again.

Commissioner Stanfill thought that last year's process was helpful, and she would like to do it again. Senator Hughes said this year's effort could also link to the results of the audit as well as the previous discussion about making recommendations for carrying on with the Commission. Commissioner Case agreed, and thought it would be best in discussing the next version of the Commission to include a discussion on how best to get results. Justice Bolger agreed.

Chair Claman noted that during last year's process, the Commission had had a facilitated session to walk through the Commission's ideas and to come up with priorities. He wondered if the Commission wanted to do that again. Senator Hughes noted that the Commission was still working on what it came up with last year, and a lot of that work could be continued. Commissioner Case thought the process could be done without a facilitator, as that process used a lot of time. Chair Claman said it sounded like the Commission did not want a facilitated discussion. There was general agreement.

Ms. Dunham wondered if there would be any recommendations for this year's annual report in addition to what the workgroups were doing.

Senator Hughes said that because the legislature did not accomplish passing the computer access bill, she would promote that for a recommendation. Commissioner Stanfill agreed; it was a very important issue and a recommendation endorsing it would not need a lot of work.

Judge Rhoades wondered when recommendations should be completed. Ms. Dunham said ideally by the August meeting, so that the annual report final draft can be circulated in advance of the October meeting. Judge Rhoades said she expected some recommendations to come from the RRRR workgroup, and the computer access recommendation could be part of that or could be direct from the Commission.

Chair Claman said the other recommendation would be the recommendation for what to do with the Commission sunset. He reminded the Commission that the timing would be to get the recommendations done by September, then circulate a final draft of the annual report ahead of the October 15 plenary meeting.

Ms. Dunham asked the Commission whether they wanted to make recommendations for reinvestment/funding of criminal justice programming.

Senator Hughes noted that there was funding in the capital budget for a pilot project to reduce recidivism, which was partially vetoed but still moving forward. She suggested it as something the Commission may want to put on the list, as a project to potentially replicate elsewhere in the state.

Judge Rhoades said that she was unfamiliar with that project. She also noted that the RRRR work group may have funding recommendations.

Senator Hughes said the pilot project was a therapeutic campus for people leaving prison that would provide treatment, counseling, and job training before they transition into their own housing. She could give an update on the project at the August meeting. Judge Rhoades also suggested that Ms. Dunham could pass information on the project to the RRRR workgroup, which might find it useful to know about. Senator Hughes agreed and said she could have someone give an update at the next workgroup.

Commissioner Williams clarified that these new recommendations for funding/reinvestment would be for FY 22. He said it sounded like there were good ideas out there that could be discussed in workgroups as kind of an iterative process, hopefully culminating at a plenary meeting for contemplation by the Commission as a whole.

Public Comment

Angela Hall with SOLO said she thought the work the Commission performs is of great importance, involving many groups working toward a common goal—the reduction of crime and the rehabilitation of human beings. She was thankful for this Commission, and if the name needed to change, she would suggest Alaska Restorative Justice Commission.

Alaska Criminal Justice Commission

Meeting Summary

Tuesday, March 31, 2020

12:00 pm – 12:30 p.m.

Audio-teleconference only

Commissioners Present: Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Nancy Dahlstrom, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Kevin Clarkson, Adam Crum, Shelley Hughes, Amanda Price, Greg Razo, Stephanie Rhoades

Participants: Travis Welch, Karl Clark, Alysa Wooden

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

Letter re: Recidivism Reduction Fund

Chair Claman noted that there was only one item on the agenda: consideration of the letter to the Legislature regarding the Recidivism Reduction Fund, as discussed at the previous plenary meeting. A draft letter had been circulated in advance of this meeting.

Commissioner Williams moved to forward the letter to the Legislature. Commissioner Stanfill seconded the motion. Chair Claman called for discussion.

Commissioner Case noted that the letter specified the statute that states the purpose of the Recidivism Reduction Fund, which he thought was helpful, but thought that also specifying the section of SB 91 that created that statutory provision might be confusing. He recalled that at the last meeting, there had been mention of some confusion among legislators about this. He suggested taking the reference to SB 91 out.

Chair Claman noted that the letter began, “The Recidivism Reduction Fund was established by SB 91 to provide funding for programs intended to reduce recidivism rates.” He asked whether Commissioner Case proposed removing the words “by SB 91.” Commissioner Case said he did, and Commissioners Williams and Cherot both said they agreed with the change.

Commissioner Stanfill asked if only referring to the statute made any difference, recalling that there had also been intent language regarding the fund in SB 91 that was not in the statute. Commission project attorney Barbara Dunham said that the intent language referred to excess funds being used for law enforcement, and that the language stating that the fund shall be used for recidivism reduction programs was in the statute itself. Removing the reference to SB 91 would not make a difference.

Chair Claman asked if there was any objection to modifying the letter as Commissioner Case had suggested. There was not.

Chair Claman asked for a voice vote on the motion to forward the letter as modified. All voting members present voted to forward the letter so modified, so the motion passed 7-0.

Chair Claman noted that he had looked into how appropriations were made from the fund in the last fiscal year, and would pass that information on to the Commission via Ms. Dunham. Ms. Dunham noted that as part of the small group tasked with developing the letter to the Legislature, Commissioner Williams had looked into how the funds would be spent this coming fiscal year and learned that there were no plans to use the Fund for the Pioneer Homes.

Public Comment

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

Next Meetings

Chair Claman noted that the next four plenary meetings were scheduled for May 28, August 27, October 15, and December 3, 2020. They were all scheduled to take place in Anchorage, but some or all might need to be telephonic due to the ongoing COVID-19 crisis.

Alaska Criminal Justice Commission

Meeting Summary

Monday, March 9, 2020

12:45 pm – 5:15 p.m.

State Office Building, Juneau
And audio-teleconference

Commissioners Present: Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Shelley Hughes, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Kevin Clarkson, Adam Crum (DHSS Deputy Commissioner Al Wall attended for Commissioner Crum), Nancy Dahlstrom, Amanda Price

Participants: Travis Welch, Theresa Capo, Karl Clark, Alex Cleghorn, Cathleen McLaughlin, Triada Stampas, Tracey Dompeling, Nancy Meade, Kim Stone, Carmen Lowry, Buddy Whitt, Brad Myrstol

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

Note re: Commission Sunset July 1, 2021

Chair Claman noted that there had been discussions about this in the capitol, though there was nothing requiring action today. He just wanted to remind the Commission of the sunset date, and note that there are a number of options at that point. They ranged from full reauthorization to letting the Commission end without any further action. Reauthorization was not super likely, as he was not seeing any support for that. There were several hybrid options that could involve maintaining the Commission's data collection and research functions, and/or continuing to look at criminal justice policy with a narrower scope of work, such as just looking at rehabilitation. He suggested keeping these options in mind as part of the planning process in the fall for next year's agenda, similar to what the Commission did last fall.

Approval of Meeting Agenda and Previous Meeting Summary

Justice Bolger moved to approve the meeting agenda and Commissioner Cherot seconded the motion. The meeting agenda was approved without opposition.

Commissioner Cherot moved to approve the summary of the previous meeting and Justice Bolger seconded the motion. The meeting summary was approved without opposition.

Data: Pretrial

Commission Project Attorney Barbara Dunham explained that she would review data on the pretrial population at DOC as part of the ongoing project to help the Commissioners become more familiar with the data the Commission collects. The data contained in this presentation would mostly be DOC data.

The first chart of her presentation showed the pretrial population in DOC facilities on snapshot days, through January 1, 2020. The snapshot days were the first days of each quarter starting July 1, 2014. The pretrial population peaked on January 2015 at 1,668, then fell to a low of 1,300 on October 1, 2016. From then on, the population had been rising more or less steadily. The last data point the Commission reported in its annual report was from July 1, 2019, at which point the pretrial population was 1,647. Since then, the pretrial population has jumped up sharply, to 1,947 on January 1, 2020.

The next chart compared the pretrial population with the sentenced population; unlike the pretrial population, the sentenced population has been decreasing more or less steadily, reaching 2,016 people on January 1, 2020—only 69 people more than the pretrial population, the smallest differential in the Commission’s data.

The next two charts looked at pretrial admissions, showing the number of admissions per quarter. These were broken down between felonies and misdemeanors, and violent and nonviolent. Nonviolent misdemeanor admissions accounted for the bulk of pretrial admissions; they dropped between 2015 and the beginning of 2017, then began to rise, reaching a peak toward the end of 2019.

Commissioner Stanfill asked when the bail schedule had been implemented. Judge Stephens said that the statewide bail schedule was implemented in 2016, and had been revised several times since then; however, there were bail schedules before 2016 in each judicial district, but they were not standardized.

Commissioners wondered whether there was any link to crime rates. Ms. Dunham explained that linking this kind of data to crime rates was tenuous at best; looking at prison admissions was more reflective of the criminal justice system’s response to crime rather than crime itself. It could reflect increased staffing levels for law enforcement or a change in practices. She noted that the new pretrial scheme mandated by SB 91 began in January 2018, and was revised by HB 312 in May 2018.

Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, noted that some of the increase in pretrial admissions after January 2018 could be due to the start of pretrial enforcement, which has supervision duties and is also more likely to catch defendants for a Violation of Conditions of Release (VCOR), a nonviolent misdemeanor. Brian Brossmer, research analyst for the Council, didn’t think the pretrial admissions numbers were related to probation violations. Ms. DiPietro said staff would take a closer look at what’s driving those numbers, particularly looking at admissions and snapshot data just for VCOR.

Judge Stephens reported that in calendar year 2015 the court system saw over 3,000 VCORs, while in calendar year 2019 there were over 8,000. In his experience, a single defendant can have two or three VCORs in course of one case.

Commissioner Stanfill asked whether there was length of stay data for pretrial defendants. Mr. Brossmer said that DOC currently only provided length of stay data for people who have been convicted and sentenced, and only for those who have been convicted of one crime. Unlike most

of the other data provided by DOC, length of stay data comes pre-analyzed and not in its raw form. It doesn't distinguish how much time a person has pretrial or post-conviction.

Commissioner Stanfill said it would be interesting to know how much time defendants were spending pretrial. Ms. Dunham said that the court data provides time to disposition, but would not provide how much time pre-disposition a defendant spent in jail. Ms. DiPietro said that could possibly be done with a sample paper file review.

Judge Stephens asked whether the paper file review done in 2018 showed that more people were being released. Ms. DiPietro said that was true, but most of that review was done before HB 312 went into effect. Judge Stephens noted that his recollection was that lengthy time spent in jail pretrial was why the Commission made many of the recommendations it did in terms of pretrial reform. Many people were spending time in jail for misdemeanors and then sentenced to time served without access to services. It would be nice to track that. Justice Bolger agreed it would be nice to get a handle on what exactly is happening there. He was also interested in looking at pretrial releases compared to pretrial admissions.

Commissioner Stanfill asked if there was any way to overlay this data with crime rates. Ms. Dunham said it was technically possible but because the relationship between this data and crime rates had a tenuous connection it might not be a valid analysis. Comparing arrest rates might be more sound. Commissioner Stanfill suggested just looking at offense-specific data. Chair Claman also suggested a side-by-side comparison rather than having the data overlaid. Commissioner Williams suggested getting AJIC to participate in that analysis.

Commissioner Stanfill said she was concerned that DOC was going to be housing pretrial defendants at the halfway houses again— she thought it was not a best practice to be mixing the pretrial and post-conviction/parole populations. Chair Claman said he hadn't heard DOC was definitively going to be doing that. Commissioner Stanfill said she believed that was DOC's testimony in House Finance recently.

Bail Study Report

Ms. Dunham explained that staff had conducted a study of a sample of cases in 2018 to gather data about bail practices. The 2018 study was intended to follow up a 2015 study which found that around half of defendants were released pretrial. The 2015 study also found that most defendants were either a third-party custodian and/or were required to pay a cash bond. The study further found that Alaska Natives were much less likely to be released pretrial than Caucasians.

The Commission also looked at research on pretrial practices; the research showed that that pretrial decision-making was more accurate with information from an actuarial risk assessment tool than with professional judgment alone, and that unsecured bonds (which do not require cash payment up front) are as effective at achieving court appearance as secured money bonds. This research and the findings from the 2015 sample of cases prompted many of the recommendations that went into the Commission's 2015 Justice Reinvestment Report.

The 2018 study was conducted similarly to the 2015 study. From a sample of just under 400 cases from Anchorage, Juneau, Fairbanks, Bethel, and Nome, 357 cases qualified for analysis. Of those cases, 281 were released pretrial and 248 were seen by a judicial officer. The 2018 sample consisted of cases opened between 4/1/18 and 6/30/18. Staff looked at the paper files for each case to determine whether the defendant was released pursuant to the bail schedule, was released after being seen by a judicial officer, or was not released.

In the 2018 sample, 79% of defendants were released at some point prior to case disposition, compared to 48% of defendants in the 2015 sample. Of all releases, 44% were released pursuant to the bail schedule. If the bail schedule releases are excluded from the sample (leaving just those cases seen by a judicial officer) 69% of those seen by a judicial officer were released.

Judge Stephens said that he wanted to make sure that everyone knew that the bail schedule only applies to misdemeanors. The bail schedule sets standard bail amounts or OR (own recognizance) releases for common misdemeanors.

Ms. Dunham said that of those in the 2018 sample who were released by a judge's order, 35% were released OR (in 2015, 12% of all cases were released OR); 23% were released on an unsecured bond (compared to 10% in 2015); 40% had a cash bond (compared to 67% in 2015); and 27% of cash bonds were set at \$2500 or more (compared to 41% in 2015).

In the 2018 cases, a third-party custodian was assigned in only 5 cases. Supervision by the Pretrial Enforcement Division (PED) was assigned in 49% of cases. Around half of defendants had a drug or alcohol restriction, monitoring, or testing requirement.

Chair Claman asked whether staff were able to find out what percentage of people who were assigned to PED supervision who were released. Ms. DiPietro said that was not investigated.

Commissioner Case wondered, if there were higher numbers of defendants released OR, fewer cash bonds, and lower cash bonds, why the numbers of nonviolent misdemeanants held in prison are increasing; he would think it should be going down. He wondered if PED supervision was related. Ms. DiPietro said that might be part of it. There is data showing that more than half of the people assigned to PED were low risk which could increase the chance of failure for that population. Also the number of VCORs increasing increases the population.

Ms. Dunham said that the 2018 study appeared to show that the racial disparity in pretrial releases was decreasing. In 2015, 25% of Alaska Natives were released compared to 61% of Caucasians; in 2018, 75% of Alaska Natives were released compared to 83% of Caucasians. She cautioned that neither of these studies controlled for other factors, but these results were positive.

Ms. DiPietro echoed that, noting that the study was not able to control for other variables such as crime charged, as there was not enough data to use those rigorous controls. The Judicial Council was able to perform a rigorous study, with controls, in 2004, and that study also found unjustified racial disparities in pretrial release decisions even controlling for other factors. That was one reason why staff chose to look at race even though they were not able to control for other factors.

Chair Claman said that the 2018 study would suggest that the changes to the law that were made were having an impact on those disparities. Ms. DiPietro noted that in releasing a larger percentage of people, it seems natural that everyone would see higher release rates, but it looked as though Alaska natives saw even more of a difference in release rates than before reform. Justice Bolger wondered whether releasing more people without cash bail benefits economically disadvantaged minorities. Ms. DiPietro said that was a reasonable hypothesis.

Ms. Dunham explained that around half of the case files in the 2018 study were missing risk assessments. Staff followed up with court personnel to obtain some of the missing risk assessments, after which the percentage of missing assessments dropped to 32%. Some of those missing risk assessments could be bail schedule cases in which a defendant was never held in jail, and hence never got a risk assessment.

In the cases that did have a risk assessment, the defendant was more likely to be released pretrial. 73% of cases with a risk assessment were released while 64% without a risk assessment were released.

Judge Stephens wondered whether the Commission should follow up with the missing risk assessments. Ms. DiPietro said that staff did do some follow up, and found that some locations were better at including the risk assessments in the file than others. In some instances, staff were under the impression that some felt the risk assessments were not needed. Staff believed that there had been some follow up from the court system in those cases.

Chair Claman wondered whether there was still pushback from the state's judges regarding the utility of the risk assessment, or whether the assessment now had more credibility. Judge Stephens said his sense was that it was not. He looks at them, and makes a note of the score and recommendation.

Nancy Meade from the Court System said that they did a survey of judges about four or five months ago, and generally there was not a lot of confidence in the tool's validity. On the other hand, some judges thought the tool was great. Judges were on all ends of the spectrum.

Ms. Dunham wondered whether the judges had been given any information about the revalidation study at the most recent judicial conference. [The revalidation study, the results of which were presented to the Commission in August 2019, showed the tool was still valid.]

Ms. DiPietro said that the judges had a robust training on the tool before it was rolled out, but didn't think there had been any training about the revalidation. She wasn't sure if DOC had released the study.

Chair Claman said the difference in release rates between cases that had risk assessments and those that didn't suggested that the risk assessments were at least having an impact. Judge Stephens pointed out that for most of the sample period in the 2018 study, judges were required to consider the risk assessment and release certain people with low scores. He said he would talk to Judge Miller about adding something about the risk assessment to the judges' training. His impression was that the newer judges were more interested in or receptive to the tool.

Ms. DiPietro agreed that and said that the revalidation study conducted by AJIC was a good study, but didn't think it had been widely disseminated. Dr. Brad Myrstol, director of AJIC, said he also didn't know if DOC released the study. He knew that Dr. Troy Payne presented the study to DOC, and issued a full report plus recommendations, but didn't know what happened after that. Ms. Dunham added that DOC Commissioner Dahlstrom had to bow out of this meeting at the last minute as something unexpected had come up.

Ms. Dunham explained that the 2018 bail study found that 21% of cases had at least one instance of failure to appear (FTA), based on bench warrants issued, before disposition. This could be very generally compared to a study of cases from 2014-2015 that found a 14% FTA rate, although that study used different methodology.

The 2018 study also found that 35.2% of 2018 cases had new criminal activity (NCA). If VCORs were excluded, that rate dropped to 24%. This could be very generally compared to the study of 2014-2015 cases, which found a 37% NCA rate, although again, that study used different methodology.

In the 2018 cases, 47% of cases in which defendants were supervised by PED had new criminal activity, about half of which was VCOR. For cases in which the defendants were not supervised by PED, the NCA rate was 29%, around one-fourth of which was VCOR. Of people released per the bail schedule, 22% had new criminal activity.

Ms. DiPietro said she thought the NCA data was interesting. One data point that drove reform was that Alaska was holding many low-risk people in prison pretrial, so the idea with using a risk assessment tool was so that judges would be better able to know who to release. She thought this was encouraging data in that we are not seeing a greater rate of NCA even though we are releasing more people. She added that the data about those released per the bail schedule was also encouraging.

Commissioner Stanfill recalled seeing a presentation on this a year ago, and noted this was an update of the results. She agreed this was encouraging. Ms. DiPietro said that on the other hand, the legal structure has changed since the 2018 study was sampled.

Commissioner Stanfill wondered whether the higher NCA rate for those supervised by PED was because those supervised by PED were high-risk. Ms. Dunham said it was hard to say, but the fact of supervision alone might tend to mean that more criminal activity was detected for that population.

Judge Stephens said he would bet that two-thirds of the new criminal activity of those on supervision would be people with "dirty" urinalysis. This might be expected if there is a lack of treatment available immediately—people are often waiting on substance use disorder assessments and treatment beds. It was the reality of the justice-involved population.

Commissioner Stanfill said that while perhaps the Commission had initially hoped that PED would morph into more of a diversion/service program, and would act more like Probation/Parole in connecting people to services, PED in its current incarnation is more focused on enforcement.

She still thought PED was beneficial, particularly in regard to victim safety. DV victims like PED because they feel like the defendant has immediate consequences and someone is watching them.

Ms. DiPietro added that when the PED program first got started, those involved were surprised at the high number of defendants charged with DV. Chair Claman said that another gap PED was meant to address was the ineffectiveness of third-party custodians, who often would not report defendants when they should have.

Ms. Dunham asked for the Commission's thoughts on what the Commission wanted to do with the bail study information. It was not something the Commission was required to report. Ms. DiPietro reminded the Commission that the study's dataset was from a different legal landscape than the current one. The Commission could replicate the study with the current legal landscape. Staff would need to let some time go by for cases to conclude. It would help answer some questions Commissioners had earlier about the pretrial population.

Judge Rhoades said she was interested in looking at high-cycling misdemeanants, and wanted to capture more data about that group.

Chair Claman suggested keeping this idea on the planning agenda for the year ahead. Ultimately it sounded like a resource decision. Ms. DiPietro said that it was a resource decision not just for Commission staff but also Court System staff who have to gather the sampled files.

Domestic Violence

Commissioner Case said he wanted to give just a quick update on the DV workgroup: it has had two meetings so far, and had been a good venue to get practitioners' perspectives, with participants from all over the state. They have been identifying issues, inventoried what resources there are, and have received varying responses as to how the state is doing on domestic violence. Some programs provide better data than others. There are varying opinions as to what should be the focus for improvement.

It has therefore been challenging to understand how we're doing on DV. So APD has signed a user agreement with AJIC to dive into APD's data on DV cases, to help better define the problem. Dr. Payne from AJIC has analyzed some information from DPS, but that was using a limited data set. APD can provide much more data. It will be interesting to see what comes back.

Chair Claman wondered if the funds for the diversion program that was previously discussed could be used for this. Ms. Dunham said that those the funds have to be spent by September of this year. Ms. DiPietro added that the Commission would also have to sign a new agreement with the grant manager. Commissioner Case said that in a perfect world, there would have been one consistent ask from the DV workgroup right away that could have been funded that way, but there wasn't. His understanding was that AJIC didn't need the money for the data dive.

Commissioner Stanfill noted that the funds initially were intended for a diversion program for people who are homeless, and wondered whether that was still worth looking at. Commissioner Case said he could check with Nancy Burke, Anchorage's homeless coordinator. He thought the available funds amounted to about \$60,000. Commissioner Stanfill wondered if the

grant was still approved for its original purpose. Ms. DiPietro said she wasn't sure and would have to defer to the grant manager.

Judge Rhoades said she would hate to see those funds go to waste, and thought there might be a potential partnership with the municipality's homelessness program. Chair Claman agreed and suggested that Commissioner Case could contact Nancy Burke and maybe Cathleen McLaughlin. Staff could schedule an ad-hoc meeting to determine if this idea matches the original funding proposal. He appointed Commissioners Case, Stanfill, and Rhoades to look into this. Commissioner Stanfill said that since this program would be Anchorage-based, she didn't need to participate. Commissioner Williams said that he could step in, and Travis Welch, program officer from the Trust, might be interested too. Chair Claman agreed and said they should keep the Commission posted. A quick telephonic plenary meeting could be scheduled if need be.

Medicaid Enrollment

Ms. Dunham explained that in the fall, the Commission had developed a list of items to address in future meetings, two of which related to Medicaid. One issue was expanding Medicaid coverage for people who are incarcerated, which the Commission addressed at the last meeting by voting to recommend that the Legislature pass a resolution in favor of the idea. Staff had since forwarded that recommendation to the Legislature.

The second issue related to Medicaid was how to ensure that people who are incarcerated can enroll in Medicaid or maintain their enrollment (if otherwise eligible) so that they can be sure they have Medicaid coverage upon release. Ms. Dunham had circulated a very brief memo on this and welcomed direction from the Commission as to further research needed.

Currently, people who are enrolled in Medicaid don't lose their enrollment when they become incarcerated. However, people enrolled in Medicaid must renew their enrollment yearly, and if they are incarcerated at the time they are supposed to renew, they might not receive a notice to renew or might not be able to complete the renewal on time. New Medicaid enrollments must be done on paper, and there is a backlog of paper applications. It's unclear whether there is also a backlog for renewals.

To address this issue, one option might be to allow people who are incarcerated access to the internet for the purpose of completing Medicaid enrollment or renewals. There may be a bill in the works to do this already. Another option is to expand the use of Medicaid navigators, who are going into some DOC facilities already.

Chair Claman said that Rep. Kreiss-Tomkins had already introduced bill to allow internet access for educational and reentry purposes.

Commissioner Stanfill asked whether the reentry coalitions were helping with this. Commissioner Williams said he wasn't sure exactly but he knew that they do orientations, and were definitely an asset that can be used. He added that there was also the SOAR program, which ensures enrollment for people in the IDP+ or APIC programs. He believed SOAR had a high success rate, but it was not the easiest thing to do. He thought the Commission could look at ways to capitalize on what's already being done. This also falls into work that the Trust is doing with DHSS.

Commissioner Williams said he also wanted to reiterate that people don't get kicked off of Medicaid entirely; if they don't renew they get suspended after 30 days. If they aren't kicked off, there should be a way to get them reenrolled quickly and easily.

Judge Rhoades said this was also an issue for SSI: people who are eligible for SSI and Medicaid should already be enrolled when they walk out of the prison doors. She believed DOC was no longer running SOAR.

Chair Claman said that for the next meeting, staff should prepare an update on programs that are out there. He would also look into the bill regarding inmate computer access as well. Buddy Whitt, staff to Sen. Hughes, said that he thought the bill originated in discussions about ways to get inmates access to job training.

Judge Rhoades said that the next meeting of the Rehabilitation, Reentry, and Recidivism Reduction Workgroup would also be meeting in May, and that group could also look into this.

Commissioner Stanfill asked whether any legislator has taken up the resolution recommended by the Commission. Chair Claman said he didn't think anyone had taken action. He could also look into that.

Juvenile Auto-waiver

Commissioner Cherot said that in the past, one of the Commission's workgroups had looked at trying to address the collateral consequences of adult confinement on youth, and how to account for advances in our understanding of youth brain development. The proposal that the workgroup had looked at had three parts, all of which address the statute that automatically waives youth charged with certain crimes into adult court (the auto-waiver statute).

First, removing some of the less serious crimes from the auto-waiver statute entirely; second, removing some of the more serious crimes from the statute provided that DJJ could retain jurisdiction up to age 26; and third, retaining the most serious crimes in the auto-waiver statute but enacting a reverse-waiver provision. This proposal and an explanatory chart had been circulated to the group prior to the meeting.

Ms. Dunham noted that the chart was created prior to the passage of HB 49, so the sentences listed were no longer accurate. In addition, HB 49 restricted the use of discretionary parole for the offenses in the auto-waiver statute.

Justice Bolger wondered where the workgroup left off. Ms. Cherot said that the proposal was discussed among the workgroup but never forwarded to the full Commission.

Tracy Dompeling, director of DJJ, said that the workgroup had also been talking about how to have youth charged with adult offenses held in DJJ custody. Since the workgroup last met, the reauthorization of the federal statute governing juvenile justice has adjusted the definition of adults and minors—now, if someone is under the age of majority, they are definitely a minor. Those youth will need to be housed in DJJ facilities by 2021 in order to be in compliance with federal law. DJJ/DHSS are now looking at how to bring Alaska into compliance. There may need to

be a statute change, or DJJ could execute an MOU with DOC. She recently visited a facility in Oregon, where they keep youth housed in juvenile facilities until age 24. It was interesting to see.

Justice Bolger asked whether Alaska will have to do something to accommodate this change in the federal law no matter what the Commission may recommend. Ms. Dompeling said that was correct, new procedures would need to be in place by October 2021.

Chair Claman asked if a youth was charged as an adult, convicted of a murder charge, and sentenced to 25 years, they would still have to stay in a juvenile facility until a certain age, even if they would eventually be moved to an adult facility. Ms. Dompeling said that was correct. The federal law would require they be held in a juvenile facility only until the age of majority. But what we choose to do as a state is different question.

Commissioner Stanfill said that her recollection of the workgroup meetings was that one of the things the group was trying to figure out was how to accommodate the developing science about brain development, and how were are dealing with those under age 26. The workgroup was also talking about why we are treating 17.5- and 18.5-year-olds who are accused of the same crimes differently. Ms. Dompeling agreed. The question was whether that was a juvenile justice issue or a general criminal justice reform issue? Chair Claman said he imagined that in larger states, there could be prisons that could have specific programming or housing for that population.

Judge Stephens said it sounded like there were two underlying issues: how the criminal justice system accommodates the lack of full brain development at a younger age, and whether to house youth with older, long-term, and repeat offenders.

Justice Bolger said he would abstain from speaking for or against this idea because it was a substantive issue, but he noted that some of the auto-waiver offenses were class B felonies, for which youth may only be spending about two years in custody. If two people were convicted of the same B felony but one was kept in the juvenile system and one in the adult system, they would experience very different detention circumstances even if they spent the same amount of time in custody. Someone in the juvenile system would not be exposed to older adults and would likely have a lower risk of recidivism.

Commissioner Stanfill recalled there was support in the working group for the first recommendation to remove some of those class B felonies from the statute, and wondered if that was something that should be looked at separately, and whether there was a different way to approach the other offenses. Ms. Dunham noted that changing the auto-waiver statute was not necessarily the only avenue of approach, and that she had distributed a public comment from Angela Hall, who suggested reviewing the sentences of those incarcerated as teenagers.

Chair Claman said it sounded like the Commission was not ready to take action, on this, but thought it was reasonable to take it up at the next meeting. He asked whether the workgroup wanted to take another look at the proposal and revise it in light of the change to the federal law. He noted that the change of federal law might mean there would be more interest in the legislature to look at a proposal.

Commissioner Cherot agreed to reconvene the sentencing workgroup and act as its chair. Commissioner Stanfill noted that the Commission had intended to reconvene the sex offenses group but her sense was that there was no appetite in the legislature to revisit the sex offenses laws. She suggested the sentencing workgroup could meet when the sex offenses workgroup was intending to meet, starting May 11. Chair Claman said that would put the group on track to come up with ideas for the August meeting.

Commissioner Stanfill said that some participants had been very set against removing the more serious offenses from the auto-waiver statute. Justice Bolger noted that there was also a reverse waiver proposal, and that members of the workgroup had reported that previous attempts to instate a reverse waiver met with fierce opposition in the legislature. He wondered whether the workgroup should account for that previous opposition or ignore it.

Chair Claman said he didn't think that it would hurt anything if all of the Commission's recommendations aren't accomplished. Sometimes having something to say no to makes it easier to get to yes on something else. His instinct was to say that judges should be able to hear arguments as to why someone should be waived into adult court or not. He could see why people might be unhappy about taking offenses off of the statute.

Judge Stephens said he thought there was already a reverse waiver. Ms. Dompeling said there wasn't a reverse waiver statute, but there was a way to achieve the same effect, if a youth agrees to plead to a lesser offense that is not included in the auto-waiver statute, they will be held in the juvenile system. Renee McFarland of the Public Defender Agency added that offenses in the auto-waiver statute would be charged in the adult court, but if the youth was convicted of a the lesser offense, the case would go to the juvenile system.

Judge Stephens said that he thought in general if it made sense for a 17-year-old to serve some part of their sentence in DJJ custody, an 18-year-old should have the same opportunity. He thought the Commission should look into the idea before Commission's sunset.

Pretrial Enforcement

Anastasia Kiefer, Pretrial Supervisor with DOC's Pretrial Enforcement Division (PED), explained that she was one of three supervisors in the Anchorage PED office. She had pulled some ACOMS data to answer questions previously submitted by the Commissioners. One question was how many people PED had been supervising. Since program launched January 1, 2018, the number of people assigned to PED increased steadily, eventually reaching an average of around 2100, with around 1000 on supervision (the remainder were either still incarcerated or on abscond status).

Roughly half of those assigned to PED supervision were assessed as low-risk by the pretrial risk assessment tool. That might be unexpected, but those assessed as low-risk could include those accused of serious crimes who score low—the score doesn't relate to the classification of the offense charged. Also, if a person has spent time incarcerated, their score is likely to be lower.

Commissioner Stanfill asked what supervision typically looks like. Ms. Kiefer said that it varies, depending on the defendant. It can consist of check-ins, testing, and/or electronic

monitoring (EM)—in Anchorage, a majority of defendants are on EM. Judicial officers will order the conditions they think the defendant should have, and it's not necessarily based on risk.

Ms. Kiefer went over the coverage areas of each PED office. The main offices were in Anchorage, Fairbanks, Palmer, Juneau, Kenai, Ketchikan, and Sitka. There were regional differences in supervision in terms of who was on EM and the risk levels of the defendants assigned to each office.

Each office also has different ways of assigning caseloads to PED officers. In Anchorage, there is a flow of work/bank system with defendants assigned to different "banks" relating to the crime they are charged with and/or their conditions. For example, there is a house arrest bank, and a DV bank. In other offices around the state, officers have individual caseloads. Smaller offices have officers with blended pretrial and probation/parole supervision duties.

Ms. Kiefer explained that EM is a very popular bail condition. Community jails have contracted with DOC to do EM in smaller communities. All communities with EM are able to monitor defendants on house arrest, and most are able to also use EM for alcohol monitoring and GPS monitoring. In Anchorage, there are 428 defendants on EM specifically for 11.41 crimes, 299 of which are defendants charged with a DV crime.

PED officers are engaged in field work 24/7. On holidays and weekends, their offices are not open, but officers are working. They prioritize victim safety, including any exclusion zone breach. They try to call victims if there is a breach, and will send out officers along with law enforcement. Since the escape law was amended (to include cutting EM device straps within the offense of escape), they have seen a 30% reduction in cut straps.

Commissioner Stanfill recalled that she was on the JRI subcommittee that made the recommendations for pretrial, and one thing that the group thought was that the pretrial officers would have enough of a connection to defendants to connect them to treatment. She wondered if Ms. Kiefer thought pretrial officers had that kind of connection, or was their job more about enforcement.

Ms. Kiefer said she thought it was both. For people with mental health issues, they can see the signs and can make referrals on a voluntary basis. If they see mental health impairments, or a lack of cognitive function if a defendant is not able to maintain an EM device- they will bring it to the attention of the prosecutor. There are a lot of prosecutorial diversion options in Anchorage. She thought that there were definitely more resources for those defendants than if PED was not in place.

Ms. Kiefer explained that the Anchorage PED office installs an average of over 200 EM devices per month, allowing DOC to free up hard beds in the Anchorage Correctional Complex and Hiland Mountain. They have a duty to warn any victim before a defendant is released on EM.

If a bail order requires that a defendant follow DV protection order (DVPO) requirements, a copy of the DVPO order is obtained from the Court and additional exclusion zones are set up as listed in the DVPO order to ensure victims' safety. Each time there is an exclusion zone entry, PED performs a real-time notification and a welfare check to ensure victim(s)' safety.

PED works closely with prosecutors, the Office of Victims' Rights (OVR) and the Office of Children's Services (OCS) to ensure that DOC has up-to-date victim contact information and any victims' safety concerns are expeditiously investigated and addressed.

Commissioner Stanfill asked how quickly PED is able to warn victims of a defendant being released pretrial. Ms. Kiefer said they attempt to reach the victim before the defendant is released. If they get a voicemail they will leave a message asking them to call with questions; they are not required to reach the victim in person. If there are exclusion zones related to the victim's location, PED will need an accurate address, so a defendant will not be released if PED can't reach the victim or get the address. They can work with prosecutors to get that information. If defendants don't agree, they are advised to go to their attorney.

Ms. Kiefer explained that PED also collaborates with parole/probation. Not a lot of people are both pretrial and on probation. If they are dual status, probation will most likely take the lead. They have different strategies and parole/probation are typically authorized to conduct searches and enforce court ordered conditions of probation.

Ms. Kiefer concluded by saying that she had been with PED since day one, and she might be biased, but she was passionate about what PED does and thought they were doing good work. They have received positive comments from the defense bar. Defendant say that even just having EM/SCRAM is opportunity for them to achieve sobriety and get their life in order.

Commissioner Stanfill said she also heard positive comments from victims, and appreciated what PED did.

Public Comment

Adam Barger asked the Commission to look at ways to revisit sentences for people sentenced to long prison terms when they are young. Often these terms amount to a de facto life sentence. He himself was incarcerated at a young age, and released at age 43. While incarcerated, he met men who had been arrested at age 16, 17, or 18, who had spent half their lifetime behind bars. He thought there should be a way to revisit sentences of 30 years or more. First, because of our evolving understanding of cognitive development and how youth understand (or don't understand) consequences. He didn't want to excuse any conduct, including his own. But he was also not the same person he was 20 years ago. He didn't want to let young people throw away their life without the opportunity to rejoin society. He was happy to have an opportunity to rejoin society and show people that he was not a burden on society. There are many people who committed crimes and were incarcerated under age 21 who should have the same chance.

Angela Hall explained that she was one who sent in the written comment that Ms. Dunham had referenced earlier. She wanted to echo what Mr. Barger said, and hoped that the Commission would pick up this issue. Chair Claman confirmed that the Commissioners had received the letter.

Marijuana Tax

Ms. Dunham explained that this was another item the Commission had identified for a future agenda last fall. She had prepared a brief memo on the subject which had been circulated

to the Commission. SB 91 had designated half of the marijuana tax receipts to go to the recidivism reduction fund, which was to be used for recidivism reduction and crime prevention programs. SB 91 also included intent language which said that any “excess” should go to law enforcement, but it was a little unclear what was meant by that. The legislative history of these provisions in SB 91 revealed that legislators were skeptical that there would ever be enough money in the fund to cover the desired programs, let alone any excess.

Since the fund was created, it has been used for substance use disorder treatment at DOC reentry services administered by DHSS in coordination with the Trust, and crime prevention programs funded through the Council on Domestic Violence and Sexual Assault. In the current fiscal year, more revenue is on track to be generated from marijuana taxes than will be spent on those funds, however, additional allocations from the recidivism reduction fund have also gone to the Pioneer Homes this year.

Commissioner Stanfill said that she had recently spoken to folks in the capitol about this and not many legislators remember doing this in the first place, or thought it had been repealed. She thought the full 50% of the marijuana tax revenue should be put in the fund, and that it should be fully spent on reentry programs.

Chair Claman wondered whether the funding to the Pioneer Homes came from excess over and above the 50%. Ms. Dunham said that the line item in the budget said that funding came from the recidivism reduction fund. Chair Claman said he would try to look into it, and didn’t think that the Pioneer Homes were necessarily within the purview of the recidivism reduction program.

Commissioner Williams said he thought this was something the Commission should be paying attention to. This is where the recommendations of Commission in terms of further reinvestment become important, whether those recommendations are for substance use disorder treatment or other programming.

Commissioner Stanfill said she believed there was good data coming out of the reentry case management programs that can support further spending.

Chair Claman said the question for the Commission was whether the Commission should take action now, or consider this for a recommendation for the next fiscal year. Another option would be to leave further action to individual Commissioners. He will try to find more information on what is happening with the recidivism reduction fund for this coming fiscal year’s budget. He thought this should be something to mention in the next annual report.

Commissioner Stanfill thought the Commission should take action, and that it should write a letter asking the legislature to use recidivism reduction fund money for recidivism reduction programs. Chair Claman said he would take that as a motion. Judge Rhoades seconded the motion. She thought the letter should note that the Commission has already made recommendations to the legislature as to how to further reinvest. This fund was intended to be reinvestment.

Senator Hughes wondered whether the letter might make some accommodation for efforts being made in the capital budget for substance use disorder treatment for the formerly incarcerated. The letter could ask that the legislature make up for any decrement in the recidivism

reduction fund in the capital budget. There might be as much as \$30 million in the capital budget going toward SUD treatment, and she didn't want to detract from that effort. She thought the Commission should be open to that. She didn't object to writing a letter, but wanted to add to the letter that if the recidivism reduction fund was not fully going toward recidivism reduction, that it could be offset in the capital budget.

Chair Claman said that a letter would need to be drafted anyway— it may not be realistic to get something done.

Judge Rhoades said the purpose of having 50% of the marijuana tax creating a fund in the operating budget ensures that these programs will have some longevity, and is something to remind the legislature that these programs need funding.

The Commission voted to approve the letter with Justice Bolger, Judge Stephens, and Commissioner Williams voting no, and Judge Rhoades and Commissioners Cherot, Stanfill, Case, and Razo voting yes. Chair Claman said that staff would draft a letter for the Commission to review, and that he would also request a spending breakdown for the recidivism reduction fund for the upcoming fiscal year.

Commissioner Williams said his concern about drafting a letter now was that he wanted to have all available information in front of the Commission. Information related to needs, and the effectiveness of current programs. He thought it was a good exercise, but was concerned about doing something on a compressed timeframe. Commissioner Stanfill said she thought it was important to do something now so that it didn't fall off everyone's radar.

Ms. DiPietro said that staff can draft a letter but would need guidance from the Commissioners. Judge Rhoades and Commissioners Williams and Stanfill agreed to help.

Chair Claman said that whatever the letter looks like, this issue should also be on the agenda for fall planning to discuss the long-term outlook for the use of this fund. He also noted that the capital and operating budgets serve different needs. He thought a letter would have to be sent in the next 10 days or it would have to be next session.

Commissioner Stanfill said she hadn't intended that her motion be on any timeline. She thought that the Commission should have a well-crafted letter. It might be too late to do something for this session. Chair Claman wondered if she was thinking it would be for the May meeting or even the August meeting. Commissioner Stanfill said she did, she thought it should be a better-crafted letter, and wondered whether it should also take in to account Senator Hughes' comments regarding the capital budget.

Judge Rhoades said it sounded like there were two items at issue; one was reminding the legislature of the original purpose of the recidivism reduction fund. That didn't have to be a specific well-crafted letter. Another consideration is whether to mention funding of specific programs, which was not what she voted for. She thought the letter that was the subject of the motion would just express concern that the recidivism reduction fund was not being spent as intended, Just as a reminder to the legislature.

Chair Claman agreed and said he thought the motion was for a rapidly-written letter. He thought that the answer was that a letter should be finished by next Friday. If that letter is satisfactory to the Commissioners helping, the Commission can have a short telephonic meeting for a yea or nay. The letter would get at the gist of what Judge Rhoades was saying, just noting that this was how this fund was spent last year and are you sure that's what you want to do. A more specific recommendation as to how to use the fund can be on the Commission's agenda for the fall.

Crisis Now Consultation Report

Chair Claman said that he put this on the agenda for discussion, and thought that by now most people were familiar with the report. He wondered if anyone had any questions about it.

Commissioner Stanfill said that she had some questions from a DV advocate's perspective, but could talk more about it to Chair Claman and Commissioner Williams offline. Generally her concern was that when a diversion program includes crimes against people, there need to be clear intentions and put some side rails on the project. She was concerned that not everyone engaging with this system will have adequate training.

Chair Claman said that he had heard similar concerns and was already working on adjusting the bill that would implement the Crisis Now model to accommodate those concerns. He was happy to talk with Commissioner Stanfill about it.

Commissioner Williams noted that the bill and the Crisis Now model are two different things and that he could also talk with Commissioner Stanfill about the services that would come with the model.

Ajd 4:40

Alaska Criminal Justice Commission

Meeting Summary

Thursday, January 30, 2020

8:30 am – 2:30 p.m.

Centennial Hall, 101 Egan Drive, Juneau, Alaska 99801

And audio-teleconference

Commissioners Present: Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Nancy Dahlstrom, Shelley Hughes, Stephanie Rhoades, Trevor Stephens

Commissioners Absent: Kevin Clarkson, Adam Crum, Amanda Price, Greg Razo (Alex Cleghorn served as proxy for Commissioner Razo), Brenda Stanfill, Steve Williams

Participants: Deb Senn, Buddy Whitt, Kathy Monfreda, Mike Matthews, Lizzie Kubitz, Carmen Lowry, Diane Casto, Morgan Cruz-Erisman, Don Habeger, Alysa Wooden, Nancy Meade

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

Approval of Meeting Agenda and Previous Meeting Summary

The meeting agenda and summary of the previous meeting were approved without objection.

Data: Supervision

Commission project attorney Barbara Dunham explained that as part of an effort to help Commissioners understand the data it collects, staff would present information on segments of the data reported annually at each meeting. The segment for this meeting concerned post-release (probation and parole) supervision. Part of the packet for this meeting included a PowerPoint presentation with each of the charts that had been reported in the 2019 annual report that related to post-release supervision.

Ms. Dunham explained that unlike most of the other data reported by the Commission, post-release supervision data comes from the Department of Corrections (DOC) “pre-analyzed,” not in its raw form. The Commission has reported the share of people who are in prison for supervision violations as well as the share of people who are pretrial and sentenced – but not all on the same chart, as DOC sends the share of people in prison for supervision violations separately and pre-analyzed. Since 2015, the share of people in prison for supervision violations has decreased from 20.9% to 11.3% in mid-2019.

The Commission also reports the number of petitions to revoke probation or parole (PTRPs) filed per quarter, with data beginning in January 2017. The number of petitions filed per

quarter peaked in mid-2017 at 1,778. Since then, the number of petitions filed per quarter has generally been declining, down to 1,210 in mid-2018. This indicates that generally, people have had more success while on probation or parole, as fewer people are charged with a PTRP.

The Commission reports average length of stay in jail for probation and violations. Since FY15, the average length of stay post-adjudication has been decreasing, while average length of stay pre-adjudication has been holding steady. Ms. Dunham noted that SB 91 capped the length of sentences people could serve in jail for technical (non-criminal) violations, although the decrease in average length of stay started before SB 91. Participants wondered why the pre-adjudication length of stay was not decreasing. Judge Stephens speculated that to some extent, time to adjudication is fixed because it just takes time for that process to unfold.

The percentage of cases ending in a successful discharge, meaning that the term of supervision did not end with incarceration, has been increasing. Mike Matthews, research analyst with DOC, said that in 2014 DOC started an internal initiative to improve outcomes for people on supervision. Fewer violations and more successful discharges was reflective of that; fewer people were “flat timing,” which DOC wanted to discourage. (Flat timing refers to when a person elects to spend the rest of their term in prison rather than being released on probation or parole.)

The Commission also reports average caseloads for probation/parole officers statewide; Barbara noted that this could be broken down regionally as well. Average caseloads have decreased from 46 in January 2017, to 37 in July 2019.

Judge Stephens wondered whether these caseloads could be compared to national standards. Mr. Matthews said that he didn’t know if there was one national standard, as each state has its own circumstances to account for. Chair Claman said that his impression was that caseloads in the 30s for Alaska were more in line with national best practices. Susie Dosik, staff attorney for the Judicial Council, said that one recommended standard was to have a caseloads of 20 for high risk individuals, 50 moderate-risk individuals, or 100 low-risk individuals. Mr. Mathews noted that most of Alaska’s caseloads were mixed; those with more time-intensive cases typically have smaller caseloads.

Ms. Dunham noted that there were other data on supervision that could be reported, and she encouraged Commissioners to let staff know what data they were interested in. Commissioners expressed interest in knowing more about the types of violations, the average number of sanctions given before a violation, data on earned compliance credits, and location-specific data. Mr. Matthews said that the latter measure would be based on the office of supervision, but could not tell where exactly the people being supervised were located.

Intro to Data from DOC

Mike Matthews, data analyst at DOC, explained that DOC’s data tracks individuals, starting with booking. For any given individual data will be entered at booking, during pretrial status, during incarceration status, at release, during community supervision, and upon return to incarceration (if applicable). The terms “booking” and “remand” are used interchangeably.

Data includes but is not limited to things such as demographic data, the Offender Management Plan, legal status, custody level, bed history (the cell/unit/institution in which the person was housed), and segregation status. Reasons for housing someone in segregation could be medical, protective, or punitive, which DOC also tracks. Chair Claman asked if the experience of being in segregation was different between medical, protective and punitive. Mr. Matthews was not sure but said he could find out.

Mr. Matthews explained that DOC data is based on the person, not on the offense, meaning the data doesn't know about the outcomes of court cases or other data not within DOC's jurisdiction. For example, if a defendant bails out of jail and the case is later dismissed, DOC will not have a record of that. Also, people can be incarcerated for multiple reasons at once, which is why it takes time for DOC to put data together and why they don't give out raw data.

DOC also does not track people who are on open court probation—typically these are people convicted of misdemeanors who are not actively supervised by probation/parole officers. Teri Carns, Judicial Council researcher, said that people who are on open court probation typically will not have their probation revoked unless they are independently caught for another crime. Mr. Matthews agreed and said there were rare exceptions. Commissioner Cherot (Alaska's Public Defender) also agreed, and said she didn't think she'd ever seen a person on probation for a misdemeanor actively supervised.

Mr. Matthews said that DOC data starts at booking/remand, beginning with the remand type (criminal, non-criminal (Title 47), or federal hold) and remand reason (pretrial, sentenced, probation/parole violation, release condition violation). Remand is also where DOC begins its assessments, which are also tracked in the data. Remands for 2018 and 2019 were as follows:

REMANDS BY TYPE BY CALENDAR YEAR - 2018 AND 2019			
REMAND TYPE	2018 COUNT	2019 COUNT	CHANGE
FEDERAL HOLD	257	291	34
FELONY	7,748	7,806	58
MISDEMEANOR	18,318	20,333	2,015
MUNI/VIOLATION	232	212	-20
NON-CRIMINAL	1,465	1,660	195
PAROLE/PROBATION	3,068	2,563	-505
RELEASE FAILURE	1,124	1,427	303
SENTENCED	399	393	-6
TOTAL	32,611	34,685	2,074
UNIQUE	20,043	21,198	1,155
DAILY REMANDS		95.0	
HOURLY REMANDS		4.0	
ONE REMAND EVERY 20 MINUTES EVERY DAY			

Misdemeanors accounted for 59% of all remands in 2019. Also, with one remand every 20 minutes, and discharges being about equal to remands, someone is either entering or exiting a DOC facility on average every 10 minutes every day.

Commissioner Cherot asked whether the 1600 non-criminal remands were all Title 47 holds. Mr. Matthews said that was probably the case; Title 47 covers a wide variety of cases including people on an alcohol hold. Judge Rhoades said that they should be mostly alcohol, but could also be people needing civil commitment who are awaiting a bed at API. There were also people who were originally booked on a criminal charge, found incompetent to stand trial, and could not be restored; if those folks have their case dismissed, they can continue to be held in DOC on Title 47.

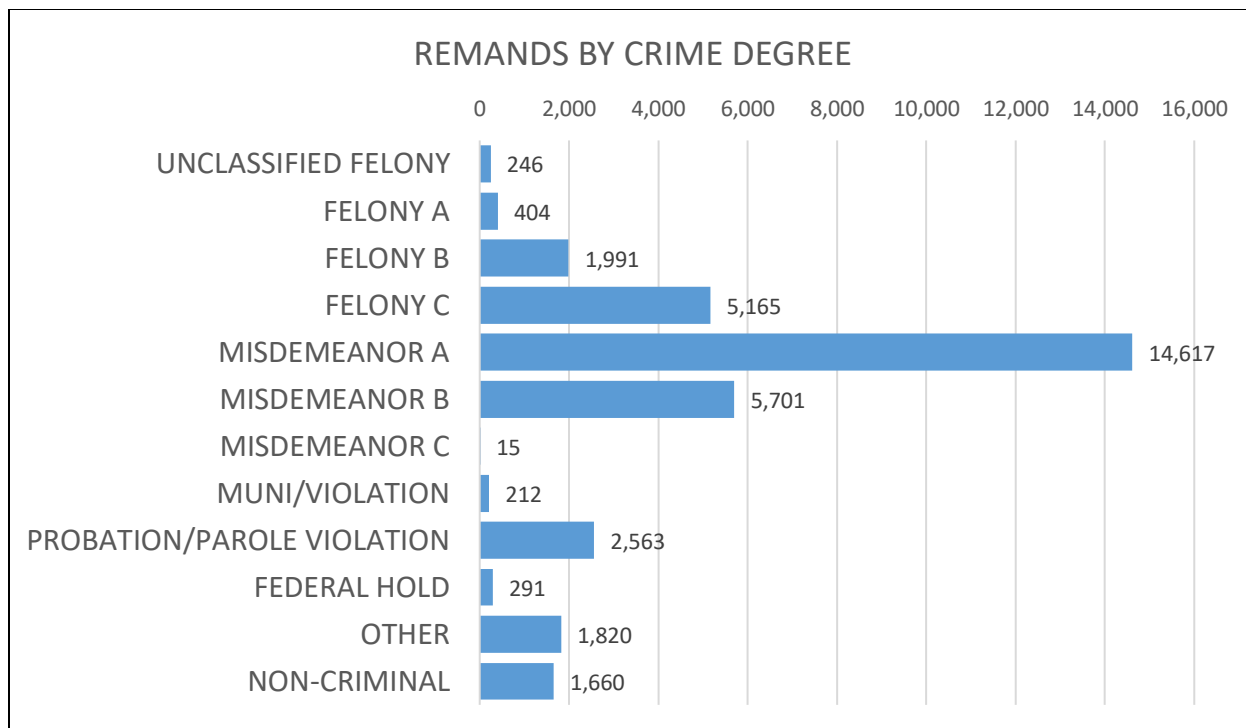
Chair Claman pointed out that the 1600 non-criminal remands can include people who are held on an alcohol hold for just 12 hours. Ms. Dunham reminded the group that these were remands, not snapshot numbers. The 1600 remands occurred throughout 2019; at any given point during that year there would be far fewer than 1600 non-criminal holds at DOC.

Mr. Matthews said that the remand figures included any booking, meaning that a person who is arrested and booked into jail more than once within the year would be counted more than once. The total remands for 2019 were 34,685 while the number of unique individuals remanded was 21,198.

Remands by crime degree for 2018 and 2019 were as follows:

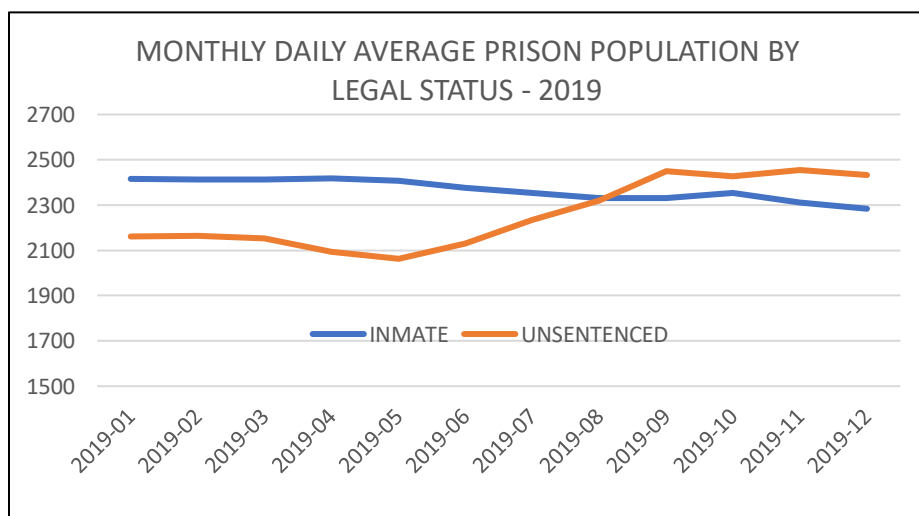
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Remands for 2019 by crime degree were as follows:



A misdemeanors accounted for 42% of remands and B misdemeanors accounted for 16.4%. Ms. Dunham said she was surprised to see so many B misdemeanors. Judge Stephens speculated those were mostly due to DV crimes. Mr. Matthews said that VCOR and FTA might account for some of them as well.

Mr. Mathews said that length of stay was also important to understanding DOC's population. DOC could calculate the length of stay for people who are sentenced and unsentenced. Unsentenced length of stay has been increasing for people charged with unclassified felonies, with the average unsentenced length of stay for that group rising to over one year in 2019.



DOC also tracks the daily average prison population. This was a snapshot of all the people in 2019, for the first time there were more people who were unsentenced than people who were sentenced in prison on average, as seen at left.

Ms. Dunham explained that the monthly daily average as seen in the chart above was different from the noon snapshot data that is reported elsewhere; the daily average in the chart above accounts for all the people who were in a DOC facility within a given day. Plain snapshot data does not account for people who are booked in after noon and release before noon the next day.

Judge Stephens noted that from January 2018 to December 2019 the monthly daily average went from 4,363 to 4,716, and increase of about 10% in a two-year span. He wondered if DOC was reaching capacity. Mr. Matthews said that right now, DOC was at about 97% of max capacity (4873), and over 100% of general capacity (4699). Ms. Carns said her understanding was that general capacity referred to the number of actual beds, while maximum capacity included makeshift beds and was limited by the fire code. Judge Stephens noted that in smaller communities, reaching capacity makes things very difficult—it is hard to operate in small spaces when people are sleeping on the floor.

Chair Claman said it looked like DOC had been over general capacity since September 2019. Mr. Matthews noted the general capacity number referred to the capacity of the system as a whole and that capacity would vary among institutions.

Judge Rhoades said she thought the problem was driven in large part by people accused of misdemeanors cycling in and out with frequency, and since the majority of misdemeanors were in Anchorage, she sensed that this was largely an Anchorage problem. Mr. Matthews said he could get more information on misdemeanants who are remanded frequently in Anchorage. Judge Rhoades said she would be interested in knowing whether this population was mostly in Anchorage, and whether they were charged by local law enforcement. Kathy Monfreda, data analyst for the Department of Public Safety, said that information could also be found in the criminal history data kept by DPS.

Mr. Matthews also had data on the daily average population by crime degree; the majority of both the sentenced and unsentenced populations were people charged with/convicted of felonies. He explained that even though the majority of remands (i.e., admissions) was for people charged with/convicted of misdemeanors, they account for less of the daily average population because they spend less time in DOC's facilities.

Mr. Matthews explained that DOC sends out daily count sheets which give DOC's inventory at the same time every day. The counts in these sheets do not account for people who stay less than 24 hours who are not present at the time the count is taken. The daily count sheet for January to date was this:

Instate Inmate Count -- Alaska Department of Corrections January 2020																
	863	128	259	1472	404	58	232	102	128	551	360	116	200	Max Cap		4873
	829	126	248	1408	395	52	226	98	128	535	354	111	189	Gen Cap		4699
Day	ACC	AM CC	FCC	GCCC	HMC C	KCC	LCCC	MSPT	PT Mac	SCC C	WCC	WPT	YKCC	Max Cap	Totals	%
1	827	129	270	1461	301	68	226	90	73	542	359	104	218	4873	4666	96%
2	830	132	280	1474	303	71	228	87	74	542	358	107	223	4873	4709	97%
3	869	132	281	1445	301	70	221	92	73	541	359	111	225	4873	4720	97%
4	855	130	278	1459	300	73	221	86	73	540	362	113	218	4873	4708	97%
5	857	132	274	1456	307	73	218	87	73	540	368	112	225	4873	4722	97%
6	852	131	274	1467	313	71	220	86	73	543	356	111	221	4873	4718	97%
7	878	125	267	1431	312	71	220	86	75	542	363	107	223	4873	4700	96%
8	877	126	268	1420	308	74	220	89	78	541	364	107	216	4873	4688	96%
9	890	127	269	1407	310	76	221	92	78	541	362	108	215	4873	4696	96%
10	876	124	273	1413	312	73	221	91	78	538	362	106	216	4873	4683	96%
11	866	124	275	1426	313	68	220	86	76	536	359	108	220	4873	4677	96%
12	843	123	281	1447	312	68	218	87	77	532	360	105	220	4873	4673	96%
13	848	122	276	1456	312	69	221	82	77	532	359	106	221	4873	4681	96%
14	885	122	283	1434	314	65	221	84	76	531	370	108	223	4873	4716	97%
15	887	116	282	1436	315	69	219	85	75	530	361	107	227	4873	4709	97%
16	889	114	279	1437	315	69	222	92	75	528	358	108	230	4873	4716	97%
17	903	115	281	1432	313	70	228	89	75	527	358	105	230	4873	4726	97%
18	845	118	282	1468	314	67	230	85	75	525	357	103	229	4873	4698	96%
19	861	119	275	1472	310	68	228	92	75	523	356	104	227	4873	4710	97%
20	875	119	281	1470	322	69	230	92	75	529	357	105	225	4873	4749	97%
21	890	123	280	1469	323	69	228	96	74	529	356	111	225	4873	4773	98%
22	913	120	283	1440	315	67	231	94	74	528	365	106	224	4873	4760	98%
23	922	118	279	1430	314	65	231	90	75	528	363	105	221	4873	4741	97%
24	905	118	285	1432	312	69	229	88	75	527	359	109	225	4873	4733	97%
25	878	114	296	1438	308	67	227	103	75	528	361	106	229	4873	4730	97%
26	875	113	292	1454	311	64	225	106	77	531	362	107	227	4873	4744	97%
27	860	108	290	1466	315	62	225	107	77	531	362	110	230	4873	4743	97%
28	891	105	287	1432	311	63	228	107	76	531	362	106	229	4873	4728	97%
29	881	109	282	1432	308	65	232	98	73	530	363	104	226	4873	4703	97%
30														4873	0	0%
31														4873	0	0%
Avg	873.4	121.0	279.4	1445.0	311.2	68.7	224.4	91.3	75.2	533.3	360.7	107.2	223.7	4873	4714	97%

Mr. Matthews said that every square shaded in grey meant that that facility was over max capacity that day, meaning that there were three facilities that were over max capacity each day thus far in January: Fairbanks Correctional Center, Ketchikan Correctional Center, and Yukon-Kuskokwim Correctional Center. Chair Claman pointed out that a majority of the facilities were over the general capacity every day thus far.

DOC also keeps data on assessments conducted at DOC, including those not currently used. Assessments may be re-done for one individual if enough time has passed since the previous one. The LSI-R and LSI-SV and the Pretrial Risk Assessment are the assessments used the most. Alex Cleghorn, serving as proxy for Commissioner Razo, asked why there were relatively few PREA risk assessments. He explained that PREA was the federal Prison Rape Elimination Act. Mr. Matthews

said that assessment had been implemented only recently. Chair Claman wondered how people were chosen for the assessment. Mr. Matthews wasn't sure. Chair Claman said he would be interested in learning more at a future meeting. Mr. Matthews noted that there was very little time for people serving short sentences to get assessments or programming.

DOC keeps data on people serving their sentences in alternate placements such as CRCs (halfway houses) or on electronic monitoring (EM). Mr. Matthews explained that DOC was trying to get these numbers up, but it was not easy. Commissioner Cherot asked whether that was due to capacity or eligibility. Mr. Matthews said it was due to statutory constraints on eligibility—there was plenty of capacity. Mostly this population consisted of people convicted of C felonies or A misdemeanors. Ms. Dunham asked whether DOC pays for EM devices. Mr. Matthews said mostly not, although people can show hardship. Commissioner Cherot wondered if there was data on the cost difference between these placements and correctional centers. Mr. Matthews said he could get that information.

DOC also keeps data on those placed under community supervision (probation or parole), as seen below:

Community Supervision Counts on 1/29/2020					
Office	Total Assigned	Incarcerated	Abscond Status	Community Supervision	on PED EM
Anchorage PSI	138	79	18	41	12
Anchorage Prob	2261	372	587	1302	72
Barrow Prob	36	7	3	26	0
Bethel Prob	212	55	3	154	2
Dillingham Prob	3	1	2	0	0
Fairbanks Prob	522	98	67	357	27
Juneau Prob	204	24	70	110	4
Kenai Prob	348	52	71	225	3
Ketchikan Prob	115	16	27	72	2
Kodiak Prob	95	13	7	75	0
Kotzebue Prob	55	17	1	37	0
Nome Prob	89	12	2	75	0
Palmer Prob	506	73	133	300	9
Sitka Prob	49	14	6	29	0
Totals	4633	833	997	2803	131

PSI here means pre-sentence investigation, and PED EM means the person has been assigned to pretrial supervision and is on electronic monitoring. Almost everyone assigned to community supervision has been convicted of a felony.

Buddy Whitt, staff to Senator Hughes, asked whether the 0s in the above table under PED EM meant that EM was not available in those communities. Mr. Matthews was not sure. Mr. Whitt said that Senator Hughes' office has asked for a list of communities over 1000 people that have EM.

Ms. Dunham said it looked like there were a lot of people on abscond status. Mr. Matthews said that those cases stay on the list indefinitely until they are accounted for, so they have piled up over time. Judge Stephens said that people can stay on that list (on abscond status) for a long time.

Finally, Mr. Matthews explained that DOC also tracks recidivism rates of anyone in a DOC facility who was incarcerated for a felony. They look at whether they have returned for any reason within three years of release. The most recent cohort was the group released in 2019, which has a 59.96% recidivism rate, which is the lowest it has been in a decade (down from a high of 69.95% recidivism for the 2006 release cohort). This data can be reported in multiple ways, such as the percentage of people who return for a new crime compared to those who return for a violation.

Intro to Data from DPS

Kathy Monfreda, Director of the Criminal Records and Identification Bureau at the Department of Public Safety (DPS), explained what data DPS collects and can provide. Their primary data system is APSIN, the Alaska Public Safety Information Network, a mainframe system that came online in 1984. There are over 2.4 million individual person records in APSIN, of which 367,084 have at least one criminal arrest. If you have a driver's license, you have a record in APSIN. An APSIN record is a unique ID.

AP SIN has arrest and citation data, as well as "hot file" data such as wanted persons, missing persons, and stolen property. It is the interface used by law enforcement to look up drivers' licenses and vehicle registrations. It also houses the Computerized Criminal History System, which contains criminal justice information reported by other agencies. Regulations require the following be sent to DPS:

- Arrest warrant (receiving agency)
- Domestic violence protection order (receiving agency)
- Location information (an agency requests information for other than a warrant purpose) (agency wishing to locate a subject)
- Arrest or citation (arresting or citing agency)
- Fingerprints (Department of Corrections or fingerprinting agency)
- Decision not to commence criminal proceedings (prosecuting agency)
- Court disposition (Court system)

- Executive clemency (Board of Parole)
- Booking photograph (Correctional facility)

Additionally, regulations require DOC to send correctional status information, but APSIN would need to be amended to receive that information. Regulations also require the Court System to send charging documents, but those are currently not being sent. Similar information is contained in arrest or citation information. In Bethel, the local law enforcement doesn't report that information, but the court there does provide the charging document.

Protection orders and other orders from other jurisdictions such as tribes or other states are not sent in a format that can easily go into APSIN's format, so that information is usually put in the section for location information, which is a blank space allowing unformatted data. It pops up to officers in the field using APSIN as a locate message. Tribal officers, however, don't have access to APSIN.

Ms. Monfreda explained that DPS has a \$2 million grant to replace the mainframe system. Chair Claman asked whether it would go to a cloud system. Ms. Monfreda replied that it would depend on what response there is to the RFP, but that would be her preference. The state uses a secure cloud now to house other state data.

Ms. Dunham noted that the Uniform Criminal Records Accuracy Act (UCRAA), which was a topic for later in the agenda, requires agencies to send information to the central repository within five days. She wondered whether that would be feasible for Alaska's law enforcement agencies. Ms. Monfreda said that technically, that requirement was on the books now. Law enforcement agencies were mostly to comply with it, although getting complete fingerprint records has been a challenge.

DPS's data show that in FY19, there were:

- 28,465 arrests
- 19,085 arrestees fingerprinted for the new charge (67% of total)
- 9,380 arrestees not fingerprinted for the new charge (33%)
- 10,162 Guilty dispositions (36%)
- 6,964 not prosecuted or dismissed or not guilty (24%)
- 11,109 no disposition (39%)
- 240 other disposition (Conviction set aside, reduced to violation, SEJ)
- 1,185 entries list a Court as the 'arresting agency'

- 59,516 disposition documents received

All of the disposition documents are entered manually by DPS staff.

DPS also collects law enforcement report data as part of the Uniform Crime Reporting (UCR) program, a nationwide data collection effort headed by the FBI to meet the need for reliable, uniform crime statistics for the nation. In Alaska, 32 agencies representing 99.5% of the state's population report their crime statistics to DPS. DPS then forwards that data to the FBI. Ms. Monfreda was pretty confident in the coverage of the UCR program, which provides yearly training on how to enter the data required. The biggest hurdle is that national definitions of crimes don't always fit the Alaska definitions.

UCR data is also the data that goes into the yearly Crime in Alaska publication, which is a resource for measuring crime trends in Alaska. Alaska's report comes out in September of the following year; this is after the Crime in the US report comes out in March, but it takes time because DPS needs to verify all the data.

Ms. Dunham noted that in years past, DPS has release a supplemental report on sex offenses along with Crime in Alaska, which has been a very helpful reference. She wondered whether a supplemental report for 2018 was on the way. Ms. Monfreda said it was almost ready to go; DPS lost the analyst who had prepared those reports in the past. They had a report prepared by a new analyst but they found some issues with the data and needed to review it. *[NB: this report has now been released.]*

Mr. Cleghorn asked whether the UCR data included reports to TPOs and VPOs. Ms. Monfreda said they were only included when the troopers get involved.

Ms. Monfreda explained that there are two types of UCR reporting methods, the Summary Reporting System (SRS) and the National Incident Based Reporting System (NIBRS). The SRS has been in place since 1929 and has the advantage of longevity, but only addresses 11 crimes in depth plus arrests for 20 more crimes. When multiple crimes occur in one incident, only the most serious is reported. The FBI will be phasing out this method and it will be retired by January 1, 2021 in favor of NIBRS.

Ms. Monfreda said that DPS is committed to transitioning to NIBRS by next year. DPS has a federal grant to implement this and to build a state repository for the information, and is working with local agencies to get them on board. Fairbanks and Anchorage will be testing reporting systems using this new method soon.

NIBRS will allow collection of additional information including detailed information on 49 major crimes plus arrests for 10 additional crimes. Agencies will collect information on the victim, suspect, location, victim-offender relationship, alcohol/drug related, gang activity, etc. for every incident. The new format can include up to 10 different offenses per incident. The FBI will have a data explorer with live updates.

Chair Claman asked when reports using NIBRS data might be expected. Ms. Monfreda said that the FBI will be publishing the information quarterly and they will start publishing data this year for states that are already using NIBRS. Chair Claman invited Ms. Monfreda to come back and report on NIBRS implementation at the August Commission meeting.

Ms. Monfreda said that the UCRAA, on the agenda for later in the meeting, was viewed with skepticism by SEARCH, a national organization of criminal justice data repositories. She said she would forward their paper on the topic. In her opinion Alaska's laws already cover most of what the UCRAA requires. Some things in the UCRAA would be very expensive to implement; for example, annual independent audits will cost around \$250,000 each year. Alaska already has a statute on point: AS 12.62.400.

Ms. Dunham asked whether it would be feasible to create a mistaken identity database as required by the UCRAA. Ms. Monfreda said there was already an identity theft file in the national crime identity system, which allows a person who is liable to be mistaken for others to get a password. Often this issue affects siblings. Currently DPS will verify anyone with a mistaken identity problem with fingerprints, and give them a letter or verification.

Report on Risk Factors Related to Criminal Activity

Ms. Dunham explained that she had circulated the final draft of the Report on Risk Factors Related to Criminal Activity. The Commission had looked at the first draft at the previous plenary meeting in December. Staff took feedback from that meeting and revised the report, and had also changed the formatting to make the report look other reports the Commission has published. She explained that the report should be sent to the Legislature the next day.

She reviewed the contents of the report. The study was requested by the legislature as a way to look at primary crime prevention, including the prevalence of ACEs (adverse childhood experiences) among those who are justice-involved. ACEs themselves are not tracked within the criminal justice system; the closest approximation was the risk assessment given to most people who serve a term of 90 days or more in DOC facilities or who are on probation. Brian Brossmer, research analyst for the Judicial Council, analyzed the responses to risk assessments administered between 2002 and 2018, looking at which risk factors were most prevalent among the responses.

Among the responses, the most prevalent risk factors were having "criminal" friends or acquaintances, having a drug or alcohol "problem", and having no recent participation in an organized activity.

Senator Hughes thought that the prevalence of substance use and "criminal" acquaintances among the responses was something to keep in mind when allocating funding for recidivism reduction. She thought that everyone understood how to address substance use disorders. Association with former criminal associates was more difficult, and could present problems for people once they are out of their primary phase of reentry support. It might be worth thinking about developing a further phase of reentry, and how to support people further along in the reentry process.

Chair Claman asked if she was interested in extending the length of existing programs. Senator Hughes said that it might be a model with more intensive services for the first period, and less extensive services later. Of course different people would have different needs.

Ms. Dunham said that one of the limitations of this study was that there was no comparison group, meaning that there was no way to compare the prevalence of these risk factors among the justice-involved population to the prevalence of those same factors among the general population. It might be that the fact of incarceration itself leads to the development of these factors, rather than the existence of these factors leading to incarceration.

Ms. Dunham also noted that these responses were essentially self-reporting, although assessors are encouraged to independently corroborate responses. This might explain why the prevalence of mental health issues was relatively low. Based on feedback at the last meeting, the prevalence of mental health issues among the justice-involved was discussed further in the final draft of the report, drawing from other available research including the 2014 Hornby Zeller report.

Judge Rhoades moved to publish the report and send it to the Legislature. Judge Stephens seconded the motion. There was no opposition and the motion passed.

Mr. Cleghorn wondered why the tools used for risk assessments at DOC, the LSI-R:SV and the LSI-R, were chosen, and Judge Stephens wondered how they were validated. Ms. Carns explained that these tools were widely used in corrections settings around the US; she didn't think they were validated on Alaska's population. Commissioner Dahlstrom said that they have discussed whether to retain those assessments at DOC. She could confer with staff about other available alternatives. Mr. Cleghorn said he was just thinking about ways to get data on ACEs. Ms. Carns said there was nothing that really does that, but studies have shown that there is a strong correlation between high ACEs and high LSI-R scores.

Public Comment

Don Habeger explained that he was the Community Coordinator for the Juneau Reentry Coalition. He wanted to share a struggle that Juneau has been experiencing. There was a real need for long term supportive residential housing people in reentry, particularly for more challenging cases. There was no adequate supportive housing for reentrants convicted of sex offenses. He wanted to bring this to the Commission's attention. The Reentry coalition is looking for solution, but hasn't yet found one.

Chair Claman said that this problem was not exclusive to Juneau. Judge Stephens agreed.

Ms. Dunham explained that Stephen Moses had submitted written comments advocating for the expansion of tribal compacts and tribal jurisdiction in some criminal cases. His written comments had been distributed to the Commission in advance of the meeting.

Recidivism Report

Ms. Dunham explained that the Commission's statute requires reporting on recidivism in the annual report, which the Commission did in its last annual report. The annual report also promised further analysis, and while this analysis was not strictly statutorily required, the topic was complex enough to warrant a separate report. Therefore there is no due date for this report.

Ms. Dunham further explained that the draft that had been circulated was a rough draft, and in part the intention of having it on the agenda was to get feedback on the scope of the report. There was a great deal of information to select in reporting. It was also difficult to find the right balance of depth of coverage and accuracy versus accessibility. This draft is fairly academic.

The report is in essence providing a baseline analysis for recidivism that can then be used to analyze trends in future reports. 2019 was the first year that the Commission had three years' worth of follow-up data for people who went through the criminal justice system in 2016, when SB 91 was passed.

The report uses conviction cohorts, rather than the release cohorts used by DOC, in order to capture all people going through the criminal justice system, rather than just those who serve time in prison. A lot of the changes made by SB 91 meant that fewer people would be spending time in prison, although many of those changes had now been repealed. Using conviction cohorts means it is more likely that people within a cohort would be subject to the same legal environment.

Ms. Dunham explained that the analysis, performed by Mr. Brossmer, uses an estimator to account for time at risk, so that the analysis does not unfairly compare people who spent one year in prison to people who spent two years in prison. Those two people would not have the same time at risk of recidivism. Using an estimator therefore means that the numbers produced in this report are not raw percentages but probability estimates based on the trajectory of everyone in the cohort, accounting for the time at risk. Using an estimator is especially important when using a conviction cohort.

The report looks at recidivism in terms of re-arrest, re-charge, reconviction, and remand within three years. While recidivism data with a three year follow-up period is standard, the report also has recidivism outcomes with a one year follow-up period to allow for comparisons with more recent conviction cohorts.

The data shows that remands within one year have been increasing for people convicted of felonies, while time to remand and length of stay is decreasing—this might be expected given policies designed to enable swift, certain and proportionate sanctions.

Other findings include that violent felonies have lower recidivism than non-violent felonies, while violent misdemeanors have higher recidivism than non-violent misdemeanors. Preliminary

findings show that drug cases have decreased while recidivism among people convicted of drug offenses has increased.

Chair Claman noted that much of this data also depends on the extent to which the law is enforced. Ms. Dunham agreed, and said that the one-year data was also very preliminary. Trends may become clearer once enough time has elapsed for more three-year data to become available. She said that one of the questions for the Commission was whether including both one-year and three-year data was too confusing.

Chair Claman said that would be one of his concerns. He also thought that the draft was at risk of either being misinterpreted or not being read at all. Other Commissioners present agreed. Ms. Carns suggested that a lot of the content could be put in an appendix for interested parties to reference.

Chair Claman suggested reworking the document and that Commissioners should send any feedback to staff by February 18, with the goal of having the next draft ready for the March meeting.

Uniform Criminal Records Accuracy Act

Chair Claman explained that the Uniform Law Commission recently met in Anchorage, where it approved publication of the Uniform Criminal Records Accuracy Act (UCRAA). The Uniform Law Commission is behind other uniform laws such as the Uniform Commercial Code; they publish new uniform laws fairly infrequently so he thought it was worth taking a look at.

Bob Tennessen, who was chair of the drafting committee for the UCRAA, explained that the UCRAA had its genesis in a request by the ABA in 2008 to look into the problem of inaccurate or missing criminal records. Recordkeeping laws vary by state. Errors in criminal records can result in severe consequences such as arrests or lost jobs.

Much of the information that the FBI is lacking is biometric. The UCRAA would require capturing biometric data at various stages of the criminal justice process; with biometric data associated with every step, errors would be less likely.

Mr. Tennessen explained that this was not intended to be an expungement measure; it was just about ensuring accuracy. If a criminal record exists, it should be accurate. There should also be a procedure to correct mistakes. One suggested provision in the UCRAA would create a mistaken identity registry. With the proliferation of information available on the internet, inaccurate criminal records are creating problems across the country, which are becoming acute in some places. The idea with a mistaken identity registry is that it would create a central repository, to which a person subject to mistaken identity issues could submit proof that they are not the person they are accused of being. They can then get letter explaining this, which they can use for job applications, etc. The UCRAA also requires the criminal justice data agency to track the dissemination of information, and perform regular audits.

Ms. Carns asked whether any states had implemented this act and if so, what issues and costs were associated with it. Mr. Tennessen said that not many states have implemented it, but that implementation would vary depending on the state. Minnesota, for example, already had many similar provisions, including the central repository for mistaken identities, so implementing it came with virtually no cost. In a lot of states, the reporting requirements theoretically already exist. The UCRAA also contains an audit provision which is actually copied from Alaska law.

Recommendation Regarding a Resolution on Medicaid

Ms. Dunham explained that at the last meeting, the Commission had asked staff to draft a recommendation that would be sent to the legislature that it pass a resolution in favor of expanding Medicaid coverage to cover services for people who are incarcerated. She had circulated the draft recommendation with input from folks at DHSS. The draft recommendation was fairly bare bones, as it was just asking the legislature to pass a resolution in favor of a federal action.

Chair Claman noted that there had been interest in this topic when some legislators learned that New York had applied for a waiver to get some coverage for people who are incarcerated. He did not believe New York had received the waiver yet.

Commissioner Cherot moved to approve the recommendation, and Judge Stephens seconded the motion. Ms. Dunham noted that this was a separate issue from maintaining Medicaid enrollment while incarcerated, which would be addressed at an upcoming meeting.

Judge Rhoades asked whether anyone from DHSS was available to speak on this. Ms. Dunham said that DHSS Deputy Commissioner Al Wall had been present earlier and expressed the department's support. Alysa Wooden, also from DHSS, was also present and said she was available to answer any questions. There was no further discussion and the motion passed without opposition.

Marijuana Tax

Ms. Dunham noted that Commissioner Stanfill, who was not present, had been interested in looking into this topic. Chair Claman suggested tabling the topic until the March meeting, when Commissioner Stanfill could participate. There was no objection, and the meeting was adjourned.

Alaska Criminal Justice Commission

Meeting Summary

Tuesday, December 3, 2019

Alaska Mental Health Trust, Anchorage

And audio-teleconference

Commissioners Present: Joel Bolger, Samantha Cherot, Matt Claman, Shelley Hughes, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Sean Case, Kevin Clarkson (John Skidmore served as proxy for AG Clarkson), Adam Crum, Nancy Dahlstrom, Amanda Price (Kelly Howell served as proxy for Commissioner Price)

Participants: Troy Payne, Lizzie Kubitz, Tony Piper, James Stinson, Sarah Stanley, Rebekah Moras, Travis Welch, Kim Stone, Nancy Meade, Don Habeger, Alysa Wooden, Al Wall, Renee McFarland

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

Approval of Meeting Agenda

Judge Rhoades moved to approve the meeting agenda and Commissioner Williams seconded the motion. The motion passed without objection.

Approval of Previous Meeting Summaries

Commissioner Williams moved to approve the summaries of the three meetings in October and Judge Rhoades seconded the motion. The motion passed without objection.

Chair Election

Chair Claman said that he had been asked by folks on the Commission to continue as chair of the Commission and he was willing to do so. Commissioner Williams moved to appoint Chair Claman as the Commission's chair for another year. Judge Rhoades seconded the motion. Chair Claman asked for any other nominations; there were none. Judge Rhoades moved to close nominations, and Commissioner Williams seconded the motion. There was no objection to closing nominations and no objection to reappointing Chair Claman as the Commission's chair for another year. Judge Rhoades expressed her appreciation for Chair Claman's efforts over the past year.

Commissioner Stanfill said she was willing to serve as vice-chair for another year, but her appointment would be up in July. Judge Rhoades moved to reappoint Commissioner Stanfill for another year as vice chair, noting that if she was not reappointed the Commission could deal with it at the time. Commissioner Cherot seconded the motion. Judge Rhoades said that she would be willing to serve as vice-chair if Commissioner Stanfill happened not to be reappointed to the Commission. Commissioner Williams moved to close nominations and Kelly Howell seconded the motion. There was no objection to closing nominations for vice-chair and no objection to reappointing Commissioner Stanfill as vice-chair.

Report on Risk Factors Related to Criminal Activity

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, said that staff had put together this report pursuant to statute. The legislature's idea was to look at people who are incarcerated or on supervision who have received a risk/needs assessment, to see what the risk/needs profiles are. The assessments used by DOC are the LSI-R and LSI-R:SV. To prepare the report, staff looked at data from LSI-R and LSI-R:SV assessments done between 2002-2018.

The results of this analysis, presented in the first part of the report, were not particularly surprising. The most prevalent risk factors related to substance use and "criminal" acquaintances. This trend held true whether respondents were in custody or under supervision in the community.

The second part of report puts this information in context. The intent of this legislation was to get information on how to fund primary prevention. The report talks about the risk factors in context, and how those things could be addressed to prevent future crime. The legislature was specifically interested in ACEs. A separate DHSS study showed Alaskans have higher ACEs scores compared with the rest of the country, and there is strong evidence from nationwide studies linking high ACEs scores to incarceration.

The report concludes with a discussion and recommendations, listing programs that address prevention for risk factors that are most prevalent. This list gives examples, and is not meant to be comprehensive. The main body of the report is 17 pages, plus there are appendices with further data.

Chair Claman noted that unfortunately no DOC representatives were at the meeting, as he'd like to know their perspective on ACEs scores for people in custody and on supervision.

Ms. DiPietro said that the study was included in statute because legislators wanted to know about ACEs, but actually assessing all people in custody and on supervision for ACEs would be quite a big project, and would need funding. It was also not advised to screen a whole population, because asking about ACEs can itself be a traumatic event. DOC doesn't do an ACEs questionnaire; the LSI-R is more suited to a corrections setting, identifying risks needs in that population. There is some overlap, however, so that was the approach the legislators took to get at the idea.

Teri Carns, Judicial Council staff member, said that the national research does establish a strong association between ACEs and the LSI-R, and that holds true from studies of both juvenile and adult populations. One can't assume that if a person has a high LSI-R score they will also have a high ACEs score, but studies have shown strong correlations.

Ms. DiPietro said that another limitation of this study is that it didn't include any comparison to the general population. It is conceivable that the general population would have the same scores. She didn't think it was likely, but we have no way of knowing that without a comparison group.

Judge Rhoades agreed that the top risk factors were no surprise. She wondered if staff looked at any correlation between high LSI-R scores and mental health disorders. She thought that would be another thing to look at to improve programming. People with mental health disorders are more likely to experience criminogenic risk factors than others. They have challenges finding services and accommodation, and are vulnerable to others, all of which relate to many of these risk factors. There

are many people with co-occurring disorders. It is very clear that people with mental health disorders are overrepresented in DOC's population. She thought the comparison to ACEs was interesting, but when comes to prevention programming, she saw a need to think about things from a mental health perspective. There is a huge lack of services for people with mental health disorders, starting from childhood. She thought this might be worth mentioning in the report. She had no problem sending out the reports as is, but wanted to throw the idea out there as she thought there was more to be said.

Commissioner Williams thought this report takes people further down path of what the Commission has talked about before—that we need to be intervening earlier in factors that drive criminal behavior. Not only in the criminal justice setting but in the family unit. He appreciated this work and thought it would help start a conversation about early interventions.

Regarding trust beneficiaries, Commissioner Williams noted that the Hornby Zeller report identified risk factors for the beneficiary population, and thought the report could start there in a discussion of how to intervene for beneficiaries. Ms. DiPietro wondered if the Hornby Zeller report had access to LSI-R scores. Commissioner Williams said they didn't, but they did do an overlay of beneficiaries in DOC, OCS, DJJ, and API custody; there was a high correlation of beneficiaries and contact with those institutions.

Commissioner Stanfill said that regarding the discussion and recommendations section, she thought that if the Commission was going to make a recommendation, the report needed to mention some of the things Judge Rhoades mentioned. The programs listed were all good but the report should mention that it was not a complete list.

Ms. DiPietro said it was not intended to be all-inclusive. Staff did want to highlight some programs that are evidence-based. The legislature did want to know about primary prevention, and things like substance use disorder treatment do prevent criminal behavior. Commissioner Stanfill agreed, but noted it would target a risk factor even if it was not primary prevention. There was a lot of research out there.

Commissioner Stanfill said that she would also point out that the difference between programs that work and programs that are evidence-based is that the latter have money to evaluate their data. She thought there was a lot of good work being done in Alaska, and a lot of it being done in rural Alaska, that was not necessarily evidence-based and did not have funding for evaluation.

Ms. DiPietro noted that the Commission has included in its annual report for the last couple of years that programs should preferably be evidence-based but there should also be space for promising practices that seem right for Alaska. She added that the CDVSA was also funding quite a bit of primary prevention, most of which was evidence-based.

Chair Claman said it sounded like the Commission needed to figure out the next steps for this report and asked when it had to be sent to the Legislature. Commission project attorney Barbara Dunham said that the preliminary results had already been reported in the annual report; the statute requires reporting the findings within 10 days after the start of the next legislative session. Chair Claman said it sounded like there was time then to take it back up at the next meeting, which was on January 30, 10 days after the start of the next session.

Judge Rhoades moved to approve the report, and Commissioner Razo seconded the motion. Judge Rhoades wondered where staff found the model programs that were included in the report. Ms. DiPietro said the Washington State Institute for Public Policy (WSIPP). Judge Rhoades wanted to be sure there was a look at programs that would identify and help people with mental health issues early in life. She was concerned people will see the programs listed in the report and think those are only recommended programs. She wanted to include language to reflect what Commissioner Stanfill was saying, and maybe take language from the earlier reports about supporting promising practices for Alaska.

Ms. DiPietro said that staff was not wedded to any particular programs or recommendations. They were not focused on mental health disorder prevention efforts because that was not what the statute was focused on.

Commissioner Williams said he was comfortable giving staff direction to modify the language in the report, perhaps moving the last paragraph explaining that the list of programs is not exhaustive to above the list so that information is not lost.

Chair Claman said staff should also add language consistent with Judge Rhoades' comments about mental health. If there was not some language about it the report might not be complete.

Judge Rhoades offered to help contribute language. Chair Claman said the report can also incorporate information from the Hornby-Zeller report.

Commissioner Stanfill asked whether the LSI-R asked questions about mental health. Judicial Council analyst Brian Brossmer confirmed that it did. Judge Rhoades added that it did ask but not in a way that addresses the central 8 criminogenic risk factors.

Commissioner Cherot noted on page 10 that past and current mental health treatment is mentioned as the subject of some of the questions, so there is some discussion of mental health in the report but not a lot.

Judge Rhoades observed that the LSI-R is also a self-report assessment so the results probably underreport the prevalence of mental health disorders. Ms. DiPietro said that there was no flag in DOC's database for mental health treatment but staff could see if there is any other way DOC captures data on the prevalence of mental health issues in the corrections population. Commissioner Stanfill said that mental health disorders are often masked by substance use disorders, which people may be more apt to self-report.

Chair Claman said the motion would be tabled and put on the agenda for January. If any Commissioner wanted to add language to the report, they should get comments to Ms. Dunham by Friday, Dec. 20, and staff would circulate an updated report for January.

Ethics Reporting and Open Meetings Act

Ms. Dunham explained that she had circulated a memo about ethics reporting and the Open Meetings Act. Staff don't typically get questions about ethics but they do get questions about open meetings. This was intended as a refresher.

For ethics reporting, the chair of the Commission is the designated ethics supervisor, and is the person to go to with any questions about ethics or reports of conflicts or gifts that might fall under the ethics act. The Commission must report quarterly whether the ethics supervisor/chair has received any reports under the ethics act. Chair Claman confirmed that staff check in with him every quarter to see if there have been any report and send the required paperwork to the state—as yet, the Commission has not had anything to report.

Ms. Dunham explained that the Open Meetings Act was intended to ensure that the public work was conducted in public. For the Commission, that means pre-arranged meetings where four or more Commissioners will be present must be noticed on the State of Alaska online notice system, and using the Commission's usual modes of notification (the website and mailing lists).

Any violation of the Open Meetings Act renders the action taken voidable. Ms. Dunham noted that the Commission was an advisory body, and since it did not issue any binding rules or regulations, the enforcement provision of the Act did not have much of an impact as applied to the Commission. Nevertheless, the Commission was a public body and should adhere to the spirit of the law for the sake of the public trust.

Data: Race/Ethnicity

Ms. Dunham explained that staff would be presenting data to the Commission at each meeting in order to be more responsive to what the Commissioners want to see in terms of data, to help the Commissioners understand the Commission's data, and to hopefully make the process of creating the annual report more effective. The data topic for this meeting had to do with race and ethnicity.

In the course of compiling the annual report, staff had included information on the race/ethnicity of DOC's in-custody population, which showed a racial disparity in that Alaska Natives were over-represented in the prison population when compared with the general population. The report had stated that the Commission wanted to look into this further in the coming year.

Ms. DiPietro handed out a memo from Teri Carns on ethnicity/race data in the Commission's and Judicial Council's criminal justice research. The memo explained how DPS and DOC get race/ethnicity data. The Council has relied on this data since the 1970s. Ms. Carns had talked with Kathy Monfreda who manages the ASPIN database for DPS. DPS gets their race data from DMV, and many people in APSIN have this DMV data. However, the collection of race data is not mandatory and the DMV has stopped collecting race data. There will be more race data missing from DPS's database going forward.

Ms. Monfreda also spoke with Troopers about what they do in the field and generally they do not ask for race unless for some reason the case warranted it. If not, officers were reluctant to ask, particularly for something like a traffic stop where race should have no bearing on the outcome.

Ms. Carns also spoke with Mike Matthews at DOC. Mr. Matthews said the booking officers rely on self-report, observation, or ASPIN. The Court system does not collect race data.

Ms. Carns noted that nationally the Census race data is either self-report or observation. New studies are using DNA in race identification.

Judge Rhoades questioned if Real IDs were collecting race information. Ms. Howell said that Real IDs would be aligned with what DMV is collecting.

Ms. Dunham presented information on race/ethnicity data on PowerPoint, showing a snapshot of the total population each quarter for the last five years, a snapshot of just the Alaska Native and Caucasian population in the last five years, and the share of each race/ethnicity on July 1 of each year for the last five years. She also showed data on the total state population taken from the Department of Labor website. The proportions of each race/ethnicity have remained fairly constant over the last five years, but among those in prison, the Alaska Native population has been growing in proportion to other races.

Commissioner Razo wondered if the Alaska population could be broken down by judicial district. Dr. Troy Payne from the UAA Justice Center said this could not be done quickly; the census and judicial districts do not have the same boundaries.

Commissioner Stanfill wondered if the race data in the prison population could be analyzed by type of crime and Ms. Dunham said it could. Commissioner Stanfill also recalled that the pre-trial risk assessment study showed no racial disparity. Dr. Payne clarified that the AK-2S scale predicted equally well by race. He noted that how race impacts pre-trial decision making is a different question.

Chair Claman asked about the racial disparity data in the Commission's recent bail study. Ms. DiPietro said that the AK-2S is one piece of information and disparity may crop up in other places where pre-trial decisions are made. The bail study looked at release decisions and the pretrial population as a whole. Ms. DiPietro stated staff is taking steps to finish up the analysis on outstanding cases, but that initial results showed the racial disparity was decreasing among people held in prison pretrial. That study is limited and didn't control for other factors.

Dr. Payne noted in all areas of criminal justice that there are racial disparities all over the country. Ms. DiPietro added that the Council had also found pretrial disparity in a study of data from 1999, which was a very robust study with multiple regression analysis. The more recent bail study did not do this and did not look at the underlying offense.

Chair Claman wondered whether the 1999 study should be followed up. Commissioner Stanfill thought the Commission should dig deeper into the data.

Senator Hughes asked about racial disparity in victims and what data is available. Ms. Howell commented that DPS does collect and report victim data.

Chair Claman inquired about the last study AJC did on racial disparities. Ms. Carns noted it was 1999 data published in 2004. It was a costly study. Pretrial showed disparities and sentencing did not. She noted it would take a year to replicate.

Commissioner Rhoades recalled a presentation on data that showed a correlation between having a public defender and staying in jail. Studies can turn up a lot of findings, but she wondered whether this was something the Commission needed to look at.

Ms. Carns said that the study of the 1999 cases used a multiple regression analysis. Many factors were taken into account in this study and it showed racial disparities independent of those

other factors. Ms. DiPietro added that this study was a felony process study and did not look at misdemeanors.

Chair Claman said that at previous meetings the Commission came up with research priorities for the coming year; race/ethnicity data wasn't on the list.

Commissioner Razo stated that it was clear there were racial disparities in a number of arenas in Alaska and the U.S. He also noted there are many different adverse consequences for the Alaska Native population. He stated it is a complicated issue that may be outside the Commission's research capacity. Perhaps the Commission could ask for an organization like ISER to take a look.

Commissioner Stanfill wanted to look at this from an offense-based perspective, looking at violent and nonviolent offenses. She wondered whether the right people were going to jail.

Dr. Payne noted all these questions were answerable, but we would need the right data. He wondered what actionable steps the Commission could take. What would they do with the results? He also noted in Alaska Black people are even more over-represented in the criminal justice population than Alaska Natives.

Commissioner Williams stated these are larger systemic problems in Alaska and may be outside the Commission's purview to address them, though the Commission can help educate the public on this and understand the data. It showed a need to advocate for early interventions moving forward.

Ms. Dunham asked what further data on this the Commission would like to see—she noted there was mention of breaking the data down by offense. In answer to Senator Hughes' question, she noted that the Commission did not receive data on victims. Ms. Howell said that DPS does have victim demographic data in its reports on reported crime in Alaska. She noted that the data typically shows that the victim and suspect race is the often the same within a given case. Senator Hughes said she was interested in knowing more.

Chair Claman wondered what victim data DPS can provide and if it is readily available. Ms. Dunham noted that Ms. Monfreda would be attending the January Commission meeting and this could be addressed. Judicial Council attorney and staff to the Commission Susie Dosik stated that the DOC offender profile breaks down offenders by race and offense class.

Public Comment

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

Recommendation Regarding a Resolution on Medicaid

Ms. Dunham explained that in developing the Commission's research priorities for the coming year, several ideas were identified that did not necessarily require research or a workgroup referral, but that the Commission was interested in discussing. One of these ideas was to recommend that the federal government amend the Medicaid rules so that people in prison could be covered by Medicaid for treatment in prison. Because the Commission's enabling statute limits the Commission to making recommendations to state bodies, this would more likely take the form of a recommendation to the legislature that the legislature pass a resolution supporting this change.

Chair Claman said that Alaska was one of seven states with a unitary corrections system. He attended a conference of the National Council of State Legislatures where those seven states discussed getting Medicaid reimbursement for treatment in prison. They discovered that New York has applied for a waiver to get that treatment covered, and the seven states wanted to make the same request. The avenue to get that done is to have the state authorities talk to the federal legislative delegation. He thought what the Commission could do is ask the legislature to pass a resolution supporting the idea.

Chair Claman said this also related to his recent trip to Phoenix to see their crisis stability centers. Captain Case urged him to go, calling it a game changer. The idea with the Phoenix project is that there is no wrong door—whoever goes to the facility gets seen to, whether their issue is criminal, mental health-related, drug-related, or medical. Officers spent an average of two minutes there, which was the reason they really liked it. If the person has a medical issue, they have nurses; if the person has a mental health issue, they can observe the person for 23 hours, and they also have access to an inpatient facility and psychiatric nurses. This facility was 100% funded by Medicaid through an 1115 waiver, regardless of whether people had insurance.

Senator Hughes said that when she proposed this idea, she was thinking of only of getting coverage for substance use disorder and mental health treatment, not full medical and dental. She thought the Commission could pass a resolution to the legislature with a cover letter to the federal delegation. It could also be sent to the governor and executive branch to ask them pursue what New York has done. She knew that at a federal level, there was a lot of focus on substance use disorders, and thought this might be a good time to try to change things.

Chair Claman thought that the Commission's statutory authorization was to make recommendations to state legislature, administration, and governor only. Ms. DiPietro looked up the Commission's enabling statute, which said the Commission shall make recommendations to those state bodies—there was no mention of federal authorities.

Judge Rhoades said that when this was discussed earlier she didn't think that she was necessarily contemplating sending a recommendation to the federal authorities. She was more concerned with current practices and getting an 1115 waiver for treatment. She noted that people are being held in DOC facilities awaiting competency evaluation or restoration, and for Title 47 holds. She suggested looking at how an 1115 waiver could fund out-of-custody competency evaluations. It might be able to cover medication management, or housing. She was also concerned that people coming out of DOC don't have active Medicaid registration. Both these things were a separate conversation from what Sen. Hughes was talking about.

Senator Hughes said her understanding of 1115 waiver was that it would allow for a variety of things once out of custody; what New York is doing is asking for coverage for people during the 90 days prior to their release. She added that since the Commission can't make recommendations to the federal delegation, it could write a cover letter that would accompany a copy of a recommendation to the state legislature, informing the federal delegation of the recommendation, to keep them in the loop. She thought they ought to know what the Commission thinks. But it would not be making a recommendation to them.

Ms. DiPietro said she didn't see why not. The Commission typically publicizes its recommendations, so she thought an informational letter would be okay.

Chair Claman wondered whether this was ready for a motion, or if staff should draft something for the Commission to take up at the next meeting.

Justice Bolger thought the Commission should take this up at the next meeting after staff puts together a draft recommendation. He also thought staff should check in with DBH on the status of the 1115 waiver as to what exactly will be funded because he believed that status has changed in the last few months.

Commissioner Williams said that nothing in the 1115 waiver allows Medicaid reimbursement of treatment while incarcerated. He agreed with the option of drafting a recommendation to review at the next meeting. Off the top of his head he would imagine this is a way to make it easier to maintain Medicaid eligibility while in prison.

Chair Claman added that it sounded like this recommendation would very specifically be related to people in custody who would otherwise be eligible for Medicaid.

Senator Hughes said that another idea discussed at the Vermont conference was to explore partnering with tribal health and federally qualified health centers. Deputy DHSS Commissioner said that some of the things Senator Hughes had asked about have been submitted to CMS, and are in process. He added that another thing discussed in Vermont was using a savings fund that would be available to cover certain populations. Senator Hughes said they also discussed looking at the idea of social impact bonds.

Chair Claman said that staff would work up a draft recommendation that could be sent to the legislature. It sounded like staff had a lot of information to work from. Ms. DiPietro said it sounded like staff should work with DHSS and DC Wall in drafting something. Mr. Wall said he would be happy to, adding that showing community support to CMS goes a long way.

Uniform Criminal Records Accuracy Act

Chair Claman said that the Commission on Uniform Laws was a national organization that tries to create laws that are appropriate for all 50 states; it is where the UCC (Uniform Commercial Code) comes from. This year they had a convention in Anchorage and voted on a Uniform Criminal Records Accuracy Act. Information on the UCRAA was included in the packet for this meeting to introduce the topic. One of the drafters of the UCRAA will be on hand for the meeting in January, as well as the heads of data for DOC and DPS. This will go on the agenda then, but for now, Commissioners could take their time to look into the Act and its supporting materials.

Redaction

Chair Claman explained the Commission had previously made a recommendation on redaction and wondered if the Commission wanted to re-recommend it. Ms. Dunham said this had been raised when the Commission was discussing its goals for the coming year.

Ms. DiPietro said the Commission had a subcommittee that worked a lot on the topic of expungement and found that this area was impeding rehabilitation and individuals' ability to be productive members of society. The research on expungement led to the recommendation on redaction.

Ms. Dunham re-presented the 2018 presentation on the redaction recommendation. She explained that the workgroup was in favor of maintaining the records, but limiting access to them. Commissioner Stanfill noted it was important the recommendation maintained public safety. Ms. Dunham explained that the term redaction was chosen instead of expungement because redaction does not imply the destruction of records. The purpose was to limit access to the public, as records such as those found on CourtView, even if they reflect a minimal criminal history, can lead employers to assume the worst. Ms. DiPietro commented that the workgroup received testimony even from individuals with misdemeanors saying it was impeding their ability to get work. Ms. Dunham noted that people also testified they had trouble getting into college and going to Canada.

Ms. Dunham explained the recommendation is designed to help people who have made permanent changes in their life and have been crime free for a period of time. The recommendation addresses restitution and victim input. It also takes into account the usual time for an individual to recidivate is usually within three years, though it could be longer for DV. The workgroup considered time to redemption, which is the point when an individual is only as likely to commit a crime as the rest of the general population.

Ms. Dunham explained the recommendation states that minor consuming alcohol and possession of marijuana would be immediately redacted because they have been decriminalized. In SIS cases they would be redacted after 1 year for misdemeanors and 5 years for felonies. For the SIS cases, an individual must have successfully completed probation and judges would consider any outstanding restitution.

Commissioner Bolger said he had been prepared to recommend to the Court System that these should be taken off of CourtView, but there was an objection from DOC. He wondered whether that issue had been resolved. Ms. Dunham said it was because DOC uses CourtView to check PFD eligibility. She thought that DOC had come to an understanding with DPS for a fix but did not hear back from them whether the issue was fixed. She would try to follow up with them.

Ms. Dunham said that for offenses other than MCA or marijuana possession or successful SIS cases, the Commission's recommendation was that a person must submit a petition for redaction to the court. The prosecutor must make an attempt to notify the victim. For misdemeanors, the waiting period for drug offenses would be 4 years and for violent offenses would be 7 years (including DV and non-registerable sex offenses). The waiting period for all other misdemeanors would be 3 years. Registrable sex offenses would be excluded. For felonies, the waiting period would be 10 years. Felony sex offenses and unclassified felonies would be excluded.

A person could redact multiple offenses with one petition, but once granted could not petition again. If a person is denied they can apply again in one year. For violent misdemeanors, felonies, and misdemeanor sex offenses, the court may grant the petition if it is not likely to harm the victim. For other cases, it would be a presumption. The effect of a petition for redaction being granted would mean that a person's criminal record would not be released in a background check and the court system would treat the record as confidential. A person would not have to disclose a redacted offense on an application and could not be convicted for perjury for failing to disclose the offense. The record will remain in APSIN, available for law enforcement and prosecutors. Dr. Payne also noted that there should be an exception so that the records could be used in research.

Ms. Dunham also explained the recommendation included Certificates of Rehabilitation as an alternative to or while waiting for a redaction.

Commissioner Rhoades wondered if a judicial hearing would be required for every petition and if successful, whether people would have to answer yes on an application if they have ever been convicted of a crime. Ms. Dunham said the hearing would be required if the offense was not one of the automatic redaction offenses and a hearing had not been waived by the parties. Commissioner Stanfill said they would not have to disclose the crime on an application.

Commissioner Rhoades shared that she has been doing re-entry work and this is was the #1 issue for reentrants. She wondered how legally one can answer a question about a criminal record and not say they were convicted. Ms. Dosik said that the idea was that a person would be given statutory permission to check “no” on application forms. She noted other states have done this and there must be a statutory fix. Commissioner Rhoades commented this would be an enormous fiscal note and it has to be effective in the community. Ms. Dunham said that some details would need to be worked out by the legislature. Commissioner Rhoades said that examples of what other states have done should be included.

Ms. Dosik summarized a March 2019 University of Michigan study supporting redaction—this research had not been available when the Commission voted to recommend redaction in 2018. Michigan has had a law for expungement since 1983 that is similar to the redaction proposal. The study found 30,000 examples of expungement between 1983-2011. They looked at prior and subsequent convictions and employment history for those cases. They have a five year waiting period, but the law only allows for one offense.

The study found that only 6.5% of eligible people applied for an expungement and received one, which might allay any fears that this would be a large burden on the system. Only 6% of people granted expungement were re-arrested within the next five years, which is a similar arrest rate to the population as a whole. This is consistent with time to redemption research. It should be noted that those in the study were low-risk individuals (because of the eligibility requirements to get expungement in the first place). People granted expungement were more likely to be employed with higher wages; getting expungement was a distinct improvement for them.

Commissioner Stanfill recalled that the Commission had heard a lot of really compelling testimony on the burden of a criminal record, mostly women. They were people who had moved on from criminal activity but then got stuck by this. That also may explain the low percentage of applicants in the study—not many people get to that point. She thought this was an important study, which answered questions the workgroup had in developing the recommendation. Even if a relatively low percentage of people apply for redaction it was still important to have a way to remove those barriers.

Ms. Dosik said that another thing the study found was that people did not apply right away after the 5-year mark, it was typically at the 7-to 10-year mark, indicating that there was some barrier that they ran into that led them to apply for expungement.

Chair Claman asked how the Commission wanted to proceed—did Commissioners want to re-recommend this recommendation?

Judge Rhoades wondered whether there was political will in the legislature to take this up, whether re-recommending it would help, and whether it would help to add information about this new study. She was hesitant to re-recommend the exact same thing. There were many other recommendations made by the Commission that have not passed, such as the recommendation to allow people in assisted living facilities return home on bail after an assault charge.

Chair Claman said that from his perspective as a representative, he was not sure that other similar proposals were received warmly in the legislature. This was a project that an interested legislator needed to take on.

Commissioner Williams noted that the next legislative session would be in year two of the two-year cycle. He wondered how the Commission should prioritize previous recommendations and whether it was plausible the legislature would take this up.

Ms. DiPietro said that typically when the Commission issues recommendations, the supporting documentation notes the rationale and evidence base for the recommendation; it might be worth updating the recommendation with new research, which the recommendation would have included originally had it been available at the time.

Commissioner Razo agreed with that, and suggested including the new research in the annual report's list of recommendations not previously acted upon. He also agreed that it didn't make sense to press the issue with the current legislature. There was likely some criminal law fatigue.

Chair Claman said he typically thinks of bills as 1, 2, 4 or 6-year projects. He thought redaction was a 6-year project.

Judge Rhoades moved to include the new research in next year's annual report in line with what Commissioner Razo suggested. Commissioner Razo seconded the motion. There was no objection and the motion passed. Chair Claman suggested that if any other relevant studies came out in the meantime, those could be included too.

Truth, Racial Healing and Transformation Project

Liz Medicine Crow, executive director of the First Alaskans Institute, thanked the Commission for the opportunity to speak and said that she was Haida/Tlingit and hailed from Kake. Barbara Blake, policy director with First Alaskans, said she was from Prince of Wales Island and was Tlingit/Haida and Athabascan.

Ms. Medicine Crow also thanked Commissioner Razo and the Commission for inviting her to moderate the recent victim listening session at AFN. She was accompanied by the rest of the staff from First Alaskans to share information on a new project with the Commission and make an invitation.

She explained that First Alaskans was a statewide nonprofit and foundation, focusing on a vision for progress for the next 10,000 years. They seek progress that is transformational and enduring. They would be celebrating their 20th anniversary next year and were looking for partners for investing in the next 10,000 years. She knew the Commission had been addressing heavy and hard subjects, and she thought the Commission and First Alaskans could join together in partnership. She was at this meeting to talk about their Truth, Racial Healing and Transformation (TRHT) project.

THRT was a project that grew out of First Alaskans' endeavors to foster racial dialogue. When Alaska had its 50-year celebration of statehood, First Alaskans asked whether that was indeed a moment for celebration for the Alaska Native Community; they went around the state to listen to what people had to say about it. They resoundingly heard that racism, discrimination and bigotry were still happening, and this was something Alaska was just not dealing with. They wondered whether, if they were motivated and could organize, they could really talk about these issues.

Alaska Native communities have almost insurmountable challenges. First Alaskans wanted to start a dialogue which a healing and policy-based approach. They created the racial dialogues to talk about the most difficult things to talk about.

Ms. Medicine Crow said she knew the Commission had been looking at racial disparity data, so this was something the Commission was already thinking about. But you cannot make progress if you're only looking at numbers. She thought this was an opportune time to offer an invitation.

She explained that the TRHT process was similar to a truth and reconciliation process. But in order to reconcile, one has to start with a good relationship, and that's just not this country's history and not Alaska's history. First Alaskans decided to call their project Truth, Racial Healing and Transformation because that's the vision, goal they were working towards. They are placing healing at the center of the project; they want to start healing on a personal, organizational, and state level. One cannot have justice without healing.

They are going to be hosting a series of six tribunal forums across the state. They will be inviting communities to share their truth and think about solutions, and ways to transform. They were also creating a growth fund for communities to use to continue this same process on a smaller scale.

Ms. Medicine Crow said that people have been talking about needing something like this in Alaska for a long time. It is a process that requires reflection. Participants need to be able to listen to other people and accept what they say as their truth. First Alaskans wants to create an historical context, to know more about how we got to where we are today; they will look at the legacy of the state, the church, etc. It would not be about shame, but a way to begin healing.

First Alaskans has been getting guidance on this around the state, having conversations with healers, churches, state agencies, and others. This effort was also linked to a national effort to use a healing-based process to develop a human-centered society. Ms. Medicine Crow said she knew that it was time for truths to be told, and time for wrongs to be righted.

Ms. Blake explained that the policy portion was where First Alaskans hoped that people like those present today could step in. No one person is an expert in everything. But with the expertise of many policymakers on board, this process could actually create a chance for change to take place. They didn't want people to share their pain, open old wounds, and leave unhealed. They were hoping that with a variety of policymakers on board as accountability partners, they could identify opportunities for change. If the Commission was willing to sign on, they should let First Alaskans staff know.

Ms. Medicine Crow said that becoming an accountability partner was a way to show that you care, and want to be part of shaping a different legacy. Organizations in Alaska have a legacy of impact

on Alaska Native communities; this was an opportunity to own that legacy and change it to the one we want it to be.

Ms. Medicine Crow added that when she was moderating the listening session, she found it eye-opening for a couple reasons. One is that it created a space for people to tell their truth, but there was no way to do anything about it. One woman who spoke said she would have healed if she had not reported. That started a conversation. It became apparent that there was an opportunity to combine powers. She assumed the Commission had already received similar painful testimony. She really wanted to focus on the experience that the person giving testimony will have, and to make sure they would have access to healers, counselors, and faith-based practitioners after speaking up.

Ms. Medicine Crow observed that much of the time, policymakers are focused on emergency situations, which often means dealing with symptoms. It means a lot of time spent looking at a problem without getting to its root. First Alaskans wanted to use the TRHT process as a way to start on road to intergenerational healing at the roots. It was an opportunity to approach things in a different way. Triage thinking has not rendered results in the past; they were trying to be smarter about what they were doing. She invited the Commission come alongside First Alaskans to join them on the THRT path. The process was open to everyone.

Chair Claman asked where and when the tribunals would be. Ms. Medicine Crow said they were in the process of planning that; the most important consideration was not to interfere with the harvest and fishing. They should be scheduling them in the next month or two. She added that part of the role of an accountability partner was to be present to witness the tribunals. It would involve training.

Chair Claman wondered whether First Alaskans was interested in having the Commission itself or Commissioners as individuals participate as accountability partners. He was not sure about the Commission's statutory authority. Ms. Medicine Crow said that they were interested in the participation of both the Commission and the individual Commissioners. She also noted that the Commission could always try to change the statute.

Commissioner Razo said that in the Commission's discussion earlier that day, the Commission looked at the data and saw a tremendous disparity, and concluded that it was the product of a systemic social problem, too big for the Commission to deal with. He thought the First Alaskans were starting a very timely conversation, and offering at least an approach, a way to come together as a group to help tackle an insurmountable problem. The Commission also talked about ACES and risk factors earlier in the meeting. The TRHT process gets into where that comes from. He would be supportive of Commission getting involved.

Commissioner Stanfill said that she had been honored to be at victim listening session at AFN with Ms. Medicine Crow. She thought that hearing the pain of the young lady who spoke was one of the hardest things to listen to over the course of all of the listening sessions the Commission had done. She thought that this was something everyone needed to be engaged in. She would also support the Commission's participation or would be involved as individual.

Ms. Medicine Crow said that Alaska has huge social issues that have uniquely Alaskan solution. The old question of how do you eat an elephant in Alaska would be translated to how do you eat a whale? The answer: one bite at a time. By community. It was an ancient technology that could be

applied to tackle hard problems. Things won't change if everyone stays in their comfort zone, and considers ideas in a vacuum.

Chair Claman said he appreciated all the work First Alaskans has done. He said the Commission would look at whether it can formally be an accountability partner; he would also welcome participation as a group or individual. He noted that at the listening session he attended in Bethel, he experienced the same frustration of hearing about people's concerns but not being able to do anything.

Ms. Medicine Crow said that there might be a way to link ongoing efforts, as a way to move forward. She noted that First Alaskans also offers Alaska Native governance and protocols training, as a way to demystifying the complexities of working with Alaska Native communities.

Commissioner Razo noted that the concept of the TRHT process was widespread, he recommended googling it, as there was a lot to read up on.

Commissioner Williams echoed what Commissioner Razo said about facing the weight of racial disparities; it feels tremendously overwhelming and daunting. He thought this was a way of comprehending how we got to where we are, and a way to create change. Not seeing change can contribute to overwhelmingness of racial inequities. Until everyone understands the history and truth of what others experience, things won't change. He liked the idea of thinking about the next 10,000 years, and what we want society to look like. He would also like to participate as individual or with the Commission.

Ms. Medicine Crow said she often hears policymakers talking about getting upstream of an issue. But in order to really get upstream, you need to go to the headwaters, otherwise there's always more upstream. If Alaska was not thinking about its legacy, the numbers won't shift. Policymakers should recognize that there are people behind the numbers. This process was about moving at the speed of trust. If there is no trust, things won't move forward.

Next meeting

Ms. Dunham reminded the Commission that the next meeting would be on January 30 in Juneau, and that the meeting would take place early in the day so that everyone would have the chance to participate in the reentry simulation.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, October 31, 2019

12:00 – 12:30 p.m.

Audio-teleconference only

Commissioners Present: Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Nancy Dahlstrom, Shelley Hughes, Greg Razo, Stephanie Rhoades, Steve Williams

Commissioners Absent: Kevin Clarkson (John Skidmore served as proxy for AG Clarkson), Adam Crum (Laura Russell served as proxy for Commissioner Crum), Amanda Price, Brenda Stanfill, Trevor Stephens

Participants: John Skidmore, Laura Russell, Lauree Morton, Nancy Meade, Tony Piper

Staff: Brian Brossmer, Staci Corey, Susanne DiPietro, Barbara Dunham

Review and Approve Annual Report Draft

Chair Claman explained that staff had sent out an updated version of the annual report with proposed revisions. Most of the proposed revisions were from the Dept. of Law, one was from himself. The plan for these proposals, as discussed at the last meeting, was to try to take them up in a single vote. He asked for the Commission's thoughts as to whether that plan was reasonable given the quantity and substance of the changes proposed.

Chair Claman noted that there was not enough time in the space allotted for this meeting to take up the proposals one by one, and he believed that if the Commission wanted to discuss the substance of the proposals, it would need to meet the next day at 9 am. There was meeting space already reserved for the Commission to meet in person if need be.

Commissioner Cherot said that the proposed changes appeared extensive to her and went beyond what she thought would be proposed given the conversation at the meeting a few days previously. She was not prepared to adopt changes this extensive in this timeframe. She thought the proposals changed the tone of the report, particularly in the executive summary, and had not had sufficient time to review them thoroughly such that she was comfortable moving ahead with them. Commissioner Razo agreed.

Commissioner Williams said having reviewed the proposed changes, he saw some of them as technical and beneficial, while other changes were substantive, and might need reworking. He thought it would be better to go over them in person.

Judge Rhoades said that she had looked at the proposed changes and had not had sufficient time to assess them, but at first glance at least two of them appeared to be speculative as to cause and effect, and she was not comfortable moving forward with them. She reviewed the statutory language on what

the Commission was supposed to report, and thought that the report that staff put together satisfies those requirements. She was not comfortable moving forward with last-minute changes.

Chair Claman said it sounded so far as though Commissioners would either reject the changes now or go through them substantively the next day.

Judge Rhoades said that there was a reason the Commission tried to schedule meetings well in advance; she was not available the next day. She thought such an ad-hoc process was not fair to those who have done the work and tried to be responsive and give feedback on time. There was time to do this at planned meeting times. She felt there ought to be a motion to adopt the report with no additional changes.

Commissioner Razo said that he had an MRI scheduled the next day and agreed with Judge Rhoades' idea. Commissioner Cherot said she had interviews scheduled throughout the day the next day and would also not be able to make it.

Chair Claman noted on Monday, the Commission adjourned with a motion to approve report still on the table. There was also Mr. Skidmore's motion to amend the report, which he ruled out of order or moot. He thought the appropriate procedure was to let Mr. Skidmore move to adopt Law's proposals. He asked whether there was any motion to amend motion to approve the report as drafted by staff.

Mr. Skidmore said he appreciated the concerns about timing. He had no opportunity to review the report until Monday. Chair Claman asked him to limit his commentary in the interest of time and asked him to make a motion. Mr. Skidmore moved to adopt the changes in to the annual report's executive summary that were proposed by the Dept. of Law. Commissioner Dahlstrom seconded the motion.

Chair Claman called for discussion and there was none, so he called the question. The Commission voted against Mr. Skidmore's motion by a vote of 6-2. (Commissioners for the motion: John Skidmore, Nancy Dahlstrom. Commissioners against the motion: Joel Bolger, Sean Case, Samantha Cherot, Greg Razo, Stephanie Rhoades, Steve Williams.)

Chair Claman asked for any other motions, and there were none. He called the question of the motion to approve the report as drafted by staff. The report was approved by a vote of 5-3. (Commissioners for the motion: Joel Bolger, Samantha Cherot, Greg Razo, Stephanie Rhoades, Steve Williams. Commissioners against the motion: Sean Case, John Skidmore, Nancy Dahlstrom.)

Public Comment

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

Chair Claman noted it was 12:20. Staff noted that public comment had been noticed as open until 12:30. Commissioner Razo moved to adjourn the meeting effective at 12:30. Commissioner Cherot seconded the motion and the motion passed without objection. The teleconference line remained open until 12:30.

Alaska Criminal Justice Commission

Meeting Summary

Monday, October 28, 2019

4:30 p.m.

Audio-teleconference

Commissioners present: Joel Bolger, Sean Case, Samantha Cherot, Matt Claman, Nancy Dahlstrom, Shelley Hughes, Amanda Price, Stephanie Rhoades, Trevor Stephens, Steve Williams

Commissioners absent: Kevin Clarkson (John Skidmore served as proxy for AG Clarkson), Adam Crum, Greg Razo, Brenda Stanfill

Participants: Tony Piper, Lauree Morton, Triada Stampas, Alys Wooden

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

Approval of Meeting Agenda

Justice Bolger moved to approve the agenda and Judge Rhoades seconded the motion. The agenda was approved without opposition.

Review and Approve Annual Report Draft

New Sections

Barbara Dunham, project attorney for the Commission, went through the report to point out new substantive changes since the draft distributed at the last meeting. There was an executive summary, and a new section describing the research and policy priorities that the Commission had identified at the last meeting.

There were also some new charts of the prison population broken down by race, which showed a racial disparity in Alaska's prisons. Alaska Natives made up a disproportionately large share of the prison population relative to their share of the general population, and this disparity had increased slightly in recent years. There was not any data showing why this was the case.

Chair Claman noted that while this information had been requested by Commissioners, staff had some reservations about including this information without being able to provide a ready explanation for it. He asked the Commissioners to share their opinions.

John Skidmore, serving as proxy for Commissioner Clarkson, said he thought the information should absolutely be included. He said that one of the original goals of SB 91 was to try to reduce that disparity.

Chair Claman noted that last year's bail study showed a reduction in the disparity in pretrial releases.

Senator Hughes wondered whether it was possible to include information on whether there was a disparity in victims. Ms. Dunham said that the Commission did not specifically collect data on victims but that it might be possible to get that information from DPS' universal crime

reports. Sen. Hughes wondered if that information could be included in the report. Chair Claman said that at this point including additional research would be impractical but that would be something the Commission could take up at a later date. Sen. Hughes noted the Victims' workgroup could take up the issue too.

Ms. Dunham explained that there was new information on sentences for drug crimes and factors that might be contributing to pretrial admissions. Mr. Skidmore said he thought the latter section should also include some discussion of changes in sentencing and classification of crimes, such violation of conditions of release, which would also affect pretrial admissions.

Chair Claman wondered whether it was possible at this point to add this data. Ms. Dunham said it would be relatively easy to add language to the report; adding data might not be necessary to convey this information. Sen. Hughes and Commissioner Dahlstrom agreed with Mr. Skidmore. Mr. Skidmore offered to draft some language.

Ms. Dunham noted that she had not received data on discretionary parole releases and would be taking the placeholder for that information out of the final draft. She explained that she had also simplified the recidivism section, placing more information in the related appendix. She said she had also added information on the Suspended Entry of Judgement, violent crime rates, information on vehicle thefts with drug charges, and demands on the criminal justice system. She noted she had included information on workloads for the public defense attorneys and that Mr. Skidmore had informed her he would also send her information on workloads for prosecutors.

Ms. Dunham continued that the reinvestment implementation section had new information on programming in DOC institutions and programming funded through DHSS. She encouraged Commissioners to read those sections as there was a lot of really programming happening through reinvestment.

Ms. Dunham concluded that there were two new appendices that provided additional information on recidivism and the LSIR/risk factor study. She thanked AJC staffers Brian Brossmer and Teri Carns for their hard work on those sections in particular.

General Comments

Chair Claman asked if there were any other thoughts on the report. Mr. Skidmore said that he thought that the report was generally too supportive of SB 91 and did not include information on why HB 49 was needed. He thought this was especially true in the executive summary, in the probation and parole section, and in the drug crimes section.

Mr. Skidmore said that the probation lists a greater number of successes, but he believed that was due to the goal posts being changed, meaning that people were spending less time on probation and therefore did not have as much opportunity to violate the conditions of their probation. He thought this was more a reflection of changes in the law rather than behavior change.

Regarding the drug crimes section, Mr. Skidmore thought that the lower incarceration rates for people convicted solely of drug crimes was touted as a success. He thought it was necessary to qualify the issues identified to maintain the credibility of the Commission.

Regarding probation, Chair Claman said he believed that the report accurately described that people who were high risk were kept on supervision while people who were low risk were

discharged sooner. He also thought the report accurately described the changes in the drug laws and did not offer an opinion on whether that was positive.

Chair Claman also noted that this report had been available to read for a while and that Mr. Skidmore's timing was unfortunate in that he was raising these issues this close to the statutory deadline. He wondered what could be realistically accomplished on this in the time remaining.

Sen. Hughes said she shared the same concerns as Mr. Skidmore. She thought that incorporating his suggestions didn't have to be complicated and could involve adding a few sentences in places rather than analyzing new data. Commissioner Dahlstrom agreed, noting that many people could be successful on probation for a year and then get lax. She offered help from DOC.

Chair Claman thought the way to proceed was to entertain a motion to approve the report and then entertain motions to amend that motion. Commissioner Williams moved to approve the report and Judge Stephens seconded the motion. Chair Claman called for a motion to amend the motion.

Mr. Skidmore said he wanted to make it clear he wasn't necessarily asking for additional data. He noted this was his first day back in the office since the last meeting and he hadn't had time to look at the report until now. He moved to amend the report with his considerations and Commissioner Price seconded the motion.

Chair Claman asked the Commissioners what the process should be; he wondered if Mr. Skidmore should provide additional language and another meeting be held to approve it.

Judge Rhoades asked Mr. Skidmore to clarify what exactly he wanted to say. Mr. Skidmore said that he wanted to qualify some of the language to note that there were other factors to consider that may have impacted some of the data. He didn't think there was time for new data analysis. He didn't think the decrease in drug admissions was a success when there was also an increase in crime.

Judge Rhoades wondered if the report actually claimed any successes or if it was just stating the fact of things changing. Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, said it was the latter, that the law was changed to hold fewer people in prison for possession of drugs, and that fewer people were now in prison for possession of drugs, consistent with the change in the law.

Sen. Hughes said she wanted to be sure the report didn't give the impression that SB 91 had improved substance use disorder statistics, and thought it made sense to add language to the effect that SB 91 hadn't necessarily solved the opioid crisis but that we stopped arresting people for drugs.

Ms. DiPietro noted SB 91 did not change an officer's ability to arrest. Mr. Skidmore said that it effectively told them to stop arresting because officers saw no point to arresting someone who wasn't going to stay in jail.

Judge Stephens said he had a hard time following and participating in the discussion without specific proposed language to look at. Judge Rhoades agreed and thought it would be helpful to be pointed to the specific pages where Mr. Skidmore objected to the content. She added that the obvious consequence of reducing sentences was to reduce use of jail beds, and thought

that was really all you could say about the changes to the drug laws. The Commission didn't have any data on people who weren't arrested, or on the prevalence of opioid misuse in the community generally, and it wasn't the Commission's duty to report on that.

Chair Claman said it sounded like there were several points in the report where Mr. Skidmore wanted substantive amendments. Judge Stephens suggested meeting again later in the week after reviewing proposed language from Mr. Skidmore. Commissioner Case agreed that he would like to see proposed language before deciding anything.

Chair Claman said it looked like another meeting would probably be necessary and that Mr. Skidmore would have to propose some language. He wondered whether Mr. Skidmore saw these issues as being significant enough to warrant another meeting. Mr. Skidmore said he could provide additional language by Tuesday and that the Department of Law would not be comfortable moving forward with the report in its current state.

Sen. Hughes said she agreed with Mr. Skidmore that she would have reservations about the report as is, even though she was not a voting member. She agreed that the Commission's credibility was at stake.

The Commission agreed to reconvene telephonically at 4:30 on Thursday October 31. Mr. Skidmore and anyone else with additional suggestions would need to get them to Ms. Dunham by close of business Tuesday, and Ms. Dunham would send out a revised draft by close of business Wednesday. She would incorporate any stylistic changes and track or highlight any substantive changes. The Commission would then address the substantive changes at Thursday's meeting, hopefully in one motion but possibly by multiple motions if need be.

Commissioner Williams moved to adjourn the meeting and thanked Ms. DiPietro and Ms. Dunham for their work on getting the report together. The motion was seconded by multiple Commissioners and the meeting was adjourned without opposition at 5:35pm.

Public Comment

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

Alaska Criminal Justice Commission

Meeting Summary

Monday, October 7, 2019

10:00 am – 4:30 p.m.

Alaska Mental Health Trust

3745 Community Park Loop, Anchorage

And audio-teleconference

Commissioners Present: Sean Case, Samantha Cherot, Matt Claman, Nancy Dahlstrom, Shelley Hughes (Regina Largent served as proxy for Sen. Hughes for the first half of the meeting), Amanda Price, Greg Razo, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Joel Bolger (Doug Wooliver served as proxy for Chief Justice Bolger), Kevin Clarkson (Deputy AG John Skidmore served as proxy for AG Clarkson), Adam Crum (Deputy Commissioner Al Wall served as proxy for Commissioner Crum), Stephanie Rhoades

Participants: Regina Largent, Kelly Howell, Brad Myrstol, Troy Payne, Tony Piper, Lizzie Kubitz, Renee McFarland Julia McDonald, Lauree Morton, Tyra MacKinnon, Travis Welch, Eugene Carl Haberman, Gennifer Moreau, Teri Tibbett

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

Approval of Meeting Agenda and Previous Meeting Summary

Commissioner Williams moved to approve the meeting agenda and Commissioner Stanfill seconded the motion. The meeting agenda was approved without objection.

Commissioner Razo moved to approve the summary of the previous meeting and Commissioner Stanfill seconded the motion. The previous meeting's summary was approved without objection.

Commission Participation at AFN and Tribal Conference

Barbara Dunham, project attorney for the Commission, explained that the Commission would be hosting a victim listening session at the Alaska Federation of Natives Convention on Saturday, Oct. 19 and would also be presenting to the Tribal Conference just before the Convention on Wednesday, Oct. 16.

Chair Claman said that the presentation on the 16th was open to topics; he thought something to do with the VPSO program might be good, and he welcomed any thoughts. Ms. Dunham explained that as a placeholder, staff had proposed presenting on the Commission's recent activities (the sex offenses report and the victim listening sessions), crime rate data, criminal justice system data, and what's changed in the law after the passage of HB 49.

Commissioner Razo thought that providing a brief update on data, Commission activities and the law was a good idea, noting there was not a lot of time, and there was a lot of material from the annual report. The update on the law would probably be most beneficial. He noted that he wouldn't be able to make this particular event.

Commissioners Stanfill, Dahlstrom, and Case said they were interested in attending.

Chair Claman said it sounded like the will of the group was to provide an update on the law and data, and there was no objection.

Commissioner Stanfill also thought it was a good idea to give update on what the Commission has been doing, in part to let people know about the victim listening session later in the week. On that note, she asked if other Commissioners wanted to go, and encouraged attendance. Commissioner Razo said he would be there.

Commissioner Williams seconded Commissioner Stanfill's encouragement. As someone who went to the previous listening session in Fairbanks, he heard a lot of good information, and thought it was helpful to attend. Chair Claman agreed, and said he thought his visit to Bethel was illuminating.

Review Annual Report Draft

Ms. Dunham explained that the draft of the annual report she had circulated was close to completion but some parts had yet to be completed. She walked the Commission through each section of the draft.

The first section was devoted to the Commission's activities for the preceding year, including the sex offenses report and the victim listening sessions and survey. Ms. Dunham noted that the Victims' Rights and Services Workgroup had decided that the Commission should also issue a separate report on the listening sessions and surveys.

The next section was devoted to criminal justice system data, with a focus on data relating to changes made by SB 91. Commissioner Williams noted that some charts had lines for SB 91 and SB 51 and thought that lines for HB 312 and HB 49 would be helpful too.

Al Wall noted the admissions and prison population data relating to drug offenses and thought it would be interesting to know what types of drugs are the basis of drug crime convictions. Ms. Dunham said that getting that information would be time intensive because that kind of data was not digitized it would likely require a case file review. John Skidmore said that the Dept. of Law also did not have that information digitized and would also need to do a file review to get that information.

Mr. Wall said he was also interested in knowing the average sentences for drug crimes compared to sentences for other crimes. Ms. Dunham said that was possible. Chair Claman thought including that information would be helpful.

Ms. Dunham explained that rising prison admission rates seemed to be driven mostly by an increase in non-violent pretrial misdemeanor admissions. Commissioner Stanfill noted that crime rates had been increasing too and wondered if that information could be included alongside admissions information. Ms. Dunham said that it could.

Commissioner Stanfill was also interested in knowing more about the Pretrial Enforcement Division, including what kinds of cases are being assigned to supervision and how many people are supervised. Commissioner Dahlstrom said her department could provide that information. Commissioner Razo thought it would be helpful to have a section describing what PED does. Judge Stephens said he also thought that information would be valuable. His impression was that judges like having PED as a new tool, but that it might be overused. He would like some data to see what's been happening with that division.

Chair Claman said that getting that information was a question of how easily accessible the data was for DOC as well as timing—if it was not realistic to get this information for this report, it could be put on the agenda for January. Commissioner Dahlstrom said DOC was happy to get the information to the Commission and would try to get as much as possible for the report. Chair Claman also suggested planning to put the topic on the agenda for January; there seemed to be interest among Commissioners, and anecdotally he had heard the same as what Judge Stephens was reporting.

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, said she wanted to draw the Commission's attention to the data on probation and parole. Every measure that staff looked at improved, and she thought it was a good demonstration of how the reforms were successfully implemented by DOC. She thought DOC was to be commended.

Commissioner Stanfill noted that the report also showed that recidivism is down, which was equally impressive.

Ms. Dunham explained that this was the first time the Commission's annual report had a recidivism section, since it had now been roughly three years since criminal justice reform was implemented. Commission research analyst Brian Brossmer had done a lot of work putting together the recidivism data, and there was more to report than what would fit in the annual report. Staff wanted Commissioner input as to whether to issue a separate recidivism report.

Ms. Dunham noted that the Commission's recidivism measure was different than that reported by DOC. DOC has always reported recidivism measures for people who have served time for a felony from the date of release. They look at whether those people return to prison.

The Commission wanted to cast a broader net, particularly because under criminal justice reform, not everyone would be going to prison and a lot of the changes were to misdemeanor offenses. Therefore the Commission's recidivism data looked at re-arrests, returns to prison, and reconvictions for people convicted of both misdemeanors and felonies, and studied the cohorts from the date of conviction. If people in a cohort spent time in prison after conviction, the analysis took that into account.

Chair Claman asked if the first chart in the recidivism section showed the cumulative recidivism rate. Ms. Dunham said it did. Chair Claman said that seemed to indicate that most recidivism happened within the first two years. Ms. Dunham said that was the case, and that data aligned with other studies of recidivism both in Alaska and nationally. Commissioner Stanfill said she had a hard time understanding that the chart showed cumulative recidivism.

Teri Carns, Judicial Council researcher, said that it made sense that the highest recidivism rate was for remands to prison, because that measure includes people remanded for probation/parole violations. Re-arrests are almost entirely new offenses. Reconvictions are also for new crimes, and that rate does not include adjudications for probation/parole violations. Each measure is important because it involves the use of justice system resources; reconviction uses the most.

Chair Claman asked the Commission's opinion as to whether more information on recidivism should go in an appendix to the annual report or in a separate report released at a later date.

Commissioner Razo thought a separate report issued the first quarter of next year would be appropriate. This is a topic people are interested in, and he thought a separate report was warranted. Commissioner Williams agreed and thought that was most realistic given the time.

Ms. Dunham also asked Commissioners to think about whether the recidivism information already presented in the annual report was too much and whether having two different ways of looking at recidivism was too complicated.

Commissioner Stanfill suggested putting in more explanation. She also questioned putting recidivism rates by ethnicity in there. Commissioner Razo thought that including that information was not offensive but rather informative, if shocking. He suggested making it clearer that the analysis didn't control for other factors. He thought people would ask about ethnicity if it wasn't included.

Ms. Dunham explained that in SB 54, the legislature had asked the Commission to look at risk factors among people in prison. DOC administers a risk and needs assessment called the LSIR, and the data from that assessment was collected for the Commission to analyze. The legislature was most interested in assessing what ACES factors were prevalent among people in prison, with an eye toward prevention; the LSIR data does not necessarily get at that directly but is related.

Ms. Carns noted that staff had prepared a 30+ page report on this as well. The report notes there is a study by DHSS on ACES in Alaska, other studies connect the LSIR to ACES, and there is more information on the LSIR itself. She thought it was well worth a separate report.

Commissioner Razo said it sounded like there was a great deal of information, enough to fill an appendix and another report at a later date. There was general agreement among the Commission to have a summary in an appendix and a full report next year.

Ms. Dunham explained that the next section contained information on crime rates, but this was underdeveloped since the crime rate data for 2018 just came out. Pertaining to the section on vehicle theft in Anchorage, Mr. Wall wondered whether there was a way to see if vehicle theft was correlated to drug crime. Ms. DiPietro said staff could look into it.

Commissioner Stanfill said she would like the report to include information on the Suspended Entry of Judgment. Ms. Dunham said staff had some information on that and could add it to the report.

Public Comment

Members of the public are welcome to comment at any time by emailing bdunham@ajc.state.ak.us.

Sen. Fred Dyson explained that he was a former member of the Commission, a former legislator, and currently served on the Anchorage Assembly. He thought it was worth looking back over the last five years to assess what went wrong with criminal justice reform. The Commission sailed into a perfect storm. He thought the previous administration didn't take enough of a leadership role in seeing the project through, the timing was bad, and the rollout should have been more deliberate. He thought legislators pandered to constituents rather than defend the law they voted for. Law enforcement officers were ill prepared for reform, and there was a gap in knowledge of how to operate under the new system. There was also a crime wave with an opioid epidemic. Reform didn't get PR it should have. He believed the Commission was on the side of

truth, mercy, data, and second chances. Going forward, he encouraged making use of federal efforts at criminal justice reform, and to pick low-hanging fruit. As a fisherman he knew it's always good to catch a weather window with the tide running your way. The cost of incarceration is huge. Ultimately reducing recidivism saves money and serves the cause of justice.

Cathleen McLaughlin explained that she is the CEO of Restorative and Reentry Services, and formerly the director of Partners for Progress. She wanted to speak to solution-based ideas. Most fragile people cannot be neatly packaged into one category: people experiencing homelessness, people with mental illness, and victims of assault can all be the same people. If service providers only address one aspect of what a person is experiencing, they are not going to really help those who are marginalized.

To illustrate this, Ms. McLaughlin shared her experience on Saturday helping out with the Lullaby Project at Hiland Mountain. This year they are starting to work with people who are in prison long-term. The women she worked with this past Saturday had been foster kids, probably had high ACEs scores, and had untreated mental health issues; those issues led them to self-medicate, which led them to become homeless or housing-unstable, which led them to become victims of sexual assault, which led them to commit minor crimes, which led to larger crimes—and now their children are starting on the same cycle while their mothers are in prison. These problems are cyclical and if Alaska does not break the cycle, it will not move the needle. Service providers need to change from a program-centric model to participant-centric models, and need to work together to provide holistic care.

Butch Moore explained that after his daughter was killed by her boyfriend in 2014, he discovered crimes by her killer's parents. He developed a video about this which he sent to the attorney general's office, but it has not resulted in any action for prosecution. He showed the video to legislators who wrote to the attorney general voicing their concerns, but there was still no action. He received a letter in response from the attorney general's office that misstated facts. He brought documentation with him today including a description of the video, the attorney general's office response and documents that disprove that response. He was here today in part because he saw Judge MacDonald's recent order about delays in the criminal justice system. Tough-on-crime laws don't mean anything if no one is able to back them up. He wanted to ask the Commission to review the video, and to direct the governor to respond and prosecute the case.

Commissioner Stanfill asked whether Mr. Moore was asking the Commission to make recommendations for a change in the laws, or whether he felt like existing laws should be enforced.

Mr. Moore said that there were laws on the books that should be enforced and are not. On the Commission's website, it says the Commission can make recommendations to the legislature and governor. He has spoken to federal prosecutors and Taylor Winston of the Office of Victims' Rights, and they believe these people should be prosecuted. He thought there might be some reason they are not being prosecuted, though he didn't know what. Given the lengths he has gone to pursue this, he wondered who else is not getting justice. He encouraged the Commission to watch the video and make a recommendation to the Governor.

Eugene Carl Haberman explained that he lived in the Mat-Su and was a follower of the public process. He attends a lot of public meetings. At the last Commission meeting he attended, The Commission advertised a different meeting time on its website than when it actually started. There was an apology but the law is the law. He noticed that there were materials provided for the meeting and that the agenda had been posted on the website but not the other materials. He observed that the staff was also the staff of the Alaska Judicial Council, which nominates judges, and those meetings have also been inappropriate. The criminal code was a hot topic in the legislature, and there was no video or audio recording of these meetings. There was no fair chance for public participation. If the process is done right, the public will be more comfortable with the decisions made. He noted there were other presentations scheduled after the public comment period. But the public would not be able to comment on those. How can public be heard? Email comments were not good enough.

Lenny Moran explained that she drove in from the Valley, and was speaking on her own behalf. She was one of the founders of STAR, was also the survivor of a machete assault in 2007, and her son was the victim of a murder. The trial for her son's murder took three and a half years. She was very disappointed in the results. She met with the governor before he was elected. She didn't believe in the death penalty but agreed in sentences that were 99 years without parole. She thought that sentence should be an option for all murders, not just the murder of a police officer. The governor promised he would work on that, but nothing has happened yet. The person who assaulted her also murdered her fiancé in the same attack, and he got 400 years. The man who shot her son will be released when he is a year younger than she was now. For her this was agonizing. She found it very frustrating to seek justice over and over again. The man who shot her son point blank on Christmas Eve didn't even know her son. Another man handed him a loaded gun, and he's walking around free. She thought that didn't make sense, and was looking for help as to who to talk to and what to do.

Commissioner Stanfill asked Ms. Moran if she knew about the Office of Victim's Rights. Ms. Moran said she was working with OVR and attends their support group, which she found very helpful. Chair Claman told Ms. Moran that he appreciated her coming forward; he knew it took a lot of courage to speak up, and it meant a lot to everyone on the Commission to hear what she had to say. Everyone there wanted solutions and the solutions were not easy.

Talia Eames from the Central Council Tlingit-Haida said she wanted to touch base about reentry simulations. CCTHITA and the Juneau Reentry Coalition will host one in Juneau at end of the month, and at the last Commission meeting there was talk of doing one during session in January. She was willing to work with the Commission on this. Chair Claman encouraged her to get in touch with staff. Ms. Eames said she would.

Chanta Bullock said she hadn't heard the whole meeting. She wondered whether in the new year the Commission would do anything about mandatory sentencing, or whether everybody should have access to discretionary parole. Chair Claman noted that this subject had already been the subject of extensive legislation in last couple of years, and that the annual report would contain a summary of recent changes. The Commission would discuss where its focus for next year would be later in the meeting, and Ms. Bullock was welcome to stay on the line and listen to that discussion.

Reinvestment Discussion

Ms. Dunham explained that the Commission was statutorily required to report on how savings from criminal justice reform should be invested. Since criminal justice reform was enacted, however, DOC has had a flat fiscal note, meaning that there is no pot of money waiting to be spent. DOC cites increased per-prisoner costs and the costs of some more expensive facilities being used more.

Chair Claman added that costs would now increase with the passage of HB 49, which had a significant fiscal note; he thought the report should reflect that.

Ms. Dunham explained that there were averted costs, since the projections before reform were that Alaska would have to build a new prison. That has been avoided, but it was hard to put the avoided costs into a dollar amount. There was also the extra revenue from the marijuana tax; it was unclear from the statute exactly how that should be used.

Commissioner Stanfill said she would like to see the Commission look into making a recommendation on how that tax money should be used. She would hate to stay stuck at the original investment amount (the amount allocated from the recidivism reduction fund as projected by SB 91's fiscal note) when there was more need for investment.

Commissioner Razo noted that the recidivism reduction money has gone to three different entities, he would like the report to detail how that money was used. Commissioner Stanfill said she would like that information broken down by how much was spent on each program. Ms. Dunham said she thought she could get that information.

Commissioner Williams said he wanted to echo what Commissioner Stanfill said about there still being a need for more investment. He noted that reentry services are also preventive services. He believed the community-based system was the key to slowing the flow into the criminal justice system and will allow better use of criminal justice resources. If Alaska continues to bolster its reentry and community-based services, it could see continued reductions in recidivism.

Updates from Agencies on Current Projects

Chair Claman noted he had asked for updates from the agencies to give the Commission some background on the discussion in the next agenda item.

Gen Moreau, director of the Division of Behavioral Health at DHSS explained that she had brought handouts on the behavioral health continuum of care as it will operate under the Medicaid 1115 Waiver. The substance use disorder (SUD) portion of the waiver was approved in November 2018 and Medicaid coverage started July 1. There are approximately 100 locations providing 1115 SUD services now. On September 3, the Behavioral Health portion of the waiver was approved, and DSB anticipates implementing these services by January 1.

Doug Wooliver, deputy administrator for the Alaska Court System, conveyed an update from Justice Bolger on the mental health and criminal justice summit. It would be a day and a half, and bring together mostly judges and lawyers, both civil and criminal, and would take place at the end of February. Chair Claman asked if this was a postponement of the summit tentatively planned for December. Mr. Wooliver said it was.

Commissioner Williams explained that the Trust, in conjunction with DHSS and other stakeholders were in the process of developing a pilot project based on the Crisis Now model. Many of those involved have gone to see this model, and the Trust and DHSS have contracted with Recovery Innovations International on how to get started. Elements of the Crisis Now model are covered by Medicaid under the 1115 Waiver. The model has three main elements. The first is a call center (different from emergency dispatch) that can respond in real time to people experiencing a behavioral health crisis. In Phoenix, their call center was able to resolve 70% of crises on the phone. The second element is having someone to send out into the community to deescalate situations. And the third element is the crisis stabilization center. This center should have a no refusal policy and be open 24/7. RII, the technical assistance provider, is now meeting with folks in Anchorage and the Mat-SU.

Facilitated Discussion

Chair Claman explained that Commissioners had made several proposals for projects for the Commission to work on, some at the previous meeting. He has been talking with staff on how to get consensus on the Commission's priorities for the year ahead. In past the approach has been somewhat ad-hoc. He wanted to take a slightly different approach this year by putting a plan for the year ahead in the annual report. He note that in previous years many of the Commission's recommendations were consensus based. He decided to engage a skilled facilitator who can help develop a consensus on this.

Thea Agnew Bemben explained that she was with Agnew::Beck and that the goal for the discussion was to come to a consensus about two to three proposals for research priorities. There was a handout with all the projects the Commissioners had proposed; the Commissioners who made those proposals would speak to them to explain them to the group. She explained the handout categorized the proposals by existing workgroups and "other", which was not to say that the proposals needed to stay in those categories; it was just a way to look at them.

Ms. Dunham reminded the Commission of its obligations and factors to consider when making recommendations. The Commission's enabling statute requires the Commission to "make recommendations for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution." The statute also requires the Commission to consider:

- "(1) statutes, court rules, and court decisions relevant to sentencing of criminal defendants in misdemeanor and felony cases;
- (2) sentencing practices of the judiciary, including use of presumptive sentences;
- (3) means of promoting uniformity, proportionality, and accountability in sentencing;
- (4) alternatives to traditional forms of incarceration;
- (5) the efficacy of parole and probation in ensuring public safety, achieving rehabilitation, and reducing recidivism;
- (6) the adequacy, availability, and effectiveness of treatment and rehabilitation programs;
- (7) crime and incarceration rates, including the rate of violent crime and the abuse of controlled substances, in this state compared to other states, and best practices adopted by other states that have proven to be successful in reducing recidivism;
- (8) the relationship between sentencing priorities and correctional resources; [and]

- (9) the effectiveness of the state's current methodologies for the collection and dissemination of criminal justice data.”

The statute also requires the Commission’s recommendations to be based on:

- “(A) the seriousness of each offense in relation to other offenses;
- (B) the effect of an offender's prior criminal history on sentencing;
- (C) the need to rehabilitate criminal offenders;
- (D) the need to confine offenders to prevent harm to the public;
- (E) the extent to which criminal offenses harm victims and endanger the public safety and order;
- (F) the effect of sentencing in deterring an offender or other members of society from future criminal conduct;
- (G) the effect of sentencing as a community condemnation of criminal acts and as a reaffirmation of societal norms;
- (H) the elimination of unjustified disparity in sentences;
- (I) the sufficiency of state agency resources to administer the criminal justice system of the state;
- (J) the effect of criminal justice laws and practices on reducing the rate of recidivism in the state;
- (K) peer reviewed and data-driven research; and
- (L) the efficacy of evidence-based restorative justice initiatives on persons convicted of criminal violations and offenses, the victim, and the community.”

Ms. Bemben said the commission should also look at the following criteria:

- Is this well-aligned with the Criminal Justice Commission’s purpose and role?
- Is this within the Commission’s powers and duties and does it fall within the methodology in statute?
- Is this related to the work of ACJC working groups?
- What timeframe does this require: short term (1 year), medium term (1 to 3 years), long term (3 years+)
- What resources are needed (and available) to support or implement this action?

She said the group would walk through each proposal, and Commissioners should feel free to voice their opinions. There were many proposals and the Commission clearly couldn’t move forward with all of them.

Proposals- Victims of Crime

The first category of proposals related to the Victims’ Rights and Services Workgroup, and the first item on the list was the victim listening sessions. Commissioner Stanfill explained that Commission had already hosted four listening sessions as well as an online survey, and that the Commission would be hosting another listening session at AFN. The question was whether to do more. Attendance at the listening sessions hadn’t been great, but the participants who did show

up shared helpful information. Each session has seen a lot of the same themes. That said, , maybe some places would appreciate the Commission going to places it hadn't yet been.

The next two proposals had been identified as priorities by the workgroup. Commissioner Stanfill said one priority was to improve communication to victims with navigation services or call centers; the second was to address pretrial delay as it relates to victims.

Ms. Bemben asked if the question for the listening sessions was whether to keep doing them, and if so, she wondered what the research goal for that would be. Commissioner Stanfill confirmed that was the question, and said that she wasn't sure what the research goal was yet but to make recommendations to address what the Commission has heard.

Commissioner Case thought that many of the same themes were coming out of the victim listening sessions, and not a ton of people were showing up. Pretrial delay was a huge issue; APD officers are subpoenaed for 12 months of the year. He was not sure what the workgroup could do on that, other than improving communication, and getting people to services. He supported the communication proposal.

Mr. Skidmore said he also supported the communication proposal. He was working with UAA on some of those issues, and would fill the workgroup in at its next meeting.

Chair Claman said the Commission needed to think about resources in terms of the victim listening sessions. He wondered what the Commission could do about communication. Commissioner Stanfill said that the workgroup had already gathered a lot of data, and now needed to look at the policies that were driving the issues. She thought a lot of policy recommendations could be made, perhaps a victim's bill of rights. It was about addressing gaps.

Commissioner Razo noted that Justice Bolger had said in his speech to the legislature earlier this year that his focus would be on pretrial delay, and that the courts would make every effort to shorten that period. He wondered whether there was an update on the courts' efforts.

Ms. DiPietro said the courts came up with a pilot program in Anchorage, making a commitment to make judges available no matter what, and to reduce unnecessary hearings. That pilot project hadn't been evaluated yet. She agreed it was a huge topic. Her sense was that the Criminal Justice Working Group would want to see how the pilot plays out and evaluate it, and perhaps the Commission could pick up the topic for the next annual report.

Commissioner Razo said he hated to duplicate efforts, but he had no information about this program. More information about this would be helpful. He encouraged the court system to publicize it. He also knew of a legal navigator project using AI that had been in the works for three years, and had made some progress. He didn't suspect it was widely known, and thought that it could have potential benefits for victims as well, a way to connect victims with resources.

Mr. Skidmore said one concept the Dept. of Law was working on is was a criminal justice concierge service, in partnership with the University. The service would provide victims and others an actual person to talk to. They were hoping to launch the service in January.

Ms. Bemben said she was hearing that maybe the Commission would not do more listening sessions, there was lot of support for the communication piece, and also support for the pretrial delay piece but that it was a big project.

Mr. Skidmore explained that the last proposal in this category was something he had raised at the last meeting. There was a pilot project in Fairbanks to share bail conditions with law enforcement, so that if an officer contacted someone who was on bail in the community, the officer could know what their conditions are. His proposal was to expand the program statewide. Sharing criminal justice data had always been a big topic for the Commission in the past. This an example that allows officers to be more responsive, and also gives the public more confidence in pretrial release. Chief Justice Bolger was interested in this as well, though they hadn't been able to meet yet.

Ms. Bemben wondered if research was needed for this project. Mr. Skidmore said no, it would involve expanding a project that exists, and the logistics of how to expand it to other areas.

Commissioner Stanfill said the project works great in Fairbanks. She wondered if it was a resource issue. Mr. Wooliver said yes, it was a resource-intensive project. He hoped that when the court system's electronic filing system was complete, it would be easier to implement. Commissioner Stanfill asked if he could put together what resources were needed. Mr. Wooliver said he could follow up on that.

Chair Claman said it sounded like the victims' workgroup could choose whether to do more listening sessions. Improving communication for victims was a project that would involve research and analysis. The pretrial delay issue was something the court system was already working on. It also sounded like commission resources were not needed for expanding the Fairbanks bail project.

Mr. Skidmore agreed that resources from the Commission were not needed, but it would be helpful to have the Commission's support. The Commission's support would be meaningful if resources were required from the legislature.

Senator Hughes said she had just recently joined the meeting. It sounded to her like both the pretrial delay project and the Fairbanks bail project were not things that required the Commission's resources but were items for the Commission to monitor and get updates on. She noted the victims' workgroup already got an update on pretrial delay. These were both things she would like to monitor.

Commissioner Case agreed with Mr. Skidmore that Commission support for expanding the Fairbanks bail project would be helpful. He added that APD's most common VCR charge is based on the condition "do not commit additional crimes" because they know that anyone with a case in pretrial status will have that condition.

Commissioner Razo said he was unclear on the relationship between pretrial enforcement and law enforcement—were they not same thing? Mr. Skidmore said they weren't; PED was assigned to monitor certain defendants. Others were not assigned. If someone was contacted by law enforcement in a community where they don't make bail conditions available to law enforcement, a police officer would have no idea whether that person was out on bail or what conditions of bail they might have. In Fairbanks, officers can call dispatch to have access to that information.

Ms. DiPietro said a few smaller communities such as Nome have a direct arrangement with the local court as well. Judge Stephens thought it was critical that officers know what bail conditions a person has. If an officer knows a person has a DV charge and is not supposed to be in the family home, that's key to keeping the family safe. He was surprised to learn at the last meeting

that this was not the case everywhere. He has this system in his town. It's also nice for judges to know that the conditions they set are meaningful.

Commissioner Stanfill said that the victims' workgroup did want this body to decide whether listening sessions should continue.

Chair Claman noted that the choice to continue listening sessions would cost resources but didn't need research. Same for the Fairbanks bail project—they could both be taken off the research list.

Ms. Bemben said it sounded like the will of the group was that the communication piece had the most support as a research priority.

Proposals- Sex Offenses

The first proposal in the sex offenses category was to update the legal definition of consent. Mr. Skidmore explained that during the last regular legislative session, there were concerns that the state statutes on consent were not up to date. A number of states have made changes in this area regarding their sex assault laws. Rep. Tarr would be hosting a community discussion on this on the 10th. He thought it would take additional research and there were a number of complicated issues involved. He would encourage the Commission to spend time on this. Commissioner Stanfill agreed. Sen. Hughes also agreed; it was important to get this right. The net should not be set too wide or too narrow.

Chair Claman said he was familiar with Rep. Tarr's work on this. The question was whether it might be duplicative of resources, if the legislature is already taking this up—whether the legislature will find it helpful or whether it will do what it wants to do.

Commissioner Razo said it was definitely within the wheelhouse of the Commission. Sexual assault is a pervasive problem, and he didn't think enough people could work on it. It is the #1 problem for the state of Alaska

Agreed that many people were already working on this issue anyway, but she felt that the Commission should be in front of this. This is the role of the Commission. She added that this tied into the next proposal in this category which was to conduct a thorough review of the sex offense statutes. The legislature directed the sex offense workgroup to review the statutes, then statutes were changing, so the workgroup put the review on hold because it wanted to see what the statutes looked like after the end of the session. A lot of changes were made but a lot of things can still be done. She knew of things other states were doing in this area.

Commissioner Williams wondered what the breadth or workload was for this project. Mr. Skidmore thought it comprised three or four areas: sexual abuse of a minor, sexual assault, offenses in 11.61 or 11.66 of the statutes (child pornography and similar crimes), and miscellaneous offenses. Ms. Dunham added that registration and related offense would be on the list as well. Mr. Skidmore said he would like to participate in that review.

Sen Hughes said that having such a review would be very helpful to the legislators, who have limited staff capacity. Last session the approach to sex offenses felt piecemeal, and she would like a broad look. She noted there had been recent headlines on tragic statistics lending some urgency to this discussion.

The final proposal in this category was to look at the human trafficking and sex trafficking laws. Mr. Skidmore said that other states are looking at this issue, and it also seems to be in the national conversation. He thought of this proposal as a subsection of the previous one.

Commissioner Stanfill wondered if looking at both human trafficking and sex trafficking involved two different projects that should be looked at separately. Mr. Skidmore said that was a good question though there was some overlap. Sex trafficking statutes cover more specific conduct. Human trafficking is broader. Chair Claman said his sense was that the public was more concerned about sex trafficking side.

Ms. Dunham noted the sex offenses workgroup had already considered a proposal to change the law on sex trafficking but waiting on feedback from a human trafficking task force. Mr. Skidmore said he didn't think that group had met recently.

Commissioner Razo said this issue was pervasive, and knew there were federal grants that CIRI and the Alaska Native Justice Center had to look into this—it would be good to hear from those groups. There is a lot of information on this we don't know.

Ms. Bembien said she thought the way to look at these proposals is that the review of all the sex offense statutes is really the research umbrella, and that the other two proposals come under that umbrella.

Proposals - Behavioral Health

The first proposal under the behavioral health category was to have statewide standards on Crisis Intervention Training (CIT) and oversight by the Alaska Police Standards Council. CIT is a national evidence-based model whose use continues to grow around the state. His concern was that as new locales adopt the model, they are not implementing the evidence-based model. He wanted to get the APSC to endorse the evidence-based model to get local police to use that model. The Commission could take position on endorsing this plan; he didn't think the Commission needed to take direct action now.

The next two proposals had to do with maintaining Medicaid enrollment for people while they are in prison and having Medicaid pay for behind-the-walls treatment. Ms. Moreau said she wanted to make clear that right now, Medicaid will only reimburse for services for people who are incarcerated if they spend more than 24 hours inpatient at a hospital. That is the only benefit available for people who are incarcerated; any other coverage is not available under federal rules.

Ms. Bembien asked Ms. Moreau to explain what happened to someone who had Medicaid upon entering prison. Ms. Moreau said their enrollment was not cancelled or suspended but the benefit was limited to just inpatient care. The problem with maintaining Medicaid enrollment while in prison is the requirement for yearly renewal. People in DOC facilities do not have access to the internet, so they have to use a paper application process. If they are able to do the paperwork every year, they are able to maintain eligibility. Commissioner Stanfill said it sounded like the question was how to ensure DOC offers everyone the opportunity to enroll. Ms. Moreau said it was. She noted the backlog of applications was being addressed and had greatly improved, and she also understood there was interest in getting inmates internet access.

Chair Claman said it sounded like this was largely governed by federal regulation, Ms. Moreau said basically yes, and noted there was some interest in expanding benefits to people in prison at a recent DC conference. Chair Claman was not sure the Commission could have much

impact on this. Mr. Wall suggested it might fall under the Commission's purview to write a letter of support for expanding coverage for people in prison.

Senator Hughes said she also brought this up at the last meeting – she thought the Commission could put pressure on CMS and the federal delegation. It would not have to be on the research list, just a resolution for a future agenda at some point. She would also support a legislative resolution to the same effect. The Commission could recommend the legislature pass such a resolution.

Ms. DiPietro said staff would double check whether that was within the Commission's statutory authorization. Certainly it was appropriate to make recommendations to the state legislature.

Judge Stephens said there were two separate issues: one was expanding in-prison Medicaid coverage and the other was ensuring that people were enrolled or still enrolled when they leave the prison doors. He thought the latter was an issue for DOC. He knew reentry planning was already required but difficult to do when most people aren't in that long. He thought the Commission could consider recommending that the executive branch make efforts to ensure enrollment—this could also be an agenda item but did not entail research.

Ms. Bemben said the first three proposals in this category sounded more like future agenda items rather than research priorities.

The next proposal was to focus on behind-the-walls treatment and rehabilitative services. Judge Stephens explained that much of the Commission's focus had been on what happens before people step behind the prison walls and what happens when they step out, but not what happens in between. He thought the Commission could look at other state practices, and make recommendations to legislature and executive branch. The focus should be not just treatment but also education and other programming. While people are incarcerated there is an opportunity to get people into rehabilitative services. The goal would be to have the person who steps out of prison be very different from the person who steps in. He doubted the Commission could do the full Norway model directly, but other states have adopted some of Norway's approaches. A delegation from Oregon went with the delegation from Alaska; it would be interesting to see what they and other states have done.

Senator Hughes said this proposal could combine with the next one, to develop comprehensive rehabilitative programming within DOC facilities, housing high-risk and low-risk people separately, and providing reentry programming and coordination. She originally voted for SB 91 because she wanted to give people a chance to turn their lives around. Alaska has a responsibility to at least give people the opportunity to be in better shape. She had done some work with people in prison and watched the effect prison can have on some people. She didn't want to see that happen to low-level offenders especially. She thought having a different facility would be best. Helping people get their life back on track was not just benefit for them but for our communities.

Judge Stephens wanted to look into using the import model, which was part of the Norway model's principle of normalcy. The idea was that people would get the same services within prison as they would on the outside.

Ms. Bemben noted that the Results First study have information on what programs are effective.

Senator Hughes said she would also like to look into providing counseling services that would teach people how to manage anger, be a better parent, and create a value system.

Commissioner Stanfill observed that these proposals didn't necessarily belong in the behavioral health category, as the services they were discussing would be for everyone. Judge Stephens thought a new workgroup might look into these ideas.

Ms. Carns cautioned that maybe 25% of people who are incarcerated are in long enough for this to apply. Half the prison population consist of people in pretrial or supervision violation status, and those convicted of misdemeanor also don't spend much time in prison. The longstanding issue is that many people who are incarcerate don't qualify for these services.

Judge Stephens said that people can still engage in services when in pretrial status. He has conducted a lot of sentencing in which the defendant has been able to amass a bunch of certificates. He also hoped that structured probation conditions might help get people into services.

The next proposal was to research the efficacy of prison treatment programs, specifically looking at in-facility compared to out-of-facility treatment. Chair Claman had made this proposal and he said he saw it as overlapping with the previous two. He noted that Norway's system didn't get to be that way overnight. It required a massive change, and Alaska also would not be able to transform its system overnight. He thought a separate workgroup might be needed, and that group could can look at whether it makes sense to focus on treatment behind the walls or not. Ms. Carns' comment on most people not being incarcerated for long enough was well-taken. HB 49 increased the minimum post-sentence prison time for reentry planning to 90 days from 30, largely due to issues of DOC's capacity. So the question was whether it was the best use of resources to focus on programming in facilities or out. He thought Results First gives a lot of background, and Commission research could give the legislature guidance on priorities.

Commissioner Williams agreed these proposals were very interrelated. Together they represented an enormous task. Essentially they were all looking at intercepts 3, 4, and 5, and what's effective.

Senator Hughes observed that the wheels of the Commission move slowly, and she wanted to let the Commission know that her office is working with someone who is a PhD candidate on recidivism reduction, and she had also been contacted by a National Council of State Legislators project. She was planning to discuss this issue with Alaska stakeholders in a meeting in November. She envisioned that this group would produce solutions that the Commission could review over time. She would let the Commission know what she was doing, but she felt she had to get something going because there was eagerness in the legislature to do step 2. She did not intend to sidestep the Commission.

Ms. Bemben summarized the discussion: the three preceding proposals could all be grouped together for a new workgroup to tackle.

The next proposal in the behavioral health category was to look into the Title 12 statutes regarding competency and related topics. Judge Stephens reminded the group that this was discussed at the last meeting; the recommendations from the UNLV report had also been around for some time. He also noted that the statute governing culpability examinations requires two specially certified practitioners to perform them, but no such person exists in Alaska, and never

had. It was costing the court system thousands of dollars to find outside doctors who were qualified, and it was always a scramble to find them.

Commissioner Williams added that there were many Title 12 statutes, and the process of reviewing them using a contractor took well over a year. There were very specific sections that are outdated that Alaska is not complying with that could be changed easily. Many people “time out” while waiting for competency evaluation and their charges are dismissed. At that point they can walk away without help, or sit in DOC with a Title 47 hold with no charges pending.

Ms. Bemben asked what needed to be done next on this project. Commissioner Williams was not sure there was a need for more research; that work had been done.

Senator Hughes said that often people cycle in and out of API, and if they are not restorable, they are often released onto the street. There was a case in Anchorage where someone in that situation was released and murdered people. Mr. Wall said DHSS was working on proposals for legislation on this topic for this coming legislative session. There would be a proposals coming to address a number of things, including amending the statute governing culpability evaluators to meet national standards. Once these proposals are drafted, DHSS can bring them to Commission.

Mr. Wall also wanted to echo the concerns of many on the Commission on this topic. In February, 76 individuals had been waiting for a large amount of time for competency evaluations. DHSS found psychologists and psychiatrists who are licensed to practice in Alaska even if don’t live here. They have a pool now and the backlog is reduced. There were 26 individuals waiting for an evaluation as of last Thursday and all of them were scheduled for an evaluation. That still doesn’t resolve the restoration piece, however. They are looking into sending people out of state to be restored. They have sent one person so far to pilot the idea. If it works, they will look at doing more.

Proposals - Other

The first proposal in the “other” category was to conduct a reentry simulation for legislators in Juneau. Chair Claman reminded the group this was discussed at the last meeting. Commissioner Stanfill noted that there were things like this on the lists that didn’t necessarily involve research but that the Commission should still keep on its to-do list. She thought the Commission should take part in the reentry simulation.

The next proposal in the other category was to hold coordinated training for agencies that work in the criminal justice system. Mr. Skidmore explained that he raised this at the last Commission meeting. He didn’t necessarily think it would take research but further discussion amongst the Commission. Commissioner Stanfill wondered if this could dovetail with the proposal to improve communication with victims. Mr. Skidmore said this was different, the idea was to seek a certain degree of uniformity among people that work in the system. There is a lot of training that happens in the state, but none of it is coordinated. People have very different viewpoints. Not everyone has to have the same opinion, but some same basic training that is coordinated so that everyone is familiar with the same concepts: law enforcement officers, public defenders/advocates, prosecutors, and judges.

Judge Stephens wondered if this was a topic for the Criminal Justice Working Group. Ms DiPietro noted that group had been on hiatus recently, but that group is more operational, and it was a good topic for them. Judge Stephens recalled the prosecutors and defense bar had a joint

training a while back in Anchorage—it went over like a lead balloon. It sounded like this proposal was not a joint training but a coordinated one. Mr. Skidmore said that was correct.

The next proposal in this category was to address high recidivism rates for domestic violence (DV) offenders. Commissioner Stanfill said that the DV intervention programs in the state were required to follow a certain model, but were not exactly following the model required by statute, because there is evidence the statutorily-required program was not working. There was a need to help people who commit these crimes to change their behavior. We use trauma-informed practices in everything except with DV offenders. Alaska needed to look into how to address this in a different way. She knew CDVSA was also very interested in looking at things differently and would appreciate the Commission's involvement.

Commissioner Case said he just wanted to do something different. Alaska is using a 3-decade-old model. DV is different from all other crimes; it involves a complicated long relationship between two individuals, and it was not as simple as just putting people in a program. The system leaves victims hanging sometimes. He thought a new approach should address both the victim and offender. We know that 60% of people in a relationship involving DV get back together. That's something the legal approach should account for.

Ms. Bemben said it sounded like this was definitely a research project. Ms. DiPietro added that Judicial Council staff had done a lot of work on this recently, and could pull that research together.

The next proposal in the other category was to house first-time and low-level offenders in separate DOC facilities or modules. Senator Hughes said that this had already been discussed as part of the earlier behavioral health research proposal. She has been encouraging DOC just to start doing this.

The next proposal in the other category was to research and review experience in other states of criminal records accuracy, including looking at the Uniform Criminal Records Accuracy Act (UCRAA). Chair Claman said this was a statutory proposal, and had been enough of an issue in other states to warrant a model law from the Uniform Law Commission. He suggested perhaps the Barriers workgroup could take a look at this, but it was probably not a research priority.

The next proposal in the other category was to implement the existing Commission recommendation for redaction statutes. Commissioner Stanfill explained that the Commission had done a great deal of work on this. No additional research was needed. She just heard from Kara Nelson, a longtime advocate in the reentry field, who is continuing her education in the lower 48 but couldn't get into an AirBnB. She would like to ask legislators to look at this again.

The last proposal in the other category was to revise the law on juvenile auto-waiver. Commissioner Cherot said this proposal was really to revive previous work on this. Renee McFarland, deputy public defender, said that the Sentencing Workgroup had been considering a draft recommendation, but it seemed like the workgroup had just stopped meeting. The draft proposal dropped some offenses out of the automatic waiver, extended DJJ custody time, allowed for a reverse waiver, and proposed to house juveniles in DJJ custody regardless of their status (waived into adult court or not) until disposition of their case.

Ms. Moreau noted that Tracy Dompeling from DJJ was also working on this.

Ms. Bemben said in summary that it sounded like there was support for four main research projects:

- Under the victims' category, looking at improving communication with victims.
- Under the sex offenses category, looking at revising the sex offenses statutes, which would also encompass looking at the laws on consent and sex and human trafficking.
- Under the behavioral health category, looking at behind-the-walls treatment, rehabilitative and reentry programming, and the efficacy of treatment programs behind the walls and in the community.
- Under the other category, looking at alternative approaches to reduce recidivism among DV offenders.

Chair Claman said that sounded like at least two big projects. Ms. DiPietro reminded the Commission that it had 1.5 staff members, plus Judicial Council staff when they are able. She reminded the Commissioners that they were needed to keep the project going. Within the workgroups, staff can't move ahead with projects without Commissioner buy-in and attendance. Often this means agencies committing staff. Ms. Dunham said she was willing to staff four workgroups, but she needed Commissioner assistance to do so.

Commissioner Williams also wanted to highlight the Alaska Justice Information Center (AJIC) as a resource. These are meaty and complex topics, and the Commission should use the resources at hand.

The Commission discussed the workgroups already in existence. The workgroups that have met in the past year were Victim's Rights and Services, Sex Offenses, and the Behavioral Health Standing Committee. Past workgroups also included Barriers to Reentry, Restorative Justice, Restitution, Title 28, Sentencing.

For the projects in the behavioral health category, the Commissioners agreed that the topic was wider than just behavioral health, and would be best suited to a new workgroup.

Chair Claman thought 4 or 5 committees was a lot. He didn't want to be in this same place a year from now with nothing done.

Commissioner Stanfill noted that in the past, the workgroups have been staggered, so they're not running at the same time. Everything on the list needed to be addressed yesterday. She thought with staggering the workgroups, it was doable. It was a matter of everyone's commitment to the Commission. She didn't feel comfortable dropping any of the topics.

Senator Hughes noted that a victim workgroup and sex offenses workgroup were already active. The Commissioners agreed two new groups were needed for the remaining items. Chair Claman said he would suggest calling one a corrections management group and one a DV group. Senator Hughes suggested recidivism reduction

Ms. DiPietro said it would be important to have commitment from DOC on the corrections management group, and there was not a DOC representative present (Commissioner Dahlstrom had left at this point). She suggested putting it at the end of the legislative session to get Commissioner engagement. Ms. Bemben suggested that group meet for a few months and then take a hiatus to do DV. Commissioner Stanfill liked that idea, as she thought the train was moving on recidivism reduction.

Commissioner Stanfill added that any revision to the sex offense statutes, would likely not be for the next session but the one after, so that group could also meet later in the year.

Commissioner Razo agreed to chair the corrections management and recidivism reduction group, and Judge Stephens and Senator Hughes said they would join that group. Commissioner Williams said the Behavioral Health Standing Committee could take a hiatus since many of the issues in this new group were behavioral-health related.

Commissioner Case agreed to chair the DV workgroup.

For the action items identified during the discussion that were not research priorities, Chair Claman said he would like to put those on future plenary meeting agendas. He also believe the Commission still needed to make a decision on Victim Listening Sessions.

Commissioner Razo said he thought the Commission had a continuing obligation to host these sessions. It would be a mistake to stop listening to victims. There were many areas of the state the Commission hadn't been to yet—essentially all of western Alaska.

Commissioner Stanfill thought it was interesting that the Commission was not getting the response it might like—she was not sure why. She thought perhaps the Commission needed to have community partners. She felt the Fairbanks effort was pretty successful. She did a lot of prepwork for that. Juneau only had a few people. Anchorage had a lot of notice and advertisement but only a few people showed up. She thought the Commission could perhaps partner with other agencies so it's their event too.

Ms. DiPietro said the Commission had spent a fair amount of money and talked to a few dozen people. She reminded the Commissioners of the list of community partners staff reached out to a few meetings ago. She thought perhaps it was worth retooling the format. Previously the Commission had good turnout in Nome and Kotzebue, but those weren't styled as victim listening sessions. Maybe it would be worth it to broaden the format.

Commissioner Razo agreed that by calling it a victim session it might narrow the interest. People who show up will also be people who target population.

Ms. Bembien agreed it would be beneficial to think about the language used. It had to do with how people self-identify; people may not want to identify as victims. She had had the most success in the past by really tagging on to local partners. She also noted that very small communities might be more successful because there is less going on there. Agnew::Beck put on an event in Hooper Bay and got 150 people. Planning the same event in Bethel had less success.

Commissioner Stanfill said it sounded like the Commission wanted to continue having listening sessions in places the Commission hasn't been to. Perhaps the Commission could work with Agnew::Beck on repackaging. But there was also a merit to signaling that it was for victims. It can be hard for victims to participate when a people who have been incarcerated are also talking. It was hard to blend populations. The was something to put thought into.

Chair Claman said it sounded like there was general agreement to keep going with the listening sessions.

Commissioner Stanfill said she would also still like to talk about what to do with the excess marijuana revenue. Chair Claman said that it might involve a bit of research—that would be something to look into for the December meeting.

Partners for Progress Update

Janet McCabe, chair of the board of directors for Partners for Progress, said she wanted to introduce Partners' main staff. Doreen Schenkenberger is the Executive Director, and Josh Sopko is the new director of the Partners Reentry Center. She noted that this summer marked the 20th anniversary of therapeutic courts in Alaska, which began as a collaboration with Partners, municipal prosecutors, and Judge Wanamaker. The underlying goal of the therapeutic courts is to make people whole; the same holds true for the Reentry Center.

Ms. Schenkenberger thanked the Commission for the opportunity to present. She wanted to share some thoughts about the operation of the therapeutic courts. One priority was to try to find more ways to get people into the programs. They were not working at their capacity. Dozens of slots remain open every month. The therapeutic court model was one of the best diversionary programs available in Alaska, and had considerable success with recidivism reduction by focusing on treating mental health and substance abuse problems. She noted that Nome had high rates of recidivism as well as high rates of substance use disorders and suicide, and thought that adding a therapeutic court in Nome would be a good idea. Such a program could serve the whole Bering Straits region. Partners would be happy to help; they offer a free training to those looking to implement a new therapeutic court. The deadline to apply for the next training was November 1.

Joshua Sopko explained that he was the new director of the Partners Reentry Center, though he had been working there since 2014. Reentry Center staff are able to help reentrants pre-release. They place an emphasis on housing, and require those receiving housing to look for work, follow their recommendations and conditions for treatment and aftercare. Since opening in 2013, the Reentry Center has provided transitional housing to 3634 clients and assisted 8711 clients with employment, housing, support groups, or referrals. They do a lot of referrals to treatment.

The Reentry Center also provides support, and talk to people about taking control of their lives. They emphasize accountability; receiving further assistance is always based on client follow-through. They recently just secured a pilot fund for emergency costs. All clients are moderate or higher risk, meaning they only deal with folks who are almost guaranteed to recidivate. They also facilitate peer support groups, such as one for people who spent a long time (more than a decade) in prison, and are starting a new group for opioid addiction.

They looked at 18-month recidivism rates for people who passed through their programs: the rate was 27% for those who were engaged with programming versus 48% for people who came into contact with the center but did not follow through or were not engaged. The most successful clients were those who had started treatment and reentry planning while in prison and continued on that plan once released.

Around three months of assistance for housing, bus passes, clothing, etc. for one person cost the Reentry Center around \$2800, compared to over \$150 per day per person in prison.

Commissioner Cherot asked how often they were able to do inreach in the prisons. Mr. Sopko said that they get to Goose Creek, Anchorage Jail, and Hiland Mountain at least monthly, and go to Spring Creek every other month. They need to reach out to Wildwood. They also working with people at the Cordova center (halfway house).

Commissioner Razo asked if the Alaska Nations Reentry Group was still meeting. Mr. Sopko said it was still meeting on Friday mornings. It was a self-advocacy group; they set their own agenda and the Reentry Center provides the space. Their Jesuit volunteer helps with that group too.

Senator Hughes asked if Mr. Sopko could get data on the number of people who are released compare to the number of people they are serving. Ms. McCabe noted that half of all prisoners are released in Anchorage.

Presentation on VPSO Task Force

Representative Chuck Kopp explained that the Legislature put together a VPSO task force last session to address recruitment and retention issues in the VPSO program, which was established in the late 70s. He knew everyone present was aware that rural public safety was currently very challenged. Members of the task force are Senators Olson, Bishop, and Shower, along with himself and Representatives Edgmon and Rauscher. Their task is to come up with solutions for the next legislative session.

The task force has met with officials from DPS who spoke about what was working what not. Their takeaway was that there was a certain amount of friction between VPSO and AST indicating structural problems. The troopers manage the VPSO grants, which is not really something they want to do. The regional nonprofits feel this is to some extent micromanagement, and they feel their mission is more than just having a VPSO position. They would like the program to be less bureaucratic and more decentralized. The troopers are obligated to issue the same grant for every place even though needs are very different in different locations. Grant denials seem arbitrary. The task force is therefore looking at grant management and more regional control, leaving DPS more as a technical advisor. The grants limit who can back up another VPSO, which is also an issue they're looking at.

All VPSO coordinators like program—they think it is challenged but worth fighting for. The coordinators have decades of law enforcement experience among them, and they are committed to doing the job well. So far they have had a listening session in Nome, and will have another panel at AFN and in Kotzebue. Their goal is to come back to the legislature with action items, both in terms of funding and in terms of statutes and program structure.

Future Meeting Dates and Tasks

The Commission agreed the telephonic meeting to approve the annual report would be on October 28 at 4:30pm. Commissioners were to get any additional comments to Ms. Dunham on the 14th, and she would get a new draft out on the 21st. The next full meeting would be on December 3 at 10:00am, and Commissioners expressed a preference for meeting at the Trust.

Alaska Criminal Justice Commission

Meeting Summary

Tuesday, August 20, 2019

11:00 am – 4:30 p.m.

Snowden Administrative Office Building Training Center

820 W 4th Ave, Anchorage, AK 99501

And Audio-teleconference

Commissioners Present: Joel Bolger, Sean Case, Matt Claman, Kevin Clarkson, Nancy Dahlstrom, Beth Goldstein, Shelley Hughes, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Adam Crum, Amanda Price (Kelly Howell served as proxy for Commissioner Price)

Participants: John Skidmore, Glen Klinkhart, Araceli Valle, Troy Payne, Alysa Wooden, Lauree Morton, Kim Stone, Nancy Meade, Teri Tibbett, Brad Myrstol, Janet McCabe, Travis Welch, Gennifer Moreau, Jonathan Pistotnik, Ceri Godinez

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

Approval of Meeting Agenda and Previous Meeting Summary

The meeting's agenda and the summary of the previous meeting were both approved without opposition.

Victim Workgroup Update and Report

Barbara Dunham, project attorney for the Commission, reminded the group that at the last meeting, the Commission had decided to continue to hold victim listening sessions and to form a workgroup devoted to victims' rights and services. The next victim listening session would be held in Anchorage on September 15, most likely at the Loussac Library. The first meeting of the Victims' Rights and Services Workgroup took place in July, and the next would take place September 25.

Ms. Dunham explained that she had circulated the report on the previous victim listening sessions and the victim survey; this had been sent to the workgroup as well and was discussed at the meeting in July. The report had analyzed the data from the survey after extensive coding of the responses performed by herself and staff analyst Staci Corey. Generally speaking, survey respondents reported they needed better information, communication, services and support. Many reported feeling as though the defendant had more rights than they did.

Commissioner Stanfill added that the first meeting of the workgroup was mainly informational; the group heard about the VINE notification systems and OVR as well as hearing about the report on the listening sessions and survey. The next meeting will be devoted to figuring out priorities and goals, and potential recommendations. She was not sure the workgroup would have a recommendation in time for the Annual Report but may have something for the next legislative session.

John Skidmore asked whether there had been any additional survey responses since Ms. Dunham wrote the report. She said she had received a handful. The bulk of the survey responses came after 49th Rising, an advocacy group for victims of sex offenses, advertised the survey on Facebook.

Chair Claman asked whether there was also a listening session planned for Nome or Koztebue. Ms. Dunham explained that at the workgroup meeting, Ingrid Johnson, researcher at UAA, had noted some victim fatigue among victims in Western and rural Alaska. Victims felt as though they had been frequently asked to share personal information despite nothing seeming to come from it. The thought now was to wait until the session at AFN and gauge interest then.

Commissioner Stanfill noted that CDVSA Executive Director Diane Casto had agreed to be the moderator for the session in Anchorage.

Reentry Simulation

Jonathan Pistotnik explained that he was the Anchorage Reentry Coalition Coordinator, one of four funded by the Trust. One purpose of the Reentry Coalition is to educate the community about reentry and the challenges reentrants face. As part of that education component, and as a way to engage the coalition, he put together two reentry simulations earlier this year.

Reentry simulations have been done elsewhere around the country; Mr. Pistotnik found a model from a team in Florida with the help of Teri Tibbett of Alaska's Mental Health Board and Yolanda Candelario from the US Attorney's Office in Anchorage. The Anchorage Reentry Coalition then hosted a simulation in April with 24 participants, and one in June with 52 participants. Mr. Pistotnik believed this was the first time such a simulation had been done in Alaska.

The aim of a reentry simulation is to educate participants and raise their awareness of the complexities of reentry. Participants are given an identity of a reentrant, then need to get an ID, food, medications, employment, and to get to meetings with their PO, all using limited transportation options and limited resources. The simulation will also throw in an unexpected challenge.

Mr. Pistotnik said the simulations were well-received by participants, who said they found the exercise worthwhile and impactful, and would recommend it to others. Volunteers who provided the "services" for the simulation also had positive feedback.

Mr. Pistotnik said that participants found that reentry is complicated, and the reentry experience varies from person to person. Participants saw a need for services that extend beyond law enforcement and corrections. His hope was that after participating, people will be more supportive of reentry services, and understand that these services will make the community safer.

The Anchorage Reentry Coalition is planning to repeat the exercise, and is thinking of hosting a reentry simulation just for the UAA community. The coalitions in Fairbanks and the Mat-Su are also thinking of hosting their own simulations. Mr. Pistotnik said he was happy to let the Commission know of future simulations. His contact information was on the summaries he provided for this meeting.

Commissioner Razo said he participated in one of the simulations, and he found it to be very impactful, especially since he went into the exercise thinking he already knew what the challenges would be. But after jumping through hurdle after hurdle, with limited information, it was hard to see path to success in reentry. He appreciated Judge Rhoades volunteering as one of the “service providers.”

Judge Rhoades said the simulations represented experiential education at its finest. She acted as the person to talk to to get an ID. She added that she would highly recommend that the Dept. of Corrections to send their POs. There was a Federal PO contingent, and all of them got sent back to “jail” during the exercise, to their chagrin. They all gathered after the simulation was done to discuss what they learned and how to implement their ideas. Judge Rhoades thought this was a great outcome.

Senator Hughes wondered how the Commission could learn from the hurdles Commissioner Razo mentioned, and whether they might point to things that could be improved.

Judge Stephens noted that the simulation brought all the services together in one place, but in reality those services are spread out. Accessing services would be much more difficult in real life without transportation. In an ideal world, all these services would actually be in one place, and reentrants would be more successful.

Chair Claman said that he participated as well, and that the simulation used bus passes. If a participant had no passes, their only option was to go back to jail. Everyone who thought they could navigate the system ran up against these limitations, and almost everyone went back to jail. He strongly recommended participating in a simulation to the members of the Commission. He thought that one real-world lesson from the exercise would be to just give everyone on probation or parole bus passes.

Judge Rhoades thought that one real-world takeaway was that a personal one-on-one navigator would be helpful, or else actually having all the services in one place. The reentry center tries to do this. A similar model would be Project Homeless Connect, which gets all the homelessness service providers in one place for people who are homeless.

Senator Hughes wondered how long the simulation would last. Mr. Pistotnik said it typically takes a little over an hour for the activity itself, plus introductions at the beginning and a debrief afterward. Senator Hughes said she was asking because “Step 2” of HB 49 was to address recidivism and reentry issues. To this end she thought it would be helpful host a simulation with all of the legislators in Juneau.

Chair Claman said he would support that, and that it would probably be best to do early in the session. Mr. Pistotnik said that a simulation would need at least 25-30 participants, with 15 volunteers. From there, the exercise can be scaled up. There is a Juneau Reentry Coalition that could help. Chair Claman suggested hosting a simulation the day before or the day after the January Commission meeting.

Ms. Dunham interjected that Ms. Tibbett had contacted her to inform the Commission that the Juneau Reentry Coalition was already planning a simulation in collaboration with Central Council of Tlingit and Haida Indian Tribes. Chair Claman suggested coordinating with that effort.

Commissioner Stanfill wondered whether certain variables in the exercise could be adjusted to tell which services would have the most impact and improve the success rate. Mr. Pistotnik said that it might be possible, though he hadn’t done it. It might be interesting to see what would happen—there could be unintended consequences to well-meaning adjustments. There were only six different personalities for participants to assume, but each person experienced those personalities differently as they went through the simulation.

Chair Claman said his experience of being a “reentrant” was generally miserable and the simulation made it easy to fail; the natural reaction is to want to fix the whole system. It would be interesting to identify whether one variable could be tweaked to help people be more successful.

Mr. Pistotnik said that the simulation was designed to be frustrating. Participants were purposefully given very little information at the start to mimic being released from prison without a roadmap. It would be interesting to see what would happen if participants were given more information at the beginning.

DV Diversion Pilot Program

Commissioner Case said that his proposal for a pilot diversion program stemmed from years of dealing with domestic violence cases and noting the high rates of recidivism, and thinking there has got to be another way. Also, domestic violence defendants typically do not have extreme substance abuse or mental health issues, which makes that population a good option for a diversion program since not a lot of treatment resources are required.

Commissioner Case explained that the Judicial Council staff did some research on this topic and found that 40% of DV defendants go back to jail within one year. Half of defendants have a continuing relationship with the victim while the case is open. Also, once a defendant is arrested, that person will have reduced opportunities for employment, which can exacerbate the violence in the relationship, and increase recidivism.

Commissioner Case added that criminal cases take time, and there is no immediate post-arrest intervention for a DV defendant. Victims often want the no-contact order lifted as soon as possible (for a variety of reasons) so the case is just pending without any change or benefit to the defendant or victim.

The goal of the pilot program is see if this is a way to reduce victimization and recidivism in DV cases at a lower cost. Under the program, officers will respond to a DV call, and do a quick risk assessment—there are existing instruments for this. Moderate-risk defendants would be the target. Low-risk defendants are unlikely to recidivate, and high-risk defendants should be arrested because of the danger to the victim.

The officer will then ask both the defendant and the victim if they want to participate in this voluntary program. The defendant will agree to be electronically monitored with area restrictions (they will still be able to work) and participate in programming. Ideally there will be two components to programming, a clinician and a case manager or resource manager. The idea is to have a 90-day process in which compliance and involvement is expected from the offender. If the person is not successful, APD will bring the case to the municipal prosecutor.

Commissioner Case said the purpose of sharing this was just to give the Commission an update; he is still in the process of developing this pilot program and gathering information. He realized there were still some holes. He is talking to a clinician now about how that part of the program would work. He was open to hearing the thoughts of the group.

Commissioner Stanfill said she was taking idea in, and was trying to have an open mind. She asked if the idea was not to arrest someone accused of domestic violence. Commissioner Case said yes, the person would be put on ankle monitoring instead. In most DV cases now, unless a defendant is really high risk, that defendant is not staying in jail, but released with conditions including a no contact order—and release happens in a fairly short time frame. But until the case is disposed, no other preventive measures are taken in that time. He thought this process would actually pose less risk to the victim because it would allow for a more immediate intervention. Both the victim and the defendant must volunteer to participate.

Commissioner Stanfill wondered how this would be affected by the mandatory arrest law. Commissioner Case said that a prosecutor can waive the arrest requirement if APD requests it. Chair Claman said this was a provision in the law he discovered recently that he hadn't known before: that there will be an on-duty attorney in each prosecutor's office who can authorize non-arrest in DV cases.

Judge Rhoades asked for a review of how the funding worked for this project. Ms. Dunham explained that the funds were part of the grants from BJA that were made available to all states that had enacted some form of justice reinvestment. Previously the grants were used to fund things like training for DOC staff. The Commission serves as the body that decides how this money should be spent.

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, reminded the Commission that it had discussed a pilot diversion program last year along with other proposals for DOC suggested by the previous DOC commissioner. When the administration changed, not a lot of action was taken on those proposals but Commissioner Case wanted to move forward with the diversion project idea. When the legislature passed HB 49, BJA canceled most of the grant with the exception for this one project because it was already going. BJA is generally supportive of law enforcement and felt it was a worthwhile pilot program.

Judge Rhoades wondered why the target population was DV offenders. She recalled the original idea was to create a diversion program for people with severe mental health issues. Ms. DiPietro said that Commissioner Case and other stakeholders had gone to Seattle [and San Francisco] to study their law enforcement diversion programs (LEAD). The key thing they founds was that diversion programs need to have something to divert people *too*—and in Anchorage, those services don't exist and we don't have the opportunity to wait for that to change in the timeframe of this grant. Case had idea

Ms. DiPietro added that the idea to target the DV offender population was born out of officers' frustration with this population. Commissioner Case said to that end he brought this idea forward about a year ago. The funding will be used to answer some questions about whether this model would be feasible.

Commissioner Stanfill wondered if Commissioner Case had conferred with victim services providers on this. Commissioner Case said that would be the next step, to reach out to all boots on ground entities to refine the concept.

Judge Rhoades said she would not be comfortable moving forward even with just a small pilot without a literature review, and an assessment of whether this has been done in other places. She was also uncomfortable that the plan didn't include a needs assessment as well as a risk assessment. She did not agree that this was not a high-needs population.

Ms. DiPietro said that staff did do that research, and have a memo that staff can circulate to the Commission. As to the defendants' criminogenic needs, that would be addressed by the clinician piece and would clearly need to be in place before this program started operating.

Judge Rhoades said she also worried about waitlists, and that that was the problem with having a 90-day program, as people might be on the waitlist for the programs that they would need to complete.

Commissioner Stanfill observed that the moment when law enforcement has been called to respond to a domestic violence incident is not necessarily a good time to ask a victim about whether they want to participate in a program, as they might not be in a good space to do that. She had concerns about victims having to make a night-of decision. She was not giving the idea a thumbs-down for now but want to follow up with Commissioner Case and read the memo.

Chair Claman said that his understanding was that the motivation for this proposal in part comes from the recognition that there are a number of DV cases where an offender is arrested and the within a week the offender is released and back to living with the victim. That reality can't be ignored. Maybe one solution was not to offer the program to the victim and offender on the night of.

Ms. DiPietro said it was important also to emphasize that the proposal was only to open this program to people accused of misdemeanors. Felonies and dangerous cases would already be screened out. Commissioner Case reminded the group that this project was not yet close to implementation. But he thought it was important to be looking at a different way to do things.

Criminal Justice/Mental Health Summit Update

Justice Bolger reminded the group that the idea for this summit started with the conference he attended along with four judges, DHSS DC Al Wall, and staff from the Trust. They came away from the conference with a commitment to provide a mental health summit in Alaska, bringing together agencies, lawyers, and judges to assess and discuss the current state of the mental health and criminal justice systems.

Since they started planning the summit, there has already been a lot of study and activity in this area just in the interim since the last meeting. That includes the 1115 waiver for mental health treatment, which will probably be approved to begin October 1. A study for the feasibility of a crisis stabilization center, probably Anchorage, is also in the works. Agnew::Beck has done two studies, one for ASHNHA on the civil commitment system and one for DHSS on the forensic psychiatry system.

Justice Bolger said that since many things are being addressed already, he will discuss the need for a summit with the other judges in the coming weeks, and will push the theoretical date of the summit to December. It is certainly something he would want to do after the 1115 waiver goes into effect. Chair Claman asked whether a location had been selected yet. Justice Bolger said that one was not locked in yet. They want to make sure that if the summit proceeds, the program is worthwhile and includes all the latest developments.

1115 Waiver Update

Chair Claman asked for an update on the 1115 Medicaid Waiver Demonstration project.

Gennifer Moreau, director of DBH, explained that this project had been in the works since 2016 and the passage of SB 74. After extensive planning, the project is now finally "real." The project went live on July 1 for substance use disorder treatment. DHSS is now enrolling providers, and there are currently 96 approved locations with 118 providers. They expect the first claims to come in in September. They are targeting major population areas in year 1: Anchorage, Juneau, Fairbanks, plus a few other areas. Reimbursable treatment is available along a full continuum of care, including inpatient and outpatient treatment, community supports, and MAT.

They are thinking they will be able to implement the mental health treatment component of the waiver in October, and will be able to reimburse 28 new services. In this component, the targeted populations are the severely mentally ill and at-risk families. New services will include early intervention for families using a study on child abuse and neglect to focus on the social determinants of abuse and neglect. They are holding off on an IMD exclusion waiver for now.

Judge Stephens wondered how this would interact with the new federal act called Family First, which requires that families receive services before children are removed from their parents. Ms. Moreau said that legislation set federal criteria for best practices, and they were working with OCS to meet with providers to understand gaps and needs. Judge Stephens asked whether programs in Alaska would be required to meet those standards. Ms. Moreau said it would depend on the services. For substance use disorder treatment, they are raising the bar and requiring that programs must be evidence-based; they are hearing from providers that it's a heavy lift. But they are also doing things like opening up provider qualifications to use traditional healers. She suggested going to the DHSS website for more details.

Senator Hughes asked whether there was any movement on Medicaid covering treatment for DOC inmates. Ms. Moreau explained that Medicaid will reimburse for inpatient (in-hospital) care, and might reimburse for care for those residing in a CRC depending on that person's restrictions. Other than those exceptions, CMS has not seemed flexible on reimbursing for inmate care in the past. She has not heard anything to suggest they've changed their mind. Senator Hughes said she had heard that they were considering reimbursing for substance use disorder treatment. She realized this was a bit off topic but she saw a need to reduce recidivism by providing robust treatment in prison, and she thought it would be helpful to get assistance from Medicaid for that.

Judge Rhoades asked whether crisis intervention would be covered by the 1115 Waiver. Ms. Moreau said it would; the new services included 23-hour crisis stabilization, residential crisis services, mobile crisis response, and ACT teams. Judge Rhoades wondered how difficult it would be for previously grant-funded providers to become Medicaid-eligible providers, and whether there was any technical assistance available for that. Ms. Moreau said there was ongoing technical assistance available for that purpose.

Chair Claman asked if he was right in thinking that if someone was released from prison to inpatient treatment in another facility, that would be covered by Medicaid, but if that same person was offered the same program in prison, that would not be covered. Ms. Moreau said that was correct.

Judge Stephens asked whether, if a person is enrolled in Medicaid, then spends two years in prison, that person will still be enrolled in Medicaid upon release. Ms. Moreau said they would be, if they do the right paperwork. Commissioner Goldstein asked how prisoners would get that paperwork in prison. Alysa Wooden with DBH said that was a challenge, because prisoners can't use a computer, and have to complete paper applications. They have tried to train DOC staff to help. Community providers can also intervene and assist in specific cases.

Judge Stephens thought that at some point the Commission should talk about making it easier to retain Medicaid while incarcerated. If that were the case, community-based organizations could then go inside to provide services. He thought the state should do everything possible to address treatment needs in jail. Senator Hughes said that if community-based programs were brought into DOC, then inmates can continue to get treatment with the same provider when released.

Ms. Moreau noted that having a family member in jail was one of the criteria for being an at-risk family and therefore one of the target populations for the Medicaid waiver.

Ms. Goldstein noted that the PDs were hosting a federally-funded program called Holistic Defense that provided services like these. This program is already in place in Bethel but the grant funding is going away in the near future. It could be a model that could be built on.

Commissioner Williams suggested that Commissioners go back to the sequential intercept model which demonstrates the various points at which people can be diverted from the prison system. He wanted to keep in everyone's mind that even if people are provided robust services in jail, almost all of them are going back to the community at some point. These people need to be supported after they are released to retain any gains they might have made while incarcerated. He thought this was a great discussion and noted that the group had been discussing various points on SIM continuum today. The value of the Commission was that it could touch all points on the continuum.

Commissioner Williams explained that the Trust was engaged with Recovery International and community providers and hospitals to develop the Crisis Now model for Alaska. The model aims to reallocate resources so that police can divert the people (or people can self-report) to a crisis stabilization center. He said he would send the Commissioners a link to the Crisis Now website.

Commissioner Dahlstrom said she was happy this conversation was happening, and that she agreed with both Senator Hughes and Commissioner Williams, and agreed that it would be beneficial to look into bringing community organizations into the prisons to provide services.

Janet McCabe explained that she was the chair of Partners for Progress, a high-volume reentry center in Anchorage serving 50 to 100 people per day. Relating to Commissioner Williams' and Commissioner Dahlstrom's remarks, she noted that Partners has been doing a lot more inreach into the Anchorage jail. They have observed that people who are prepared before they leave prison have lower recidivism.

Judge Rhoades thanked Commissioner Williams for bringing the discussion back to the SIM continuum. She said she would appreciate using the committee referral process for what was being discussed. She heard two important ideas: the first, from Judge Stephens, was looking at ways to keep people enrolled in Medicaid while incarcerated. In her mind the only way to do that was to engage the institutional POs. The second idea was how to get Medicaid to cover treatment

for people while they are inside DOC facilities. She wanted to refer those ideas to the Behavioral Health Standing Committee. Judge Stephens so moved, and Justice Bolger seconded the motion. The motion passed with no objection.

Senator Hughes said she went to a rural jails conference in Montana in June. Other states have a smart 911 system, which keeps the details of people with mental health issues, so that information pops up if there is a call from that person's residence. Some states also have a mental health professional associated with the 911 system, who can accompany first responders. There was also discussion of the SOAR (SSI/SSDI Outreach Access Recovery) program at the conference as a way to maximize reentry opportunities.

Pretrial Risk Assessment Revalidation Study (Part 1)

Dr. Troy Payne, professor at UAA's Justice Center, gave a presentation on the completed revalidation study of Alaska's pretrial risk assessment tool, the AK-2S. He explained that it was important to remember going into the presentation that DOC had been handed a series of large tasks with the passage of SB 91, not least creating a whole new division devoted to pretrial. SB 91 also required DOC to create a pretrial risk assessment for anyone detained in DOC custody following an arrest or for whom the prosecution requests an assessment.

The AK-2S was developed by researchers at the Crime and Justice Institute (CJI) using data on pretrial defendants in Alaska in 2014 and 2015. They were required to construct a tool only from static data available in state databases, because the process envisioned for using the tool did not include interviews with the defendants. The tool was required to assess a defendant's risk for failure to appear and being arrested for a new crime if the defendant were to be released from custody.

Dr. Payne explained that CJI then engaged in exactly what they should have done. They conducted meetings with an extensive stakeholder meetings. Stakeholders made suggestions as to what items might be considered for use in the tool.

The tool was required to be equally predictive for race and gender, and items used in the tool were required to be predictive both individually and together. Individual items on the scale were expected to have a p -value of ≤ 0 and the overall scale was required to have an AUC of 0.60

After considering an exhaustive list of items, the researchers at CJI found that failure to appear (FTA) and new criminal arrest (NCA) were two distinct outcomes, and the items that were predictive of one were not necessarily predictive of the other. This is not unusual and is consistent with the scientific literature on pretrial risk.

Many items that might be expected to be predictive did not work as well as they needed to in order to be included in one of the scales. These items were identified by stakeholders as things that the researchers should look at, but ultimately were not predictive enough to be used in the tool: current age, current DUI charge, current drug charge, current public order charge, any

prior felony arrests, any prior convictions, current probation charge, and prior domestic violence arrests.

The tool did not include national criminal history data, because the federal national crime database did not allow pulling bulk data for research purposes. However, individual criminal history can be pulled on a case-by-case basis, which is what DOC's Pretrial Enforcement Division has been doing. They have recorded national criminal history data for each defendant, meaning that data can now be assessed for potential predictive capability.

Dr. Payne explained that DOC had commissioned the revalidation study and that it was limited in scope. The project had four components: 1) ensure that the items on both the FTA and NCA scales continue to meet the expected criteria (listed above) when the tool was created; 2) ensure that each scale over all meets the same expected criteria; 3) test whether certain new items meet the same criteria and if so, whether their inclusion improves the performance of the tool; 4) whether national criminal history information meets the criteria and improves the performance of the tool.

Senator Hughes said she spoke to someone who talked about how these tools could potentially break down the NCA scale into violent and nonviolent NCA, and wondered whether that was possible with this scale. Dr. Payne said that was not within the scope of his project. Ms. DiPietro said that CJI had looked into that idea but concluded that there was not enough data to perform that analysis. They suggested that over time, with more data collection, that might be possible.

Senator Hughes said she was thinking of how different things are now 2014-2015, the years when the data to create the tool came from. Since that time the opioid crisis grew exponentially, for example. She asked when this kind of study would be done again. Dr. Payne responded that revalidation was never done. It should be seen as a cycle.

Public Comment

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

Pretrial Risk Assessment Revalidation Study (Part 2)

Judge Rhoades wondered at what point a revalidation becomes a revamp. Dr. Payne said it depends on what the person requesting the analysis wants. A total revamp would be something that would have to be planned for from the beginning. Chair Claman noted that since DOC commissioned this study it was up to DOC to decide what to do next.

Dr. Payne clarified that the term "revalidation" does not necessarily imply a foregone conclusion or that there should not be any changes to the tool. As populations evolve, these tools should be revalidated periodically and adjusted if necessary.

[At this point Commissioner Kevin Clarkson joined the meeting; Deputy AG John Skidmore served as his proxy until this point.]

Dr. Payne explained that his data set was comprised of all criminal cases in which a risk assessments was performed in 2018, with some cases with missing data removed. This wound up being just under 15,000 cases.

He then looked at those cases to determine which ones experienced pretrial failure—either FTA or NCA—within 2018. To be assessed for pretrial failure, the person must have been out of custody for at least one day before disposition (or before the end of 2018) and must not have pled guilty at arraignment. He said it was important to note that the data is from calendar year 2018, so not every case in the data set was fully disposed. If he had excluded those cases, a large number of cases would have dropped out of the data set and the analysis would have been less meaningful.

Dr. Payne explained that 58.5% of the 2018 cases had no failure, meaning the defendants in those cases never had an FTA or NCA before the case was disposed or before the end of the year. 18% of defendants had an FTA incident (in which a warrant was issued for failure to appear) and 32.8% had an NCA. Of the new criminal arrests, 26% were for Violation of Conditions of Release. Roughly 7 in 10 of new criminal arrests were for nonviolent misdemeanors. Roughly 1 in 10 included violent felony charges.

Dr. Payne explained that these numbers could not be directly compared with the baseline rates that CJI used in developing the tool, because all cases in the CJI data set were fully disposed cases. The baseline rates in that data set were 14% FTA and 35% NCA. For the current data set, he would expect the rates to go up a bit, but not by much, if he were to reassess when all cases were disposed.

Dr. Payne went on to summarize the efficacy of the tool itself. As noted above, the tool has two separate scales, one for FTA and one for NCA. The FTA scale had some problems. It was constructed as a scale with scores ranging from 0 to 8. However, no defendant ever scored an 8, not even those held in custody pretrial.

The reason for this was that two items included on FTA scale were very rarely scored a “yes” (meaning one point would be assessed), and even more rarely scored together, making it nearly impossible to score an 8. Those two items were “currently booked on an FTA” and “currently booked on a non-DUI motor vehicle charge.” After SB 91 passed, FTA in most instances was reduced to a violation, as were most non-DUI motor vehicle charges, meaning that it would be rare for someone to be “booked” under one of those items as a criminal charge. In 2014-2015, the period from which CJI took its data to design the tool, those things were still crimes. Essentially, the tool was designed for a legal environment that no longer existed.

Despite this flaw in the FTA scale, the scale was effectively predictive of risk. Those assessed as high risk were more likely to have an FTA incident than those assessed as moderate or low risk. Risk scores correlated to FTA rates in a linear fashion, meaning that the higher the risk score, the higher the FTA rate. There was a big jump in FTA rates between defendants who scored a 5 and those who scored a 6.

The non-problematic items in the FTA scale continue to be predictive. Dr. Payne tested new items for their possible inclusion in the scale. Items that did not work (were not predictive) included current age, any aspect of the current offense that was not already included in the FTA scale, and prior convictions of any seriousness. Items that did work were prior *felony* convictions, and any other pending cases.

Chair Claman asked why prior felony convictions was predictive but any prior conviction was not. Dr. Payne said that his best guess was that misdemeanors are more common, so having a prior record doesn't differentiate among defendants well enough. An item will not be predictive if many people have that same characteristic.

Judge Rhoades wondered whether the items relating to FTA and driving offenses might be relevant once again now that those items are now crimes again with the passage of HB 49. John Skidmore explained that FTA reverted to the pre-SB 91 version of the offense but driving with license suspended did not. Judge Stephens thought it was worth looking at.

Dr. Payne said that a risk assessment was like a pre-flight checklist. It contained a list of standard things to look at, but there could be other red flags in an individual case that could be just as or more important than the risk assessment score. It was not a one- step release decision. For the two previous items that are now offenses again, he would recommend looking at those again for the next revalidation. We don't know if those items are still predictive for the current population, so the next revalidation would need to do that analysis on a population for whom that law is once again in place.

Dr. Payne said that by adding the two new items to the scale (prior felonies and other pending cases), the scale was predictive of risk and defendants in the 2018 data set would have scored an 8 under this revised scale. The revised scale was equally predictive across gender and race as well. He suggested adjusting the margins of the low, moderate, and high designations so that low was a score of 0-2, moderate was 3-7, and high was 8. There were relatively large jumps in the FTA rate between those scored as a 2 and those scored as a 3, and between those scored as a 7 and those scored as an 8.

Dr. Payne said his analysis of the NCA scale showed no faults in the scale's design or predictive capability. He would, however, recommend renorming the scale (i.e. resetting the boundaries between low, moderate, and high). Under this scale, more than half the defendants were assessed as low risk, about a third were moderate risk, and about 1 in 7 were high risk.

Dr. Payne said that while there was nothing wrong with the current items on the scale, DOC staff expressed practical difficulties with the items that have a lookback period: total number of arrests in the past 5 years, total number of prior convictions in the past 3 years, and total number of prior probation sentences in the last 5 years. DOC would prefer to have the same lookback period for those items because it is time consuming to look through the databases to score these items. Dr. Payne found that if the same time period were to be used for those three items, the three-year period was more predictive than the five-year period.

DOC also asked Dr. Payne to look into whether the new items on the FTA scale should also be added to the NCA scale. Dr. Payne determined that adding those items did not make a statistically significant difference to the scale's predictability. Adding them to the scale would be harmless. With those items added, the scale would become a 12-point scale. Dr. Payne suggested norming the scale by designating scores of 0-3 as low risk, 4-9 as moderate risk, and 10-12 as high risk.

[At this point, Dr. Payne took a break from his presentation and the group heard a presentation from Thea Agnew Bemben from Agnew::Beck. The summary of that presentation is below the conclusion of this presentation.]

Dr. Payne reiterated that the researchers who developed the AK-2S were not able to get out-of-state criminal history for defendants in their 2014-2015 data set in bulk, because the FBI doesn't allow the bulk collection of that data from its NCIC database. However, DOC has been collecting that data on an individual basis since the AK-2S went live. Accordingly, he was able to assess whether using any aspect of out-of-state criminal history would be predictive of pretrial failure.

He found that none of the items he analyzed were predictive, no matter how they were scaled. The NCIC data is limited, and it's not always possible to tell whether an item on a person's criminal history is a felony or misdemeanor or at what point in time it occurred. In all, less than a quarter of the 2018 cases had out-of-state criminal history. Most people who have out-of-state history also have in-state history, another reason why it might not be predictive. However, judges should know about this history if it appears on a defendant's record and DOC should continue to provide this information along with their risk assessments.

Mr. Skidmore suggested that judges should have access to complete NCIC histories for defendants. Judge Rhoades said that judges don't have access to NCIC themselves so someone needs to provide it before arraignment. Judge Stephens said that kind of information is harder to come by on weekends too.

Senator Hughes said that Alaska was the only state to require that judges use the risk score in the release decision. Dr. Payne said that any tool is only that, and generally shouldn't be a substitute for professional judgment. Judge Stephens pointed out that until HB 312 passed, there were a few offenses (nonviolent misdemeanors and C felonies) where a low or moderate risk score would mandate release. HB 312 removed that provision.

Dr. Payne said that no risk assessment should be robotically applied. His concern for the state of Alaska was that no one was tracking the reasons behind the release decision, and if a judge was departing from the guideline recommendation given by the tool, why that was. Collecting that information would be helpful for future revalidations of the tool, as well as looking at regional differences in release decisions and assessing training needs for Alaska's judges.

Dr. Payne explained that he gave DOC recommendations in line with what he had talked about today. His understanding was that they were working on implementing them.

Commissioner Stanfill recalled that one reason for recommending a risk assessment tool was that it was less likely to be racist, and she wondered if that was the case. Dr. Payne said he didn't have adequate comparison data to say whether the racial disparity in pretrial release was now better or worse.

Ms. DiPietro reminded everyone of the context: Dr. Payne's study was an assessment of the risk assessment tool, not of all pretrial releases. The Alaska Judicial Council's most rigorous study on pretrial release found statistically significant racial differences in who was released before trial and who was not, and that being detained pretrial translated into longer sentences. The Judicial Council did another study just before the Commission proposed criminal justice reform, and it found the same disparity.

Ms. DiPietro continued that the Judicial Council staff just did another study of all pretrial releases, and that recent data suggested there was less racial disparity. It is important to know that the study of the risk assessment, which only looked at defendants held in jail pretrial, is different from a study of release rates, which looks at all pretrial defendants (those released immediately on a bail schedule, those released after a risk assessment and arraignment, and those in jail). The recent study indicated that the racial disparity was not gone but that the disparity was decreasing.

Commissioner Dahlstrom said that Deputy Commissioner Jen Winkleman and Deputy Director Delila Schmidt were both on the line with her and they were still working though the final report for the study. She appreciated the work of Dr. Payne.

Forensic Hospital Feasibility Study

Thea Agnew Bemben explained that her consulting firm, Agnew::Beck had been tapped to conduct a feasibility study for a forensic psychiatric hospital in Alaska for the Division of Behavioral Health and the Mental Health Trust Authority. She gave the "speed version" of the study's findings and recommendations.

Ms. Bemben said that the original RFP was to look into relocating and/or expand API's current forensic psychiatric unit. They expanded the scope of the project as it went on. They also identified policy, process, and statutory changes that would be required to address the competency evaluation and restoration backlog, and researched the forensic psychiatric workforce and alternatives to inpatient restoration. They also looked at improvements in data tracking. There is not one data tracking system for this population, so Agnew::Beck compiled the data needed for this study.

The target population for the study was people in the forensic system and those peripheral to it—people who need a competency evaluation, people deemed incompetent to stand trial (IST) and in need of treatment to be restored (restoration), people who have been deemed IST and also non-restorable after going through restoration (specifically those who were charged with serious crimes and then civilly committed), and those who have been found Not Guilty By Reason of Insanity (NGRI) and civilly committed.

First, they mapped the status quo of the forensic psychiatric system using the sequential intercept model, following national best practices. They found there is a significant delay once a defendant is ordered to have a competency evaluation (with an average wait of 7.5 weeks) and also when waiting for restoration (with an average wait of 16). Once a person is transferred to API for restoration, their average length of stay 75 days. All told, an average, complete trip through the forensic system is a 9-month process.

The identified goals to improve the system were to 1) increase safety for people with mental illness and for the community and reduce inflow into the criminal justice system, 2) increase system efficiency so that people can proceed through the competency evaluation and restoration system without delay, and 3) reduce returns to the system by connecting people to long-term supports.

There has been a significant increase in the demands on the Taku Unit (the 10-bed unit at API that conducts competency evaluations and restorations) over the last few years, with increasing orders from the Anchorage courts and increasing evaluations completed. There is no data kept on the number of competency evaluation orders issued statewide.

The backlog of people waiting in the system has also increased. API added more evaluators to address the evaluation backlog in 2019, but the increase in evaluations also led to a greater backlog in people who have been ordered for restoration and are waiting for a bed.

For people admitted to the Taku Unit, the majority (73%) had a primary diagnosis of schizophrenia. The most common secondary diagnosis was substance use disorder (50% of secondary diagnoses).

56% of people evaluated were deemed incompetent to stand trial. About 2/3 of all competency cases in 2018 were felony cases. Anecdotally people in Anchorage were reporting that many of these cases were misdemeanors, but that was not true statewide. Ms. Bemben noted that misdemeanor cases also often get dismissed before the process is complete and wouldn't be included in that data. Commissioner Williams also noted that those were felony charges, and that not everyone in those cases would have a felony conviction.

Commissioner Stanfill asked why misdemeanor cases are often dismissed. Ms. Bemben explained that those cases will be dismissed if the defendant is held in custody awaiting evaluation or restoration for a longer time period than the typical or maximum sentence for the offense charged. Judge Rhoades added that there was case law on this point. She wanted to point out that this happens before their case even gets started.

Ms. Bemben added that 72% of people were held in DOC custody while awaiting a competency evaluation. Agnew::Beck's full report (page 18, figure 14) showed that over time, more cases were being dismissed in interest of justice, and fewer defendants were being found competent.

Many people are cycling through the civil and criminal systems. Of the forensic patients admitted in FY18, 48% had a prior civil or forensic commitment to API between FY15 and FY18.

Ms. Bemben explained that addressing these issues was an urgent need. In recent years, five Western US states have been sued for very similar delays and backlogs. When those lawsuits were filed, the states were experiencing the same wait times as Alaska is now. The settlements for those lawsuits required pretty drastic changes and steep fines for failing to meet those requirements. Washington and Colorado have paid millions of dollars in fines. Agnew::Beck estimated that Alaska might be required to pay around \$3.4 million dollars for one year's worth of fines under a similar settlement agreement.

Agnew::Beck's recommendations began at intercepts 0 and 1 of the sequential intercept model, calling for increased diversion away from the criminal justice system. There is already a diversion program in the form of therapeutic courts, but many competency orders come from those courts, and it would be better to divert prior to that. On civil side, hospital emergency departments are overwhelmed. Some crisis intervention teams operating within some law enforcement divisions, but their use is not universal.

There needed to be diversion in the form of a crisis stabilization center and increased use of crisis intervention teams. Part of the issue with API is that they have taken on crisis services. Agnew::Beck was working on bringing the Crisis Now model to Alaska with the Trust. In addition to the improved crisis response, they also recommended creating a court liaison program. This was modeled off a program in Connecticut. The liaison compares the court docket with a list of individuals in treatment and coordinates the state response. Commissioner Goldstein suggested that such a person could also cross reference the docket with people in the public guardian program.

For intercepts 2 and 3 (initial hearings and competency evaluation process), Ms. Bemben noted that one problem at this point in the system was that API's forensic psychologists do both competency evaluations and restoration; this is not the case in most states because of the potential for a conflict of interest. There is also limited oversight of the forensic system; most states have external quality control.

Agnew::Beck recommended addressing these deficiencies as well as implementing a statewide competency calendar. Their report detailed the needed resources and next steps as well as cost estimates.

Judge Stephens asked whether the statewide competency calendar would keep track of everyone in the competency/restoration system. Ms. Bemben said it would, and would make sure everyone was tracked. Judge Rhoades said that she was part of the team that developed the coordinated competency calendar for Anchorage, noting it was helpful to have the same practitioners dedicated to this calendar. She thought it made sense to move the project statewide. Currently, API was just treating people in the order in which they come in; there is no triage, and no way to distinguish between felony and misdemeanor defendants.

Justice Bolger said Judge Henderson was coordinating the Anchorage calendar, and suggested discussing the concept with her, Judge Rhoades and Judge Stephens in the near future.

Ms. Bemben explained that restoration is currently a one size fits all approach; other states have multiple levels of restoration services. The restoration process for juveniles is unclear and informal; typically someone from API will just walk over to McLaughlin if asked. It is also difficult to involuntarily medicate people in Alaska, which makes it difficult to restore people.

Agnew::Beck projected the future need in the year 2026 based on current data; it suggested adding forensic beds to API, implementing jail-based restoration and formalizing the juvenile restoration process. There were immediate steps that could be taken now to achieve these things. In the long term, Title 12 of the Alaska Statutes would need to be amended.

Ms. Bemben explained that jail-based restoration was an option used in other states, and would not be appropriate for everyone. It was for defendants who are high risk but amenable to treatment and not requiring inpatient care. Agnew::Beck's estimate for who would be eligible for jail-based restoration was conservative.

Commissioner Dahlstrom said that DOC has some very difficult people in custody right now. She felt obligated to say that DOC corrections staff was not trained on mental health, and many individuals were not getting the care they need. She was open to discussions on creating a therapeutic space but they were already operating at capacity and she was worried about space.

Ms. Bemben said those points were well-taken. Agnew::Beck worked with Laura Brooks and Adam Rutherford in DOC's Health and Rehabilitative Services Department to determine where it would be best to put people. Most of these individuals are already at DOC anyway, so Agnew::Beck's report lists two alternatives to put these folks with the best staff. Commissioner Dahlstrom asked whether that would be DOC staff or API staff. Ms. Bemben said that would depend; they worked out costs for either scenario. Commissioner Dahlstrom also noted that DOC has a real shortage of providers (this is a problem statewide). Ms. Bemben agreed, and said that the report compares Alaska job benefits to other states, and explores ways to make working here more attractive for providers.

Judge Rhoades asked whether the study looked at outpatient restoration. Ms. Bemben said they looked at some models but concluded it was not considered robust enough and didn't seem promising for Alaska given the provider shortage.

The next part of the study looked at intercepts 4 and 5, covering discharge from the system and community follow-up. The status quo was that there are currently limited discharge options for people who have been found incompetent to stand trial even after restoration; this is especially true for those who are homeless. Alaska also has low rates of restoration compared to other states (44% compared to an average of 70%), and a very high bar for civil commitment.

The population that is not restorable is mostly made up of people whose primary diagnosis is psychosis. They make up 88% of the forensic population and 92% of those found not restorable.

Agnew::Beck projected the demand for discharge options for non-restorable patients through FY2026, estimating that about 70 individuals annually will not be restorable. Agnew::Beck suggested that discharge options for that population should be a combination of civil commitment beds within a Complex Behavior Unit at API, structured residential group homes, and supportive housing units.

For improvements across the system (at all intercepts), Agnew::Beck suggested creating a Forensic Mental Health Coordinating Council to provide oversight over the forensic system, and developing a system for statewide data tracking and reporting. They listed the data points that should be collected on a weekly, quarterly, and annual basis.

In conclusion, Ms. Bemben reiterated that many of their recommendations could be implemented immediately, within the next six months. Some of them could happen tomorrow if people wanted to put in the effort. They also listed the medium-term recommendations that could be implemented between 6 months and 2 years from now, and the long-term recommendations that could be implemented in 2 or more years.

Potential Legislative Initiatives re: DV/SA from the Dept. of Law

Mr. Skidmore explained that Law had been looking at four potential initiatives related to domestic violence and sexual assault (DV/SA).

The first was expanding an existing pilot project of making conditions of bail release readily available to law enforcement in Fairbanks. Judge Stephens was surprised this was not available everywhere; in his district, they send the conditions of release to law enforcement. Ms. DiPietro said that was also the practice in Nome.

Mr. Skidmore said that in most places around the state, bail conditions are not accessible to the officer on the street. Law would like to take the Fairbanks project statewide.

Chair Claman wondered how the pilot in Fairbanks got started, whether it was because of practitioners making a concerted effort, and whether a statute change would be required to take it statewide. Justice Bolger noted that it would need to be a big effort because it would require all of the judges in the state to agree on a common wording for bail conditions. Ms. DiPietro said that there would also need to be some kind of common online repository for this information. Mr. Skidmore proposed that a workgroup look at what would be needed to expand this project statewide.

Mr. Skidmore said Law's next area of interest was to look at Alaska's consent laws. He had spoken to Diane Casto with CDVSA about this and she was supportive. Senator Hughes noted that she wanted to revise the consent laws with HB 49. Mr. Skidmore said he had asked her to hold off on that for further consideration.

Commissioner Stanfill said that the Sex Offenses Workgroup already had this on its radar.

Mr. Skidmore said that the third topic on Law's list was to look into human trafficking and sex trafficking. A previous commission looked at these issues a few years ago but nothing came of it.

Mr. Skidmore said Law's fourth proposal was to coordinate training statewide for all agencies involved in the criminal justice system. He has been hearing about inconsistencies in training, and thought it would be a good idea to have all parties to criminal cases on the same page. What the Commission is now hearing about communication with victims would be a good example of a topic this coordinated training could cover.

Commissioner Goldstein pointed out that the defense agencies do not have any money for training; that money was taken out of the budget.

Next Steps

Shelley Hughes said she also wanted to push for "Step 2" of HB 49, which involved looking at what's happening behind the prison walls and reentry. She would like to be able to take something to legislators next session. She noted that other states and countries have lower recidivism rates. She thought the Commission could make recommendations on how to do that.

Chair Claman said that the Commission had discussed earlier this year how this body can be most useful. The challenge is to take up issues that the legislature will respond to. The Commission made recommendations that went into SB 91 and SB 54, but had no say in HB 312 or HB 49. He suggested looking realistically at what the best use of the Commission's time might be. He also suggested that Commissioners take a careful look at the Sex Offenses Report, which he was still working through. He suggested making the recommendations around topics that the legislators are interested in.

Judge Stephens said he could talk at length about the genesis of SB 91, and the letter from the legislature requesting recommendations to make significant reductions to the prison population. The reality is that post HB 49, we will have more people in jail for a long time. He thought that what we do behind the prison walls has been a longstanding issue, and was not really addressed in SB 91. If something is a best practice, he thought the Commission should look into it and make recommendations, even if they will be put on shelf and not looked at by the legislature. He hoped that what we are doing behind the prison walls would be on the agenda. He suggested sending the topic to a workgroup to look at what are other states are doing.

Senator Hughes said she understood the frustration with not getting things through to the legislature, but she also thought there was bipartisan support for action on things like behavioral health, and she was ready to take up that banner.

Commissioner Stanfill said that the Commission has always used the subcommittee process and noted that right now the active subcommittees/workgroups were devoted to behavioral health and to victims. The Sex Offense Workgroup was ready to look at consent and

other statutes. She wanted to keep being the body that would take a deep dive into the research and make recommendations.

Chair Claman suggested that for the next meeting, the Commission would identify the key policy areas to look at in the year ahead.

Ms. DiPietro reminded the Commission that it was charged with making recommendations for reinvestment. There are no savings to be spent, but regardless of that, the Commission can still talk about recommendations for areas that should be funded. Ms. Dunham noted that she had included last year's recommendations for reinvestment in the draft of this year's annual report as a placeholder. Ms. DiPietro reminded the group that last year's report made recommendations for principles to be followed in reinvestment and suggested funding categories of how reinvestment should be spent. She suggested that the Commission could look into put dollar amounts on things.

Judge Rhoades noted that there was also the Results First study, which looks at what is effective in terms of behind-bars treatment. There is a lot of work that the Commission could do based on what has already been done.

Commissioner Williams said he echoed those remarks. The Commission has already made evidence-based recommendations that would address a lot of what has been discussed at this meeting. He suggested looking back at those. He didn't want to create recommendations just for that sake.

Chair Claman noted that Appendix C and the text of the draft annual report both included information on recommendations the Commission has already made. He suggested that the Commissioners spend time prior to the next meeting looking through the draft annual report.

Annual Report Rough Draft

Ms. Dunham explained that she had circulated a draft of the annual report. The draft was a skeleton and would be fleshed out; there were placeholders for data that would be added in once that information was provided by the agencies. She encouraged the Commissioners to look at the draft report and let her know if they had any changes or additions to suggest.

Chair Claman noted that Commissioners should also provide or update their biographies for inclusion in the report.

Scheduling

Staff

The Commission's next meeting would be October 7 (already scheduled); the Commission agreed to meet again the first week of December, probably the 3rd. For subsequent meetings the group suggested that Barbara propose meeting dates based on the previous years' meetings

Alaska Criminal Justice Commission

Meeting Summary

Friday, May 31, 2019

10:00 am – 2:30 p.m.

Alaska Mental Health Trust
3745 Community Park Loop, Anchorage
And teleconference

Commissioners present: Joel Bolger, Matt Claman, Kevin Clarkson, Nancy Dahlstrom, Beth Goldstein, Amanda Price, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners absent: Adam Crum (Al Wall served as proxy for Commissioner Crum), Shelley Hughes (Regina Largent served as proxy for Senator Hughes)

Participants: Troy Payne, Brad Myrstol, Kim Stone, Tony Piper, Lizzie Kubitz, Alysa Wooden, Gen Moreau, Beth Russo, Triada Stampas, Henry Randolph, Ashley Bauman, Eugene Carl Haberman, Don Habeger, Teri Tibbett, Nancy Meade, Araceli Valle, John Skidmore

Staff: Teri Carns, Brian Brossmer, Susanne DiPietro, Staci Corey

Approval of Meeting Agenda

Judge Rhoades moved to approve the agenda and Commissioner Razo seconded the motion. The agenda was approved without objection.

Approval of Previous Meeting Summaries

Commissioner Razo moved to approve the three previous plenary meeting summaries and Commissioner Williams seconded the motion. Project attorney Barbara Dunham explained that Judge Stephens had pointed out an incomplete sentence in the November 28 summary. She suggested removing the incomplete sentence. There was no objection to approving the summaries with the November 28 summary so amended.

Victim Listening Sessions Update

Ms. Dunham explained that last fall, the Commission had directed staff to conduct victim listening sessions throughout the state. An ad-hoc workgroup convened to give staff more direction, and suggested the sessions should if possible be conducted in Juneau, Fairbanks, Ketchikan, Bethel, Nome, Kotzebue, Anchorage, and the Mat-Su. Thus far, the Commission has held sessions in Juneau, Fairbanks, Ketchikan, and Bethel. Attendance at these events has varied, with the most successful attendance in Fairbanks. She credited staff research analyst Staci Corey with putting a lot of work into outreach and advertising for these sessions.

Ms. Dunham went on to explain that given the relatively low attendance in the most recent session in Ketchikan and Bethel, staff brainstormed different ways to reach victims. Staff recently put up a survey asking for the same kind of feedback elicited at the listening sessions. The survey had been live for two weeks and in that time over 100 responses had come in. One very common theme from both the listening sessions and the surveys was that victims felt like there was a lack

of communication at all stages of the criminal justice process. Ms. Dunham said she was looking for feedback from the Commission on how to proceed with this project.

Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, asked Ms. Dunham to give a sense of who attended the listening events. Ms. Dunham said that there was typically a variety of people who had experienced a variety of crimes.

Judge Rhoades asked how long the participants talked and if there was a presentation, how long the presentation ran. Ms. Dunham said that she began each session with a presentation that became shorter with each session. There were few enough participants that there was time for anyone who wanted to talk to talk without a time limit. Sometime participants also had questions for the Commissioners.

Commissioner Stanfill suggested forming a victim-centered workgroup to look at common themes, and come up with ways to work on victims becoming part of system.

Chair Claman asked whether the Commission thought there should be more listening sessions, and if so, how many more.

Commissioner Price wanted to know first what outreach had been done for the sessions that had already been held. Ms. Corey explained that outreach and advertising had been conducted via newspaper ads, radio ads, Commissioners or staff speaking on radio or TV shows, state victim service agencies and advocates, local shelters and victim advocates, local social services and mental health agencies, local law enforcement, local native corporations or village leadership, local courts, DA offices, area legislators, city councils and mayor's offices, chambers of commerce, health and hospital organizations, and the local branch of the university, if applicable. Many of those contacted in turn posted about the upcoming session on bulletin boards and online.

Commissioner Price said it sounded like the outreach efforts were tremendously comprehensive, and wondered if they were successful. Getting this kind of input is valuable, but she wondered whether the attendance merits the effort.

Commissioner Razo said he thought the sessions were valuable, even though only a small number attended the session he went to in Ketchikan. Everyone there spoke about DV offenses, which is hard for people to talk about, and he had respect for those who did. He thought there were opportunities to have even more effective sessions. AFN, in Fairbanks this year, would be a good opportunity, as there are many attendees, many of whom are likely affected by crime. He thought it was worth looking into. He also still thought going to the northwest part of the state was a good idea, either Nome or Kotzebue.

Commissioner Goldstein asked whether potential participants might have shied away because of the public nature of the forum. Ms. Dunham said that was a reasonable assumption given the response to the survey, which could be completed anonymously, compared to the attendance at the listening sessions. But, she said, victims were also not monolithic, and those who did speak up at the listening sessions seemed glad for the opportunity. Many attendees and survey responders said they felt like they weren't heard by the criminal justice system and therefore might welcome the opportunity to tell their story.

Commissioner Williams said that he had attended the sessions in Juneau and Fairbanks, and noted at the Fairbanks session that there were people who listened and didn't share during the public portion of the meeting but wanted to share privately afterward. He noted that staff and Commissioners attending made it clear they were open to other communication and gave out the Commission's contact information. He also agreed that the listening sessions should continue, though he was not sure at what frequency.

Commissioner Dahlstrom said she also supported continuing the sessions, even if numbers were not as high as the Commission might have hoped. She thought that people appreciated the opportunity, and volunteered to help put together a session in Eagle River.

Deputy AG John Skidmore said he would be interested in looking at some kind of record of the sessions. He thought it was important to preserve the ideas from this work. He also thought holding a session at AFN was a good idea.

Ms. Dunham explained that there were recordings of each of the sessions, though it might be hard to hear because not everyone who participated wanted to talk into a microphone. She and other staff members had also taken notes. Also, with the volume of survey responses collected it should be possible to analyze the responses statistically, in addition to getting anecdotal information. She said this information could go in a separate report to the legislature or be included in the Commission's annual report. Commissioner Claman said it would be good to have this information written down in some form for the next meeting.

Judge Rhoades agreed that the Commission should continue to do the listening sessions. Victims, like everyone else, are busy people, and she thought it was important to have an ongoing opportunity. She was also interested in Commissioner Stanfill's idea to have a workgroup to process this feedback.

Beth Goldstein wondered if holding private listening sessions would be worthwhile; not everyone wants to tell their story in public.

Chair Claman said it sounded like there was support for moving forward with more listening sessions: at AFN, in Anchorage or Eagle River, and in northwest Alaska in Nome and/or Kotzebue – so about three or four more sessions. He wondered whether the Commission should try to do these sessions before November.

Ms. DiPietro said it was probably best to avoid scheduling them in the summer or even September, so as not to interfere with fishing or hunting season.

Chair Claman noted that Anchorage schools start in mid-August, and AFN was in mid-October, and Mr. Skidmore suggested that the northwest trip might be best after AFN, and before the end of the calendar year.

Regina Largent, staff to Sen. Hughes, suggested hosting a call-in session via teleconference to include people who can't get to hub communities.

Chair Claman called for a motion to hold a sessions in the Anchorage area in mid-August, at AFN, and in the northwest at a date to be determined (before the end of the year).

Commissioner Williams so moved and Mr. Skidmore seconded the motion. The motion passed without opposition.

[Note: at this point, Commissioner Clarkson had not yet arrived to the meeting and Mr. Skidmore was serving as his proxy.]

Restitution Update

Nancy Meade, general counsel for the Alaska Court System, explained that the Court System took over collection of restitution from the Department of Law about two years ago. Since then, the Court System considers the effort to be going well. There is a lot of old restitution still owed, but in FY18, the Court System collected more than the Department of Law had in prior years. The amount collected in FY18 was \$1.7 million, and the amount collected thus far in FY19 is \$1.9 million. The Court System has been able to do this work with fewer dedicated resources than the Dept. of Law, as it has been able to find efficiencies. Ms. Meade thought it was helpful for victims to have single point of contact. The staff dedicated to this project (one FTE plus a supervisor) had also been successful getting payments from restitution payment plans set up by DOC and DJJ.

People who are owed restitution have the option to collect for themselves, but most chose to have the Court System do it. Ms. Meade thought it was helpful for them to have a comprehensive website devoted to restitution collection with FAQs, as the site gets a lot of hits. The Court System sends out checks to the victims when it collects money from the defendants. It collects the most in October through January due to PFD garnishment. The Court System receives an average of 20-30 phone calls per day about restitution. In FY18, it issued about 4,000 checks, and it is on track to issue a similar amount in FY19. About 40% of payouts go to private victims, 45% to businesses and corporations. The biggest recipients are insurance companies or businesses such as Carrs and Fred Meyer. The state and federal governments receive about 15% of the payouts. These are for crimes such as Medicaid fraud or vandalism to state property.

One challenge to the restitution collection project is a relative lack of resources, as there is only person devoted to it full time, plus the help of a supervisor. They prioritize the processing of payments to victims. Another challenge is working with prosecutors to get restitution judgments.

Judge Stephens recalled that when the Department of Law had this responsibility, they had two lawyers working on it. The program ended suddenly and the Court System took it on because there was no other entity that could do so.

Chair Claman asked whether the Court System kept track of the amount of restitution collected versus the amount ordered. Ms. Meade said she did not have that information, though she knew that the collection rates under the Department of Law ranged from 10% to 48%.

Commissioner Stanfill asked whether, when POs make restitution plans for probationers/parolees, the payments go through the Court System. Ms. Meade said they did. Commissioner Stanfill asked if there was any way of knowing whether the provision requiring POs to set up these payment plans helped collect a greater percentage of restitution owed. Ms. Meade said it was hard to say; the Court System is constrained by its limited resources and does not have

robust data collection mechanisms in place. They are focused more on accurate accounting. She could look into it. Ms. DiPietro reminded the group that the Commission had put out a report on in December 2016, and it had data on collection rates.

Chair Claman asked whether a new written report could be prepared easily, something that details how much restitution has been distributed for how many people, etc. – something simple. Ms. Meade said she could work with Commission staff to put something together.

Revalidation Study

Dr. Troy Payne explained that he had results for his revalidation study, but he only finished it this week and DOC hadn't had time to look at it yet, so he would not be reporting on those results at this meeting. In any event, he was on track to finish this work by the end of the grant period at the end of this year.

Dr. Payne explained that essentially, the purpose of the project is to check the math on the pretrial risk assessment tool that was created in 2017 by analysts from the Crime and Justice Institute (CJI). CJI developed the tool using data on pretrial defendants from 2014 and 2015. Given changes to the law and other external factors, the tool should be checked to ensure it is still valid for Alaska's pretrial population. It is also generally a good idea to check the instrument continually to ensure that it continues to be predictive.

Dr. Payne noted that the purpose of the project was not to do a process study, or a comprehensive pretrial release study. He was looking only at whether the tool continued to be predictive for failure to appear (FTA) and new criminal arrests (NCA), and whether the risk scales classify defendants appropriately. It could be that the tool is generally predictive but the boundaries between low, medium, and high might need to be adjusted. He is also looking at whether the baseline rates for FTA and NCA changed. CJI found a 14% FTA rate and around a 38% NCA rate.

Specifically, Dr. Payne said he was looking at whether the tool was equally predictive for all regardless of gender or ethnicity. He was also assessing whether considering out-of-state criminal history changes the results. Out of state criminal history was not available when the tool was being developed because the federally-administered National Criminal History Database does not allow pulling bulk data for research. For this reason, it is common for many risk assessment tools not to include this information. Since the tool went live in January 2018, pretrial enforcement officers have been able to record out-of-state criminal history going forward for everyone assessed.

Chair Claman said he was happy to schedule another meeting to get an update with results of the revalidation study. He suggested that Dr. Payne also might want to explain why the tool predicts NCA and FTA only.

Dr. Payne explained that those were the two things the tool measures because it was designed only to be predictive for the pretrial period. The primary concerns for this period are public safety and whether the defendant will show up for court. Chair Claman noted that the constitution also requires that those be the only concerns in the release decision because of the presumption of innocence.

Dr. Payne said that was correct; though he noted it was also possible to use a pretrial tool to assess the extent to which defendants need services. Other risk tools used in other jurisdictions also address need. Items on the scales used in Alaska's tools look at a defendant's past; one restriction on CJI was that the state wanted no interaction with defendant to create the risk score. In other states, a pretrial services department will interview the defendant not just about the past, but about the present—things like whether the defendant has access to transportation, employment, or childcare. Alaska is not assessing the defendant's present needs, which limits the ability to predict pretrial outcomes, as some factors predictive of FTA are not historical but current practicalities.

Judge Stephens asked whether the study looked only at those assessed, and not those released OR or issued a citation and summons. Dr. Payne said that was correct. To be assessed using the pretrial risk assessment, the person must have been in custody pending an initial hearing. Prosecutors can also request that risk assessments be done for those not in custody, but that is rare relative to the number of people assessed because they are in custody. The tool was intended to help guide the release decision and therefore not needed for people who have been released. This was a limitation of the study, because it did not look at the entire pretrial population.

Chair Claman wondered if this presented difficulty in comparing current data to previous data. Dr. Payne said it was hard to compare 2014 data to 2018 data, and noted that another thing that changed in addition to the law was the bail schedule. Judge Stephens noted that the current bail schedule is similar to what it was in most places before 2016, but for some crimes and in some districts there will be significant differences. Dr. Payne said he was not sure of the extent to which CJI included bail schedule release in its analysis, but he thought the populations used in the two studies were similar. Chair Claman suggested that should be something noted in reporting the outcome of the revalidation study.

Dr. Payne said another aspect to note about the analysis was that CJI was using fully disposed cases for its data set. The data available for this study was for cases started within the 2018 calendar year. The data set couldn't be limited to fully disposed cases because there would not be enough volume—often cases take more than a year to complete. The data can be used to compare predictability, but it will throw another wrench into the analysis of other factors. He could do further analysis later on, after the cases are disposed, if agencies so wish; his focus has been on the primary purpose, revalidating the tool's predictability.

Dr. Payne also noted that the fact that both the PED and the risk assessment tool were operational on January 1, 2018, was a minor miracle; it is extraordinarily difficult to set up an entire pretrial program in 18 months. The results of the revalidation study and any evaluation of the pretrial process should be considered in that context.

[Commissioner Clarkson arrived at this point.]

Teri Carns, staff analyst for the Judicial Council, spoke to Dr. Payne's earlier observation about the tool only using static (historical) factors; she noted that there are a variety of reasons to use only static factors. One reason is resources; it takes people to conduct interviews to assess dynamic (current) factors. There is also a national trend toward using static factors in tools like these so results are both more comparable and objective. It would also take more time to conduct interviews, especially in rural areas, and the goal is to get in-custody defendants to arraignment

within 24 to 48 hours. The defense bar also has objected to interviews because they might ask about incriminating information.

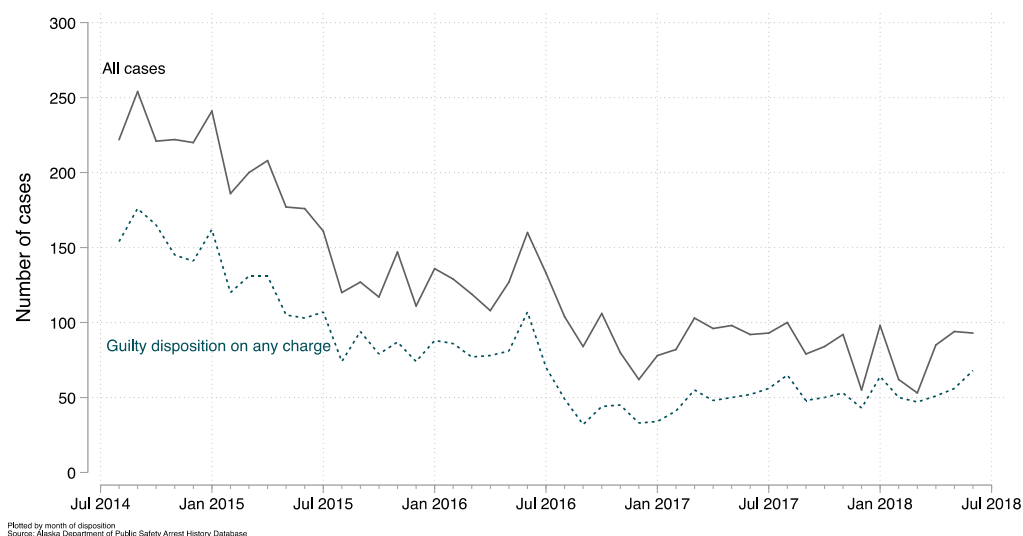
Dr. Payne agreed there were definitely concerns about interviewing for dynamic factors, though he thought there were ways to make interviews objective. It was better to have a tool with only static factors than not have one at all. He thought it would be better to have a tool that addresses the needs of defendants, and that nationally, pretrial practices were heading in direction.

Dr. Payne concluded that he was almost ready to release the data. Once the analysis is concluded and findings disseminated, one additional component of the project is to consider implementation. The analysis might be difficult to implement practically, which was another reason to make sure DOC was fully briefed before the data was released. But he was also very happy to get questions now before the report was done.

Arrest Data Analysis

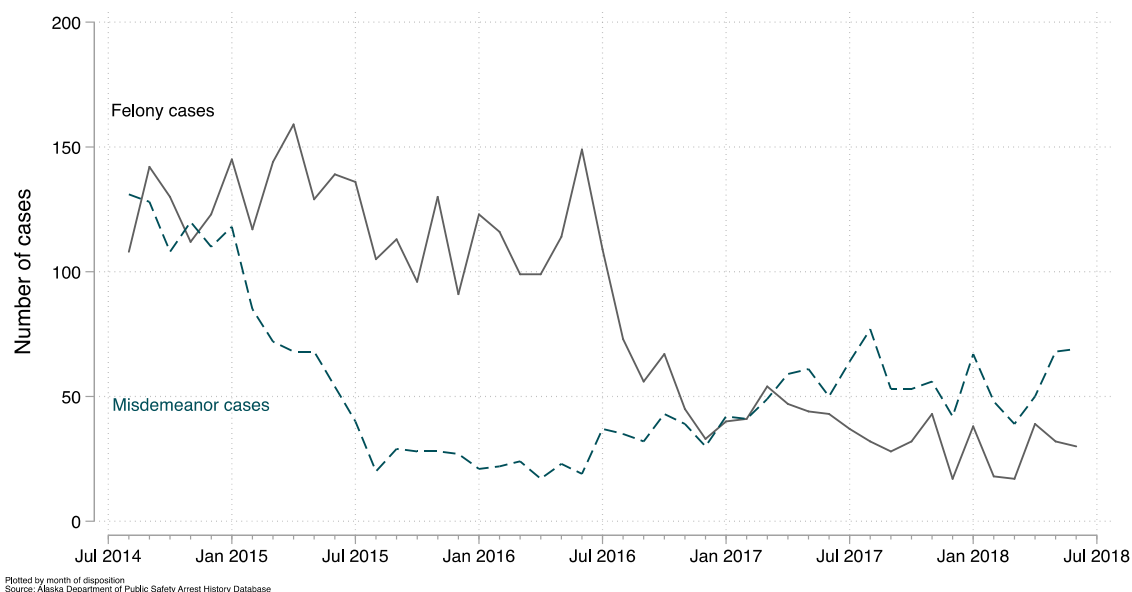
Dr. Payne explained that the Alaska Justice Information Center (AJIC) has been analyzing SB 91 implementation data. This presentation represented just a bit of the data they are able to analyze, and in part the purpose of this presentation is to encourage questions from Commissioners on what the data is telling us about our criminal justice system. Left to their own devices, academics will go down rabbit holes that may not be pertinent to any current concerns, so it's always good to get feedback on what's important.

Dr. Payne went on to say that the topic for today was drug cases. Specifically, he and his colleagues looked at how many cases were charged under Title 11, chapter 71 (the drug crime statutes), and how the nature of those cases may have changed over time. They looked at charge-level data provided by DPS to ascertain whether an arrest includes any section of AS 11.71 (or AMC 8.35.010, the Anchorage Municipal Code provision which incorporates state offenses). They then collapsed this by cases using court docket numbers to get the number of cases per month that involved a drug charge at either arrest or disposition.



The above chart shows the number of cases with an 11.71 arrest charge compared to the number of those cases that had a guilty disposition for any charge, decreasing over a four-year period. Dr. Payne noted there was a steep break in July 2016, when SB 91 came into effect, but the bulk of the decline over time happened between July 2014 and July 2015. He also noted that obtaining conviction rates can get tricky, which is why they were looking at case level data; since many charges drop out, case-level data gives a more accurate picture of what happened. Most charges result in a conviction of some sort.

Chair Claman asked if there was any reason why there was such a big drop between 2014 and 2015. Dr. Payne said it was attributable to the drop in misdemeanor charging, as illustrated by this chart breaking down felony and misdemeanor drug cases:



Dr. Payne said that in speaking with criminal justice experts about this he concluded that the drop in misdemeanor cases is probably attributable to the legalization of marijuana.

Commissioner Price asked whether there was any analysis comparing this arrest data to staffing levels. Dr. Payne said there wasn't.

Commissioner Goldstein asked whether these charts included municipal cases. Dr. Payne believed they did—often municipal prosecutions will appear with charges under AS 11.71, and DPS will enter that way. The data had a very low number of AMC cases. He was working with DPS to clarify this.

Commissioner Price noted that the data ends with July 2018, and wondered if Dr. Payne planned to analyze data collected after that. Dr. Payne said AJIC will keep doing analysis like this as long as they have access to the data. He thought it was important to note that having data sharing in statute is extraordinarily useful.

Commissioner Price agreed, and also noted that the state recently received High Intensity Drug Trafficking Area (HIDTA) designation so it was possible there will be a spike in drug arrest numbers. Dr. Payne said that was a good reminder that arrest and prosecution data measure

criminal justice system outputs, not necessarily the amount of crime being committed at a given time. For example the rate of DUI arrests measures how many people were arrested, not how many people were driving drunk.

Ms. DiPietro said that this information was also presented at the last Criminal Justice Working Group, at which the federal member of that group reminded them that this data doesn't include federal arrests or prosecutions. Judge Stephens said that was a good point, as he believed the federal authorities are taking a lot of drug cases. Dr. Payne thought he might be able to include some federal data in this analysis. He added that another factor to consider in the data is the prioritization of resources—other cases such as violent crimes might take priority.

Judge Rhoades thought it was good the data included municipal cases, because as state dropped misdemeanors due to budget cuts, Anchorage took on a lot of those cases. She thought leaving out Anchorage cases would generate different results. Dr. Payne noted that the arresting agency in many cases was APD, which was another reason he believed the data probably included municipal prosecutions under state statutes.

Commissioner Razo thought now was a good time to ask for federal data, and thought he could perhaps facilitate. He participated in the recent meeting with US Attorney General Barr, who showed a willingness to cooperate with Alaska on public safety issues. Dr. Payne said that was encouraging, as federal data is important for understanding what's happening in drug cases.

Dr. Payne continued with his presentation, explaining they focused on felony cases, and that the data showed the conviction rate improving over time for felony drug cases. By refining this rate for felony convictions and felony drug convictions, the conviction rate dropped slightly each time, but tended to show that if a person is charged with a felony drug charge, they will likely be found guilty of something, likely a felony, and likely a felony drug charge.

Judge Stephens noted that the data also does not reflect cases where a defendant might be cleared in one case because of a universal plea agreement, pleading guilty in another case. Dr. Payne said it would be possible to get at those cases from Court System data, but that data doesn't start until 2016.

Dr. Payne said AJIC would like to hear from the Commissioners what questions they have—AJIC is able to do detailed analyses with the available data, and has the capacity now to do ad hoc analyses. He encouraged the Commissioners to contact AJIC any time. AJIC wants to be able to answer questions that are meaningful.

Ms. Carns wondered about the number of felony drug cases relative to all felony cases. In the past, the number of drug cases has been much higher than it looks now—less than 50 cases per month in the last year or so but in previous years there were between 100 and 150 cases per month. Dr. Payne said he didn't have that comparison but could get it.

Mr. Skidmore asked whether dates in this data represented the date of filing or disposition? Dr. Payne said they represented the date case was disposed. Using the arrest date will show essentially same data shifted back around 200 days. DPS doesn't always get information on cases until the case is disposed.

Judge Rhoades asked if Dr. Payne had a sense of how many people were represented in this data, and whether any of them were duplicates? Dr. Payne said he can get that information, though it will be more accurate towards the end of data series. He didn't have access to defendants' complete criminal history. Judge Rhoades noted that for the felony cases, defendants can't cycle through as quickly to reoffend later. But she still would be interested in looking at recidivism and what interventions the people in this data set are receiving.

Briefing on Crime Bills

Ms. Dunham explained that there were two significant crime bills that were passed in this year's legislative session. She had prepared a summary comparing SB 91 to HB 49, widely known as the bill designed to "repeal and replace" SB 91. That summary wound up being quite lengthy, so she also prepared a memo summarizing her summary, and also summarizing HB 14.

Ms. Dunham noted that characterizing HB 49 as a "repeal and replace" bill was fairly accurate, as most of the provisions that had been enacted with SB 91 were repealed or amended. She listed the items that remained in place or remained with amendments:

- *Disorderly conduct* – The sentence for disorderly conduct was reduced from 10 days to 24 hours with SB 91. HB 49 raises the sentence to 72 hours for a first offense, 10 days for a second or subsequent offense.
- *Minor offenses* – Certain minor offenses (e.g. obstruction of highways, gambling) were decriminalized with SB 91; these remain decriminalized.
- *Drug offenses* – HB 49 essentially returns drug crimes to the pre- SB 91 scheme; simple possession is now still a misdemeanor for the first offense, but becomes a felony upon a second offense (with a 10-year lookback period).
- *Pretrial Release* – The pretrial risk assessment still exists and the judicial officer must consider it but is not bound by it. Defendants may request a bail review hearing for inability to pay if they can show they made a good faith effort to pay. Otherwise, release procedures are essentially back to pre-SB 91 practices, including the use of third-party custodians. (The bail schedule was not affected.)
- *Suspended Entry of Judgment*: remains in place.
- *Credit for time served in treatment* – Now limited to 365 days.
- *Early termination of probation/parole* – POs may (but are no longer required to) recommend early termination for those in compliance and treatment complete.
- *Felony sentences* – Amended as follows:

	Before SB 91	SB 91	HB 49
Class A felonies	1st conviction: 5-8 years 2nd conviction: 10-14 years 3rd conviction: 15-20 years	1st conviction: 3-6 years 2nd conviction: 8-12 years 3rd conviction: 13-20 years	1st conviction: 4-7 years 2nd conviction: 10-14 years 3rd conviction: 15-20 years

Class B felonies	1st conviction: 1-3 years 2nd conviction: 4-7 years 3rd conviction: 6-10 years	1st conviction: 0-2 years 2nd conviction: 2-5 years 3rd conviction: 4-10 years	1st conviction: 1-3 years 2nd conviction: 3-7 years 3rd conviction: 6-10 years
Class C felonies	1st conviction: 0-2 years 2nd conviction: 2-4 years 3rd conviction: 3-5 years	1st conviction: 0-18 months 2nd conviction: 1-3 years 3rd conviction: 2-5 years	1st conviction: 0-2 years 2nd conviction: 2-4 years 3rd conviction: 3-5 years

- *Driving with license suspended/canceled/revoked* – If a license was suspended, canceled or revoked for a reason other than DUI/Refusal, this is now an infraction for the first offense; subsequent offenses are a Class A misdemeanor.
- *Earned compliance credits* – This provision was modified to grant 10 days of credit for every 30 days in compliance (previously 30 days of credit for 30 days in compliance).
- *Risk and needs assessments while incarcerated* - DOC must create a case plan for anyone incarcerated for 90 days or more (previously 30 days); DOC must also report to the legislature on case planning.
- *Pretrial Enforcement Division* – Remains in place.
- *Victim notification provisions* – Remain in place.
- *ASAP* – Changes made by SB 91 and SB 54 and SB 55 remain in place.
- *Alaska Criminal Justice Commission duties* – Commission duties were mended to include reporting on data provided by Department of Law re: sex offense case processing. (Other duties and the sunset date remain the same.)

Ms. Dunham also explained that HB 49 added a number of new provisions that were not addressed in SB 91; many of the new provisions relate to sex offenses, generally making it easier for prosecutors to charge more conduct and to charge conduct at a higher level. Anyone required to register as a sex offender in another jurisdiction will now be required to register here, even if the underlying crime in the original jurisdiction is not a crime in Alaska.

Ms. Dunham further explained that HB 14 addressed loopholes revealed by last fall's case involving defendant Justin Schneider; the bill was commonly known as the "Schneider fix." HB 14 changed the definition of sexual contact to include contact with semen, bolstered victim involvement in plea negotiations, and barred anyone convicted of a sex offense from receiving credit for any pre-sentence time spent on electronic monitoring or in treatment.

Judge Stephens asked what the fiscal notes for these bills were. Chair Claman said the fiscal note for HB 49 was around \$50-60 million per year, and the legislature also increased money for prosecutors and public defenders in the budget. The fiscal note for HB 14 was indeterminate. Additional funds were also put in the budget for the therapeutic courts. The legislature considered increasing funding to reopen the courts on Fridays, but that fell through.

Chief Justice Bolger added that the Court System had a fiscal note too, though he was not sure of the exact number. It amounted to the cost of two full-time pro-tem judges.

Chair Claman added that a separate bill created new Superior Court judge seats in Homer and Valdez.

Report from COSCA/CCJ Summit

Chief Justice Bolger explained that he attended the Conference of Chief Justices/Conference of State Court Administrators at its Western Region Summit the previous week, along with Judges Morse, McDonald, Henderson, and Gandbhir, DHSS Deputy Commissioner Al Wall, and Commissioner Williams and another employee from the Trust. The summit had to do with the nationwide mental health crisis. Many of the problems Alaska is having related to mental health issues are also present in other states. States such as Florida and California have multiple floors of jails filled with severely mentally ill people held in deplorable conditions.

Those who participated in the conference decided to hold a statewide summit on these issues, most likely in November. The broad theme will be to develop more avenues for assisted outpatient commitment at various intercepts in the criminal justice process. The state summit will invite providers, experts, judges, and attorneys to discuss implementing this.

Chief Justice Bolger explained that one speaker at the conference was a psychiatrist from Tucson who ran a crisis response center, and Chief Justice Bolger understood that there was movement toward creating this kind of center in Anchorage. Such a center would be a resource in addition to API, jail, and emergency departments. It would stabilize people experiencing a behavioral health crisis and include release planning, and would be a way for this population to avoid involvement with the criminal justice system.

Chief Justice Bolger went on to say that many other places are also experiencing delays in competency evaluations and restoration. Delays in restoration are particularly problematic for people who have low-level charges, as they can be held in jail awaiting restoration for a long period of time. Restoration is not particularly useful to this population long-term, as the goal of restoration is just to make the defendant ready for trial, and it is not truly rehabilitative. Many of these cases wind up being dismissed, without getting the person any kind of help or treatment. Some jurisdictions bar these level of crimes from the competency/restoration process either using a statute or an MOA. The idea is to get this population into a rehabilitative setting or assisted outpatient treatment quickly.

Commissioner Williams added that the Alaska team was very engaged in the conference, and that it was interesting to find out that the things we're experiencing in Alaska are part of a national trend. One of the largest injustices created by the delays in competency and restoration is the problem of a defendant waiting in jail for competency evaluation or restoration for a longer period than the defendant's potential sentence. The Alaska delegation discussed strategies for minimizing that, and there was a lot to be learned from other states. The examples of crisis stabilization centers that were highlighted have really turned things around for their jurisdictions; these jurisdictions have been using Medicaid waivers as a funding model. They have been working with law enforcement officers, who don't want to have to make those decisions.

Judge Rhoades noted that she started the effort to create a unified competency calendar for Anchorage. Many municipal misdemeanor defendants wait for months for a competency

evaluation, then restoration. The whole process can take 9 months, which is essentially a maximum sentence for a Class A misdemeanor. Once a case is disposed, there is no discharge planning to maintain the defendant's stabilization achieved by restoration. There was also a need to address people who are not restorable— there is no applicable law for those people.

Judge Rhoades continued that Alaska has historically been a leader in this area, for example by establishing some of the first mental health courts. The Trust and the Criminal Justice Working Group have worked on this, including commissioning the UNLV report, which hasn't had a lot of traction. Since that report was published, law enforcement officers have become much more frustrated with the increasing number of mental health calls. Nationally, the number of people who are severely mentally ill who have been contacted by law enforcement has skyrocketed. A crisis stabilization center would be a way to help control that spigot early in the cycle, as a way of ensuring that this population doesn't become unnecessarily involved in the criminal justice system. For the most part this population is not criminal, just really sick. First responders need something other than the only current 24/7 dropoff: DOC.

Chair Claman added that the purpose of restoration for trial is just to get the defendant to understand the trial and assist their lawyer, which does not necessarily translate into being able to function in community.

Chief Justice Bolger said that a lot of people are now motivated to act on this, and he welcomed participation. He was encouraged by enthusiasm of DC Al Wall.

Chair Claman said this topic tied into the next item on the agenda, the future work of The Commission: with the reforms suggested by this commission largely repealed, what will be the Commission's new focus?

Public Comment

Eugene Carl Haberman said he lives in the Mat-Su and follows public process issues. He said that the public notice for this meeting listed the start time as 10:30, not 10:00, and the public notice law says public meetings can't start until the listed time. He has attended a lot of public meetings over the years. At an Anchorage Assembly meeting he stated that taking public comment in this manner does not allow the public to make comments. He was not able to attend two meetings of the Assembly because they were not properly noticed. He has also attended APOC meetings. He sees a prejudice toward people who agree with the group that is meeting, and indifference to people who do not agree. He added that the Judicial Council also doesn't comply with the public meetings laws.

William Riley said he had a suggestion to offer in light of the passage of HB 49. He explained that he grew up in southeast Alaska, made some stupid decisions at age 18, and was convicted of a felony. His conviction was set aside (SIS), a disposition that is unique to Alaska and is not the same thing as expungement. In retrospect, it was one of the worst things to happen to him. He still has to answer yes to the question of whether he has been convicted of a felony, even though he is not a felon. Ten years later, he now works for Caterpillar, owns property, and believes he is a productive member of society. He tried to go to Canada two years ago, but couldn't because he was considered a felon. He can't get a pardon because the state considers him already pardoned.

There is also no expungement in Alaska. His suggestion, which he considered an easy fix, would be to convert all old SIS dispositions to the new suspended entry of judgment (SEJ) disposition.

Judge Stephens noted that Mr. Riley was not the only person to come to the Commission with these concerns. The SEJ, recommended by the Commission and enacted in SB 91, is a direct result of previous similar comments. The Commission has also looked at expungement. Chair Claman noted that the legislature hasn't taken up the Commission's recommendations for redaction (similar to expungement).

Mr. Riley added that he had tried to get into medical school and law school and was denied because of his record. He was also turned away from some volunteer fire departments, and can't get into the military.

Chair Claman noted that SEJ operates differently from the SIS because it requires both parties (prosecutor and defendant) complying. He also noted that the Federal Youth Offender Act for offenders under 25 has helped people in Mr. Riley's situation.

Judge Rhoades said she was very sympathetic to this issue. She had believe that the SEJ would supplant the SIS, but it didn't. She noted this happens with people convicted of misdemeanors too. She knew of a woman who had a misdemeanor set aside, who applied for a job with DHSS, but was not selected for an interview because the SIS was on her record. This is an issue that affects many people.

Meeting Schedule, Agenda, and Future Priorities

Chair Claman explained that while the next meeting had been set for August 23, he had a potential conflict and suggested moving the date. It was decided that the potential new date would be August 20 if Chair Claman's conflict was confirmed, otherwise the meeting would remain on the 23rd.

As to the Commission's agenda and future priorities, Chair Claman said he'd like to hear from each Commissioner present, and was looking for broader thoughts on the direction of the Commission.

Judge Stephens said that when the Commission started, it was focused on enhancing public safety, reducing recidivism, and maybe reducing the prison population. Now, he thought the Commission's focus should be on mental health. From his perspective, the prevalence of untreated mental illness seems to be getting worse, and it impacts not just criminal cases but CINA cases and civil commitments. Earlier in the meeting, he had asked about the fiscal note for the crime bills because he anticipated there would be more people in jail once they become effective.

Judge Stephens also noted that SB 91 didn't look at what happens to people during incarceration. This needs to be a priority if more people will be in jail and for longer; Alaska needs to figure out what interventions they need while they are there to ensure they will not recidivate on release. Lower recidivism, of course, means fewer victims. This should be a priority, even for

those who are not in for a long time, as they also have a continuing need for support from community programs.

Commissioner Price said that substance abuse was also a pressing issue, and thought that the Commission should put forward recommendations on how to address this problem. She also suggested addressing what the public safety response should look like throughout Alaska—for example, the legislature was evaluating the VPSO program. She saw gaps in the statewide standard for law enforcement response, and thought it would be helpful to identifying those gaps and look at response times in rural areas.

Mr. Skidmore said he agreed with Judge Stephens about focusing on mental health and in-prison programming. He also agreed with Judge Rhoades' earlier comments that there was work done on the intersection of mental health and the justice system in the UNLV report, and thought there was large consensus on that report. Not on everything, but he didn't want to let the perfect be the enemy of the good. He also thought domestic violence and sexual assault crimes should be a focus, considering Alaska's grim statistics on those issues. Many entities were working on them, but the Commission could also focus its energy on them with the benefit of having a broad spectrum of stakeholders. He also wanted to echo Commissioner Price's comments that the state is struggling with appropriate law enforcement responses throughout state, rural areas in particular. The Commission could bring attention to the gaps and make recommendations.

Judge Rhoades noted that she has focused her career on mental health. She agreed with Judge Stephens that it affects every case type the courts see. She thought there hadn't been as much focus in this group on mental health as there could be. She knew that Trust beneficiaries were disproportionately represented in prison. In order to see change, Alaska can't jail people for alcoholism or mental health crises. If so, those populations will mix with the population of hardened criminals and learn how to be criminals. She thought there should be a focus on mechanisms of diversion across the spectrum. There also needed to be treatment in custody and a robust reentry system. People returning from prison can't be expected to succeed without support, and they need sustained supports to prevent their return.

Chief Justice Bolger said he agreed with everyone. He thought there was a lot of motivation to work on the mental health issue now. He was also struck by Commissioner Price's point on rural safety. He had spent a lot of time in rural areas, and there continues to be a crisis of domestic violence, sexual assault, and mental health issues, and he thought the Commission should also focus on public safety in rural areas.

Commissioner Razo said that he had spent most of the past Tuesday listening to testimony on the public safety crisis in rural Alaska in the meeting with AG Barr. He agreed that should be a focus. The Commission should develop recommendations that are realistic and meaningful.

Ms. Largent said that she knew that Commissioner Hughes would agree on the topics already mentioned, particularly looking at rural justice since she was just then attending a conference on rural prison reform. Her office will be working with DOC on this, and has also been looking at issues related to domestic violence and sexual assault.

Commissioner Williams said he wanted to echo a lot of what had already been said. He also wanted to remind the Commission of where this state has already been. If you took the names off reports going back 15 years, you would probably see same reports with the same recommendations. He thought it might be worth reviewing what's been done, because he didn't want to burn unnecessary time. He had reviewed the Commission's recommendations from its 2018 Annual Report. Those and several other recommendation, such as the UNLV report and the Behavioral Health information exchange, were still applicable, but haven't gotten any traction. The Commission has also made expungement recommendations.

As the representative for the Trust, Commissioner Williams wanted to focus on addiction and mental health. He agreed that there should be access to treatment during incarceration, but Alaska really needed to be looking at the community-based system, not only with adults, but with families and children early on as primary prevention effort to stem the flow of people coming into criminal justice system. Things coming online with the 1115 waiver will help. Some kind of inventory might also be in order, of things that are in the pipeline right now that could help.

Commissioner Clarkson acknowledged that he was a Commission newbie, but noted that Mr. Skidmore was his deputy, and he agreed with him. He has been shocked by the statistics on domestic violence and sexual assault. He had been studying up before the meeting with AG Barr, and discovered that the rate in western Alaska was 106% greater than the rest of the state. He thought there should be an increased law enforcement presence in rural Alaska.

Chair Claman said he agreed with everything mentioned, particularly the public safety issue in rural Alaska, which really hit home for him when he was in Bethel for the victim listening session. He viewed the shelter and the staff there noted that when alcohol access increased in Bethel, the assault rates doubled. The challenge of alcohol and drug abuse and mental health issues had been in Alaska since statehood. There hadn't been much progress on alcohol in particular.

Chair Claman went on to say that one frequent criticism of criminal justice reform was that not enough resources were put toward rehabilitation. But his observation was that we put resources toward rehabilitation, but the money couldn't be used in some cases due to lack of providers or capacity. If Alaska doesn't invest in behavioral health infrastructure, no reform will work. The challenge continues to be how to manage state resources.

Chair Claman also thought the sex offense rate was an embarrassment to everyone who works in public policy. It is a sad reality in rural Alaska, and must be changed.

Chair Claman asked what steps the Commission should take next. Options included partnering with the Court System on the mental health summit, looking at best practices in other states that were also working with limited resources, and giving input on rural public safety. He also noted that previous recommendations haven't gone anywhere, such as the recommendation for expungement. It might be worth looking at which efforts will be most successful.

Commissioner Dahlstrom said she believed Alaska needed to and can do a better job with rehabilitation and thought there were changes that could be made within DOC. She appreciated

efforts made in this direction so far. DOC's goal is to make people better when they leave prison than when they entered.

Ms. DiPietro said that Commissioner Stanfill had to step off the teleconference line but she texted her thoughts. Commissioner Stanfill wanted to focus on the needs of victims, and look at solutions to what the Commission learns from the listening sessions and surveys. She also wanted to look into developing an evidence-based DV program for Alaska, whether by creating a new program here or finding a promising practice from another state. She also agreed with what the others were saying. She wanted to see more data on how other states treat all drugs (not just opioids), particularly how other states deal with drug addiction with at the diversion stage.

Commissioner Goldstein said her concern was that Alaska was always looking at the problem at the back end, by developing interventions for people who have already committed crimes. She suggested looking at putting resources into juvenile and adult victims before they become defendants. Look at victims of sexual assault— many become abusers themselves, or become substance abusers. When she was working in the federal system, she reviewed many federal presentence reports, and almost every one of them had a heartbreaking story of trauma that led them into the criminal justice system.

Judge Rhoades thought Commissioner Goldstein's observation dovetails with Judge Stephens' previous observation that mental health issues affect all cases. She thought it would be worth looking into the year that the legislature required DOC, DHSS and the Court System to coordinate their budgets around the juvenile population to optimize service delivery. If they were required to do in perpetuity, it would always ensure that Alaska was looking at the victimized population in concert.

Commissioner Williams wanted to echo that the common factor in criminal justice cases is trauma, including adverse childhood experiences. One form of trauma that is not always thought of was trauma as result of the loss of one's culture. If cultural trauma was not addressed, it will also lead to addiction and mental health problems.

Chair Claman wondered what the Commission thought about partnering with the Court System to plan its mental health summit? Ms. DiPietro suggested that the Commission could offer staff time. Chief Justice Bolger said that would be appreciated. Commissioner Williams moved that the Commission partner with the Court System to plan and convene a summit related to criminal justice and behavioral health. Commissioner Razo seconded the motion. There was no opposition, and the motion passed.

Chair Claman solicited other ideas from staff. Ms. DiPietro said the Commission could convene a victim workgroup as suggested by Commissioner Stanfill. Ms. Dunham noted that Commissioner Stanfill was also interested in continuing the sex offenses workgroup, and that generally speaking, workgroups were a useful way to generate meaningful and well thought-out recommendations. Chair Claman wondered whether there should be a workgroup to plan the Commission's future agenda.

Judge Rhoades noted that the Behavioral Health Standing Committee has had difficulty getting purchase, but has new members and energy now. At the last meeting that group discussed educating the Commission on the Sequential Intercept Model (SIM), understanding behavioral health disorders and their medical bases, and evidence-based interventions. She thought some additional education would help the Commission to move forward.

Commissioner Clarkson said he would also like to confer with his team at the Department of Law about sex offenses, and thought they may come up with a motion for the August meeting. Chair Claman said that could go on the agenda, and also suggested looking into the public safety response in rural Alaska. Commissioner Clarkson said he would invite Commissioner Price to come up with something.

Chair Claman said it sounded like the Behavioral Health Standing Committee could look at Title 12 and Title 47 (competency and restoration). He wondered if there should be another committee.

Commissioner Williams thought there were three issues for the Behavioral Health Standing Committee: 1) Title 12 and competency, and looking at concrete fixes to those systems; 2) the community-based behavioral health system, and gaining a greater understanding of that system at the Commission level; and 3) institutionalizing the exchange of data among agency branches and AJIC so that agencies don't have to struggle with getting data.

Commissioner Razo didn't think there needed to be any more committees.

Chair Claman said it sounded the Commission will get some recommendations from the Behavioral Health Standing Committee along with some substantive education. The Departments of Law and Public Safety would develop recommendations on rural police responses and sex offenses. Chair Claman would work with staff on getting information on evidence-based practices for rehabilitation services. The new victim workgroup would also meet to assess the results of the listening sessions and surveys.

Judge Stephens asked whether there was a way to get technical assistance for educating the Commission on the SIM? Judge Rhoades noted that providers existed, and had been used in previous efforts. Judge Stephens thought it would be good to find a technical assistance provider who could prioritize evidence-based practices, and thought the Commissioners needed to further educate themselves. Chair Claman said that made sense, as it underlies the mental health and substance use questions. Commissioner Williams thought there could be presentations on types of interventions, and that such a training wouldn't have to take a full day if people committed to doing some reading on their own. Also at the conference in November, there could be the same educational opportunity for a wider audience, including other policymakers.

Ms. Dunham asked Chair Claman if he wanted to include a presentation on the revalidation study for the August meeting. Chair Claman said that hopefully Dr. Payne would be ready to present on that separately by the end of June.

Ms. Dunham apologized for the mix-up regarding the meeting time posted on the website, and noted that staff had been hard at work transitioning to a new website. She encouraged Commissioners to visit the new site and provide feedback.

Alaska Criminal Justice Commission

Meeting Summary

Monday, March 4, 2019

11:00 am – 4:30 p.m.

Sealaska Heritage Institute, Living History Room

105 S. Seward Street, Juneau, AK 99801

And audio-teleconference

Commissioners Present: Joel Bolger, Sean Case, Matt Claman, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Steve Williams

Commissioners Absent: Kevin Clarkson (Rob Henderson served as proxy for Attorney General Clarkson), Adam Crum, Nancy Dahlstrom (Kelly Goode served as proxy for Commissioner Dahlstrom), Shelley Hughes (Regina Largent served as proxy for Senator Hughes), Amanda Price (Michael Duxbury served as proxy for Commissioner Price).

Participants: Nancy Meade, Lizzie Kubitz, Troy Payne, Brad Myrstol, Laura Brooks, Andy Jones, Jillian Gellings, Katie Baldwin-Johnson, Mike Matthews, Dusty Dumont, Araceli Valle, Cathleen McLaughlin, Janice Weiss, Triada Stampas, Bob Churchill, Tony Piper, Donald Revels, Kim Stone, Gen Moreau

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

Agenda

Commissioner Steve Williams asked to add an update on the Behavioral Health Standing Committee to the end of the agenda. The agenda was approved so amended without objection.

DOC Recidivism Data

Laura Brooks, Operations Manager for the Division of Health and Rehabilitative Services of the Department of Corrections (DOC), spoke to the Commission about DOC's recidivism data.

She began by explaining that Alaska is one of six states in the nation that operates a unified correctional system, meaning that the state operates both the jails for pre-trial and misdemeanor offenders and prisons for sentenced felony offenders. There are 12 jails and prisons statewide, and 13 field probation offices. There are also 15 regional and community jail contracts and seven contract community residential centers (CRCs, or halfway houses). DOC has also established electronic monitoring programs in seven communities.

In 2018, there were 31,533 bookings into DOC facilities (many of those bookings were for the same person). As of December 31, 2018, there were 4437 offenders in jail or prison, 45% of whom were unsentenced. Also as of December 31, 2018, 3,547 people were on probation or parole, 967 defendants were on pretrial supervision, 230 people were in CRCs, and 167 people were on electronic monitoring.

DOC measures recidivism by looking at felony offenders who are re-incarcerated within three years of release; re-incarceration includes returning to prison for a probation or parole violation, new felony crime, or new misdemeanor crime. This rate has consistently been in the mid-to-upper 60th percentile (meaning that about 2/3 of all felons released from prison returned

to prison within three years), but recently, Alaska has begun to see a steady decline in this rate. For the cohort of people convicted of a felony and released from a DOC facility in 2015, the three-year recidivism rate was 61.33%.

The decreased recidivism rate of the 2015 cohort reflects changes that DOC began to implement within facilities and for supervision, including using risk assessments to target interventions and ensuring that programming was using evidence-based practices. Some of these changes were implemented before SB 91 and some after.

Of those who return to prison within six months, 58% do so for a probation or parole violation. Of those who return to prison within three years, 46% do so for a probation or parole violation. Excluding probation and parole violations, the three-year recidivism rate for the 2015 cohort was 32%. Of that same cohort, 20% returned for facing felony charges.

Broken down by classification of the persons original conviction offense, recidivism was now in all offense classes except for offenses against a person and weapons offenses:

OFFENSE CLASS	2013	2014	2015
ALCOHOL	57.7%	57.2%	49.3%
DRIVING/TRANSPORT	58.1%	68.9%	47.6%
DRUGS	62.9%	56.6%	55.0%
PAROLE/PROBATION	69.8%	67.5%	63.6%
PERSON	63.8%	62.3%	66.7%
PROPERTY	71.9%	70.7%	67.6%
PUBLIC ORDER/ADMIN	68.1%	72.6%	61.7%
SEX OFFENSE (REG)	54.2%	48.6%	38.6%
WEAPONS	56.7%	54.1%	60.0%
TOTAL	67.0%	65.1%	61.3%

People returning to prison for a new offense tended to return for the same offense for which they were first convicted:

RETURNED OFFENSE	RELEASED OFFENSE								
	ALCOHOL	DRIVING/ TRANSPORTATION	DRUGS	PAROLE/ PROBATION	PERSON	PROPERTY	PUBLIC ORDER/ ADMINISTRATION	SEX OFFENSE (REG)	WEAPONS
ALCOHOL	9.31%	0.00%	1.40%	3.34%	1.22%	0.22%	1.21%	0.00%	0.00%
DRIVING/ TRANSPORTATION	2.45%	0.00%	1.40%	0.94%	0.49%	0.44%	0.00%	0.00%	8.57%

DRUGS	0.49%	2.33%	9.58%	2.82%	1.71%	2.89%	1.81%	0.00%	5.71%
PAROLE/PROBATION	24.23%	31.32%	23.93%	29.48%	39.14%	27.16%	29.17%	27.24%	28.57%
PERSON	3.43%	6.98%	1.64%	11.16%	9.27%	5.33%	6.63%	2.48%	8.57%
PROPERTY	0.49%	2.33%	3.74%	5.32%	2.68%	13.56%	6.02%	0.00%	5.71%
PUBLIC ORDER/ADMINISTRATION	8.40%	4.65%	12.62%	9.23%	11.22%	16.22%	15.66%	4.96%	2.86%
SEX OFFENSE (REG)	0.49%	0.00%	0.00%	0.57%	0.49%	0.22%	0.00%	3.92%	0.00%
WEAPONS	0.00%	0.00%	0.70%	0.73%	0.49%	1.56%	1.21%	0.00%	0.00%
TOTAL	49.30%	47.60%	55.00%	63.60%	66.70%	67.60%	61.70%	38.60%	60.00%

DOC also performs risk assessments (the instrument is called the LSI-R) for every prisoner serving a term of incarceration of more than 30 days. The higher the assessed level of risk, the more likely it was that a person would recidivate.

The highest risk for recidivism is within 6 months of release. In any given year, approximately 25% of releases will return to incarceration within six months, and more than 40% will return within one year. After three years, the number of returns to incarceration falls considerably.

Ms. Brooks concluded by listing the available reentry and rehabilitative programs provided by DOC, and said that reentry remains a priority for the Department. She noted that DOC had just hired Janice Weiss to coordinate reentry efforts for the Department. All offenders receive an offender management plan (OMP) intended to address the offender's criminogenic needs.

Sanctions and Incentives at DOC

Mike Matthews and Dusty Dumont presented information on sanctions and incentives used within the Division of Probation and Parole at DOC. Mr. Matthews, Research Analyst for DOC, presented the data, while Ms. Dumont, a probation/parole officer, was on hand to answer any programmatic questions.

Mr. Matthews began by explaining that the data on sanctions and incentives should all be taken with a grain of salt, since they concern initiatives that are relatively new, and these data have not been tracked or reported before. The data is subject to change, and not enough time has passed to show whether there has been any impact on recidivism.

Mr. Matthews explained that between 1/1/17 and 2/5/2019, parole/probation officers made 21,403 sanction reports, which described 21,804 sanctions imposed. (Some reports contained more than one sanction.) Around 4,917 people were sanctioned in those reports.

The 21,804 sanctions ranged from arrest or issuing a warrant for an arrest to increased PO contact and verbal or written warnings. Arrests and warrants for arrest were the most common sanction, followed by verbal warnings. The undesired behavior most commonly leading to a sanction was drug or alcohol use (36%).

During that same time period, parole/probation officers issued 9,175 incentives, the most common of which was verbal praise (8,292). Other incentives included things such as reducing urinalysis appointments and enhancing travel.

Commissioners noted that within the list of incentives granted, the number of Earned Compliance Credits (ECCs) granted seemed low (81); Ms. Dumont explained that ECCs were calculated automatically by DOC's data tracking system (ACOMS); the number reflected in the incentives report likely represented occasions when ECCs would not have been granted but officers awarded them as a reward for good behavior. For example, someone on supervision might receive a sanction and therefore would not receive an ECC for that month, but if that person could course-correct within the month, the officer would see that the ECC was granted.

Judge Rhoades noted that there were many more sanctions than incentives issued, and recalled that best practice was to issue more incentives than sanctions at a ratio of roughly six to one. Ms. Dumont explained that parole/probation officers were busy and that things like arrests and warrants would more likely be documented by officers than incentives, which may be given but officers may not have the time to document. Deputy DOC Commissioner Kelly Goode pointed out that minus the arrests and warrants on the sanctions side, the number of sanctions and incentives was roughly equal.

Mr. Matthews explained that from January 1, 2017 to March 2, 2019, 9,500 people on probation or parole had been eligible to earn ECCs and 7,823 of those people had earned an ECC at least once. Additionally, in that same time period, there were 15,395 opportunities to obtain an ECC and of those, ECC was awarded 51% of the time. Once someone earns an ECC, they retain that credit even if they subsequently engage in undesired behavior.

Responding to questions from the Commission, Ms. Dumont said that many of the new policies put in place by SB 91 were things she had already been doing, and that she wished she now had more discretion post-SB 91. For example, parole/probation officers do not have discretion over whether to allow early termination of supervision due to earning ECCs. There are cases when someone has earned enough ECCs to be discharged but they have been engaging in undesired behavior and the probation or parole officer feels the person should not be discharged from supervision.

Commissioner Brenda Stanfill noted that while Ms. Dumont's office in Juneau may have been using these policies before SB 91, from her observation that was not how things had worked in Fairbanks. Since these policies were implemented, she has seen improvements in probation/parole officer practices there. One of the reasons for putting these policies into SB 91 was standardization; if something is in regulations it's more likely to be followed.

Chair Claman noted that increased discretion can be beneficial as he benefitted from discretion after making a mistake as a teenager. But discretion also led to the gross sentencing disparities that prompted the creation of Alaska's presumptive sentencing structure. Presumptive sentencing was met with frustration in some quarters at first but is now widely accepted. There is an inherent tension between discretion and standardization.

Public Comment

Cathleen McLaughlin from Partners for Progress said that a question had been circulating in the reentry community lately as to whether community in-reach into DOC facilities had been

affected by the switch in administrations. She was happy to report that Partners was still doing inreach as it had been for the past three years; their access had not been compromised.

She was encouraged to hear that reentry was still a priority for DOC and that they were creating offender management plans (OMPs). However, she had yet to see an OMP; she thought it would be useful to send those plans to community reentry providers.

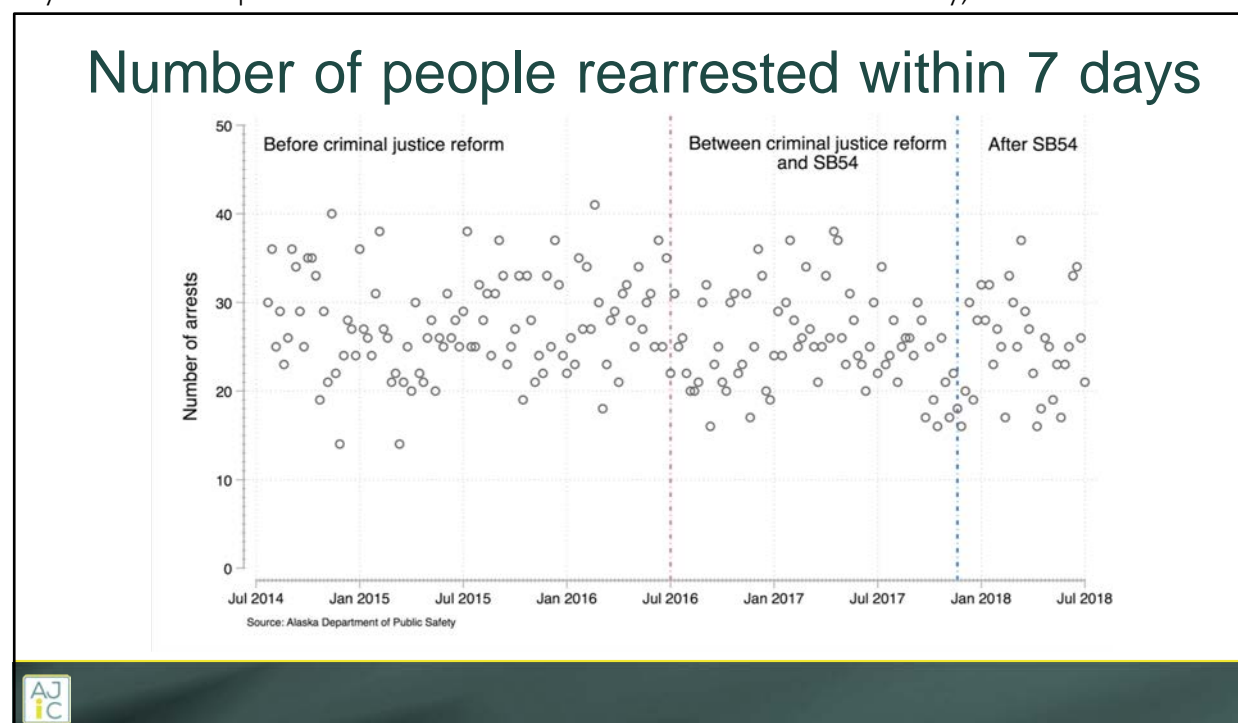
Bob Churchill, volunteer with the Alaska Nations Reentry Group, said that the ANRG was a support group for reentrants. Many of their group members were sex offenders who struggled being in Anchorage because they were not from around there and were on waitlists to get into treatment or their treatment was prolonged. He encouraged DOC to continue to expand teletreatment, noting it was not available in call cases. He also questioned the validity of polygraph tests being culturally appropriate for Alaska Natives. The ANRG's goal was to get participants back to their village if the village is willing to take them back.

Re-arrest Data

Dr. Troy Payne presented data to the Commission on re-arrests that occur within seven days of the first arrest. This was based on data that is required to be sent to the Commission per AS 44.19.645 (enacted by SB 91), including arrest and citation data as collected and reported by the Department of Public Safety (DPS).

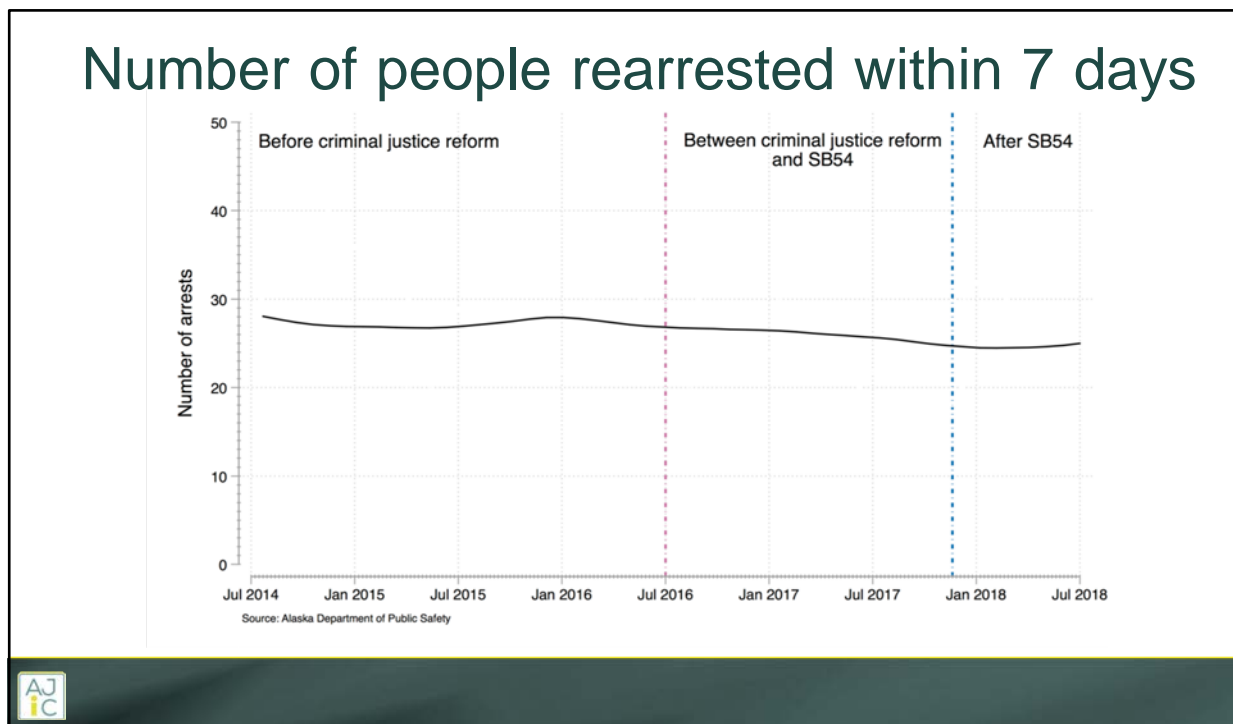
The DPS arrest and citation data used for this presentation include felony and misdemeanor arrests and citations; they do not include infractions or violations. There is one record per criminal charge, whether that charge is associated with an arrest or citation. Occasionally, DPS will only become aware of a charge at disposition. This data includes those charges.

In total, there were 222,313 charges between July 1, 2014 and December 31, 2018. Dr. Payne looked at which of those charges were repeat charges for the same individual within seven days or less. If a person was arrested more than once on the same day, each of those arrests



counted. He then tallied the number of people who were rearrested within that time period each week. There was no discernable difference in the pattern of rearrests before and after SB 91, and before and after SB 54.

He plotted the number of rearrests on a chart (above), and also smoothed out the plot points to create a chart that's slightly easier to understand (below).



Commissioner Quinlan Steiner said it appeared to him that this research shows that the popular “catch and release” narrative about criminal justice reform is completely false. Dr. Payne said that was one way to characterize it. Dr. Brad Myrstol, director of the UAA Justice Center and colleague of Dr. Payne, said that they had been monitoring the various legislative hearings to see if the Justice Center had the data to provide information the legislators were interested in. One question that kept popping up was the notion of “catch and release” and whether there was any data on that.

In response to Commission questions, Dr. Payne clarified that every arrest was counted, no matter how close in time to the original arrest. It only counted people who were charged with a crime, but this includes people who were charged and given a citation instead of booked into a correctional facility. He did not separate out misdemeanor and felony arrests, but noted that this cohort of arrestees tended to be generalists.

Dr. Payne’s analysis excluded arrests for violating conditions of release (VCOR) because for the period between SB 91 and SB 54, that was not a crime and there were no data points reflecting arrests for VCOR. When VCOR arrests were added back in for the period before SB 91 and the period after SB 54, there was still no discernable difference.

Judge Rhoades wondered who was in this group. Dr. Payne explained that they were getting arrested for many different things, though in order for someone to be arrested and either cited or booked and then released within the 7 days, they would more likely be charged with a misdemeanor.

Dr. Payne said he had done the same analysis for rearrests in different time frames: within 14 days, within 30 days, within 180 days, etc. No matter what the time window was, there was no difference in the number of rearrests before and after criminal justice reform.

Judge Rhoades asked whether he had performed any analysis looking at the difference between state and municipal charges. Dr. Payne said he hadn't, but could do that given time. Judge Rhoades said she was curious because some things changed regarding things being charged as misdemeanors.

Justice Bolger said he thought there were a number of factors that drive arrests and noting that many things have changed, was surprised these numbers remained stable. Dr. Payne said that was true and noted that the Anchorage Police Department in particular had added a lot of officers during this time, but the statewide numbers reflected in this data did not change.

Chair Claman said that he thought the public criticism related to the idea of "catch and release" was a broader criticism of people being let out on bail when the public thought they should not be let out; many of these releases were due to the bail schedule. Dr. Myrstol noted that the analysis does not show that cycling does not happen, but does show that the rate of cycling has not changed. Judge Stephens said that it would appear there is no factual reality to the public perception that SB 91 has made things worse in this area.

Ms. DiPietro noted that admissions to prison were up, but that more people were also being released. We now know that around 30% of arrestees are released per the bail schedule. It was curious that the rearrest rate remained the same since more people were being arrested and then released.

Judge Rhoades wondered whether it was possible to get more data on the people getting rearrested. Dr. Payne said it was. Chair Claman asked members of the Commission to funnel any additional research questions on this data through staff. Dr. Myrstol cautioned that good data analysis takes time, and there was only so much analysis they could perform in advance of the next meeting.

Sex Offenses Report

Commission staff attorney Barbara Dunham explained that this was the final draft of the report she had previewed at the previous meeting. The report does not have a due date. She encouraged Commissioners and their staff to contact her if they spotted any typos or formatting errors.

Commissioner Stanfill, who had been chairing the sex offenses workgroup, noted that the report had been in the works for several years. It is intended to be an overview of the law, research, and policies on sex offenses, and is meant to be used as a reference going forward. Because of the way the available data has been reported, the data sections don't flow nicely together, and it was not possible to tell the concise story she was hoping to tell.

Ms. Dunham said she drafted the report with input from the workgroup. Because the workgroup was open to all, a variety of perspectives are reflected in the report; some of these varying perspectives could be seen as contradictions. There were no specific recommendations in the report other than a general recommendation to rethink the state's approach to victim services. For the most part, this report was intended to be informational.

The introduction of the report highlighted some of the top line takeaways: the problem of sexual violence in Alaska is worse, using several measures, than the rest of the US; it is a problem that affects Alaska Native women disproportionately; the vast majority of sex offenses go unreported; and there are significant challenges in rural Alaska in terms of keeping victims safe. The news is not all bad, however, as newer research has shown that sex offender treatment and containment models are effective at reducing reoffending.

The first and largest section of the report focused on the available data on sex offenses. Ms. Dunham said the intent of this section was to start at the wide end of the “funnel” to give an estimate of how many people were affected by sexual violence, then to walk through the case processing data to conclude with data on convictions for sex offenses.

Ms. Dunham explained that it was impossible to know exactly how many people in Alaska have been the victim of a sex offense. The best way to get a sense of victimization is to conduct a victimization survey, which UAA and CDVSA have conducted twice on a statewide level, once in 2010 and once in 2015. It is not a perfect representation of all victimization in Alaska because it was a survey conducted only of women over 18 with access to a phone. However, it provided a sense of the order of magnitude of victimization. In 2015, 2.9% of women surveyed reported experiencing sexual violence in the previous year. 2.9% of all adult women in Alaska in 2015 amounted to over 7,000 women.

The next data point to get a sense of the rate of victimization in Alaska was reports to law enforcement, compiled by DPS. Ms. Dunham explained that DPS has been issuing special reports on sex offenses in Alaska since 2015, which provide a lot of data. In 2015, around 1300 sex offenses were reported to law enforcement. This data cannot be directly compared with the victimization data because it includes reported offenses against men and children, but it does give a sense of the order of magnitude and indicates that a great number of sex offenses go unreported.

Judge Rhoades asked whether there was any role in the report for expert commentary on why victims don't report. Ms. Dunham noted that the report states there were varying theories from stakeholders, as well as reference to national studies on why victims don't report and the need for an Alaska-specific study. There was also reference elsewhere in the report to the conditions that might suppress reporting, such as living in a small community, social pressure, and the perceived ineffectiveness of the criminal justice system.

Ms. Dunham also noted that there was an upcoming study from UAA on victim perspectives of the criminal justice system. Dr. Myrstell explained this was a study from Dr. Johnson, who is on the SAK workgroup. The research question for the study is did the victim feel the system gave them justice after making a report. It would not give a reporting rate or reasons for not reporting.

Judge Rhoades said that readers of the Commission's report might ask why victims don't report, but she was not suggesting additional research.

Ms. Dunham explained that the next data subsection discussed sex offense case processing, and tries to convey a sense of the attrition that happens through case processing and tries to explain why not all cases result in a conviction for a sex offense. Because this report was intended for a general audience, there was a flowchart at the beginning of this section explaining the criminal justice process and how a case could drop out at each stage. Deputy DPS

Commissioner Michael Duxbury thought that it was important to explain the process but thought there was more to it, and thought the flowchart should mention the SART or CAC process.

Ms. Dunham noted that Commissioner Stanfill had wanted to delete a text box highlighting that of arrests by all Alaska law enforcement agencies 2008-2011, 68.9% of cases resulted in a conviction while 28% of charges resulted in a conviction. Commissioner Stanfill said that she thought it was misleading in that it seemed to misrepresent how many cases resulted in conviction. The Commission agreed to remove the text box.

Ms. Dunham explained that a section labeled “Sex Offense Case Processing: A Data Gap” tried to bring the above sections together to make a more fluid narrative despite the limitations in the available data. Ms. DiPietro said staff struggled with this because the data sets were not directly comparable and they did not want to confuse the reader. However, it does provide information on an order of magnitude level.

Justice Bolger wondered whether there was a way to highlight this information better. Ms. DiPietro said staff would work on the heading of the section.

Commissioner Steiner noted that the victimization data was not directly comparable to the case processing data because the victimization survey can include things that are not necessarily crimes. Ms. DiPietro said that the specific questions asked tended to produce answers that would probably reveal crimes. Dr. Myrstell pointed out that the survey also measures victims, not victimizations, and that was another way to distinguish the survey from the case-level data. Commissioner Razo suggested separating out the victimization data from the other bullet points in this section. Chair Claman suggested taking clarifying language from the footnotes and putting them in the body text.

Ms. Dunham said the data section also included information on average sentence length and average number of prisoners incarcerated for a sex offense. The group thought it was important to highlight the reason why there were not many people in prison for a Class A felony sex offense (because there are not many of them.) Judge Rhoades wondered whether Alaska’s sentences were in line with other states’.

Ms. Dunham noted that the report also included some common case characteristics; Deputy Commissioner Duxbury asked whether strangulation was included in this data. Ms. Dunham replied that use of hand was included in the statistic on use of weapons in sex offenses.

Ms. Dunham explained that the data section contained information on sexual abuse of a minor (SAM) cases in which the defendant was age 21 or under, which was a topic that the legislature had expressed interest in knowing more about in a previous session. Staff had analyzed 2016 data from the Department of Law on this. There were not many SAM cases with defendants under age 21.

Commissioner Stanfill wondered whether this data could be broken down by ethnicity as there had been a request to get that information from a member of the public. Commission research analyst Staci Corey said that ethnicity was not provided in the data from Law. Deputy Attorney General Rob Henderson said that that data could be retrieved but it would have to be done by hand.

Ms. DiPietro noted that AFN had called on the Judicial Council to study ethnic disparities in sex offense cases. The Judicial Council approved this project and intended to find resources for

the project. They had some data on this from a felony process study of cases from 1999, but that needed to be updated. Commissioner Razo pointed out that study did show bias.

Deputy Commissioner Duxbury noted that troopers are no longer uniformly entering information on ethnicity in their reports. It doesn't serve a law enforcement purpose, so there is not much motivation to collect that information.

Ms. Dunham explained that after the data section, the next section of the report concerned Alaska's sex offense sentencing laws. It contained the current sentencing provisions, previous sentencing provisions, and legislative history of HB 218, which raised the sentences from the previous sentencing ranges to the current sentencing ranges in 2006. Ms. Dunham said that this section was intended to inform the legislature of what had happened since the last major revision to these laws. Some of the assumption made by legislators at the time was based on information and research that has since changed, been updated or been expanded.

Commissioner Steiner asked why there was wording in this section explaining there was no recommendation to change the existing sentencing laws. Ms. Dunham explained that workgroup members had been concerned about the way this section read, and wanted to clarify that it was not a call to repeal or change the existing sentencing laws. Commissioner Stanfill added that this had been a hot topic and that the language was intended to make it clear about what the Commission did and did not want to say.

Deputy AG Henderson noted that the Department of Law had pushed for the language to be included. Commissioner Steiner thought that was a good reason for taking it out. He thought it was a political statement and he was uncomfortable with it. He said that in 2006 the prevalent idea was that programming and treatment didn't work, requiring lengthy sentences. The report is just relaying that history and noting that the research has been updated.

Justice Bolger suggested a compromise removing some of the language in this section about not making a recommendation to repeal. The Commission agreed to this compromise.

Ms. Dunham explained that the next section talked about the perceived gaps in Alaska's sex offense laws and that the Commission was planning to review them. Commissioners Razo and Steiner suggested adding language clarifying that these suggestions came from victim advocates.

Ms. Dunham said the section on treatment and reentry also included information on sex offender registration. Ms. DiPietro said that information should be added to this section related to the *Doe* case (out-of-state convictions don't require registry if the offense requiring registry in another state is not similar to an offense requiring registry in this state). Judge Rhoades suggested adding information about the difficulty those with intellectual or developmental disabilities face in complying with registry statutes.

Ms. Dunham explained that the next section of the report talked about victim services and safety. Commissioner Stanfill asked whether the information on 44 out of 68 VPSO positions being filled had been verified. Deputy Commissioner Duxbury said that 44 was the current number. At one point there were as many as 90. VPSOs were not organized as a state entity so he didn't immediately know how many positions were open.

Commissioners wondered whether information should be added linking alcohol and substance abuse to the prevalence of sexual violence, and suggested pulling information from the McDowell report. Commissioner Stanfill cautioned that not all sexual violence was rooted in

substance abuse and thought it could be problematic to link the two. She was opposed to adding this information into the victims' section. Commissioners agreed to add another separate section referencing the McDowell report.

Judge Rhoades added that she was concerned the report did not address the issue of people who are developmentally disabled and committing sex offenses, and that these cases may not be processed appropriately. People who are developmentally disabled may be competent to stand trial but might not understand the nature or gravity of their conduct. She thought it was too late to add anything substantive on this but thought it deserved a mention. There was no objection to this.

The Commission unanimously voted to approve the report, amended as discussed during the meeting. Ms. Dunham said she would send the amended report out with changes tracked. If any Commissioner then objected to the report being sent out, she would consult about next steps with Chair Claman. Otherwise, the report would then be sent to the legislature.

Behavioral Health Standing Committee Update

Commissioner Williams gave the group a quick update on the Standing Committee. It met the previous Friday, with Judge Rhoades, Mr. Henderson, Laura Brooks, and Al Wall among others. It was a short but focused meeting to come up with a workplan for 2019. They identified several different areas to work on: crisis intervention teams/centers, jail-based diversion, Title 12 and the competency process, access to institutional treatment, and reentry and discharge planning.

Victim Listening Sessions

Ms. Dunham and Ms. DiPietro explained that the next victim listening session would take place in Fairbanks on March 10, with more to follow. They urged Commissioners to get in touch if they wanted to participate.

Alaska Criminal Justice Commission

Sex Offenses Workgroup

Meeting Summary

Wednesday, January 8, 2019, 9:30 a.m.

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

Commissioners present: Brenda Stanfill, Quinlan Steiner

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

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

Updated Report to Legislature – Registry

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

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

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

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

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

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

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

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

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

Updated Report to Legislature – Victim Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public comment

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

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

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

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

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

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

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

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

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

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

In-Custody and Out-of-Custody Treatment

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

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

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

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

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

Updated Report to Legislature – Prevention Programming

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

Updated Report to Legislature – Conclusion

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

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

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

Updated Report to Legislature – New Appendices

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

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

Updated Report to Legislature – SAKs

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

Updated Report to Legislature – SAM cases

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Updated Report to Legislature – Recidivism

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Updated Report to Legislature – Updating the research

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

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

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

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

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

Updated Report to Legislature – Loose ends

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

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

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

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

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

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

Plan for Report

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

Future Meetings and Tasks

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

The group agreed to meet next in May.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, January 24, 2019

Elizabeth Peratrovich Hall, 320 W Willoughby Ave, Juneau, Alaska 99801

And audio-teleconference

Commissioners Present: Joel Bolger, Sean Case, Matt Claman, Adam Crum, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Steve Williams

Commissioners Absent: Kevin Clarkson (Rob Henderson attended for Attorney General Clarkson), Nancy Dahlstrom (Jared Hutchings and Lei Tupou attended for Commissioner Dahlstrom), Shelley Hughes (Regina Largent attended for Senator Hughes), Amanda Price (Michael Duxbury attended for Commissioner Price).

Participants: Nancy Meade, Araceli Valle, Troy Payne, Lei Tupou, Travis Welch, Lizzie Kubitz, Laura Russell, Albert Wall, Gennifer Moreau, Rob Corpesi, Carmen Lowry, Cathy Schlingheyde, Tracey Dompeling, Ashley Dowling, Clinton Lageson, Susie Dosik, Tony Piper, Alysa Wooden, Mike Mathews, Geri Fox, Morgen Jaco, Katie Baldwin, Karen Cann, Kim Stone, Emily Wright, Michael Duxbury, Talia Eames, Teri Tibbet, Ted Madsen

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

Introductions

Chair Claman noted there were new members of the Commission present and encouraged those present to introduce themselves.

Approval of Meeting Agenda

Commissioner Razo moved to approve the agenda and Justice Bolger seconded the motion. The agenda was approved unanimously.

Approval of Previous Meeting Summary

Staff attorney Barbara Dunham had not circulated the previous meeting's summary; Chair Claman asked that the previous meeting's summary be circulated for the next meeting.

BJA Phase II Grant Approved

Commissioner Case explained that the Bureau of Justice Assistance (BJA) had approved the proposal for a pilot diversion program at APD. APD is looking to create a pilot diversion program for DV offenders.

Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, explained for those that were new that BJA provides grant funding for any state that has enacted criminal justice reform and needs implementation funds. Through the Commission, Alaska has already received funding for training at DOC, among other things. This pilot program recently approved by the commission is intended to use the last remaining funds. The funds will go directly to APD.

The Commission had also approved asking for BJA funding for a DOC project to find way to have people in small communities serve very short amounts of incarceration time in their community. There were a few communities that had interest in this. The grant would have funded a feasibility assessment. That request had not yet been approved and Ms. DiPietro was not sure whether it was still on DOC's agenda.

Commissioner Stanfill asked whether AWAIC was involved in the planning for the APD diversion program. Commissioner Case said the project still needed final approval and had to hire someone to begin the project, so they were not yet ready to involve stakeholders yet. Ms. DiPietro said that the approved budget for the project reserved funds for stakeholder involvement.

Validation of Alaska's Pretrial Risk Assessment Tool

Dr. Troy Payne, associate professor of justice at the UAA Justice Center explained that the Justice Center had been tasked with revalidating the pretrial risk assessment tool for DOC. For his presentation, he planned to speak about pretrial risk assessment in the United States generally, Alaska's current pretrial practices, and the timeline for the revalidation of Alaska's risk assessment tool.

Pretrial Risk Assessment in the US

Dr. Payne said that nationwide, more than 60% of inmates in jails are pretrial detainees costing approximately \$9 billion in incarceration expenses annually. The goals of the criminal justice system during the pretrial phase are to protect public safety, assure the defendant's appearance in court, and honor the defendant's constitutional rights. Dr. Payne reminded the Commission that pretrial defendants have been arrested but not found guilty, and therefore have a constitutional right to be presumed innocent and a right to bail that is not excessive.

Dr. Payne explained that historically, judicial officers have base pretrial release decisions on an opaque combination of professional judgment, intuition, statutes, specific offense categories, monetary considerations, and other information. The last 20 years has seen the addition of risk assessment tools to this mix.

Pretrial risk assessment tools differ from other tools used in corrections; they are typically brief questionnaires and based on static factors that do not require asking questions of the defendant. The pretrial tools measure the risk of the defendant failing to appear or the defendant's re-arrest (some also measure the defendant's risk of violent re-arrest).

Most pretrial risk assessments are created for local jurisdictions; there are few national tools available. Tools used in each jurisdiction are dependent on resources and the availability of quality data. The PSA (Public Safety Assessment by the Laura and John Arnold Foundation) and the ORAS (Ohio Risk Assessment System by University of Cincinnati) are the two most popular tools that are used on a national level. Both are similar to the AK-2S, the tool used in Alaska.

Typical risk factors included in pretrial risk assessment tools are:

- Current charge
- Any other pending charges
- Prior incarcerations
- Prior violent convictions
- Failure to appear history
- Residential stability
- Employment/caregiver history
- Drug abuse history

Dr. Payne noted that most factors included in a pretrial risk assessment tool do not require questioning the defendant. He explained that current charge is not as predictive of pretrial failure as most people think.

Dr. Payne went on to say that pretrial risk assessments are important because they guide release decisions, including assigning appropriate supervision conditions, and improve outcomes. Supervising everyone released pretrial at a high level is not a great idea because it results in over-supervising low-risk defendants, which leads to worse outcomes and a waste of resources. Supervising high-risk defendants appropriately can result in better outcomes.

Benefits and Limitations of Risk Assessments

There is a growing body of research demonstrating that validated pretrial risk assessments can accurately differentiate defendants' risk levels and improve the accuracy of pretrial failure prediction over other methods of making release decisions. Still, these tools are meant to be aids, not to completely replace professional judgment. Dr. Payne likened risk assessment tools to a pilot's pre-flight checklist—if all the boxes are checked, but the pilot can tell the plane is not ready to fly, it won't fly.

Dr. Payne cautioned that these are population-level tools; they predict a likelihood of success or failure, not a certainty. They are actuarial tools, similar to what insurance companies use. As certain score for an individual doesn't mean that individual will necessarily perform as

predicted. Overrides will be necessary in specific cases, and in these cases decision-makers should document any departures from the tool's recommendation. These tools also assess risk only, and do not identify areas of need that could be addressed during supervision to improve outcomes.

Dr. Payne also cautioned that risk assessment tools must be consistently validated to ensure their predictive validity. Laws and policing tactics could change, affecting the factors used in the tool. Validation requires significant data collection demands, which can be hard to do.

The benefit of using pretrial risk assessment tools is that they are an objective, standardized way of assessing the likelihood of pretrial failure, and can help reduce bias (both conscious and unconscious). Collection of data for validation purposes can also lead to improvements in pretrial programs and services. There is also a potential for cost savings from fewer pre-trial detentions and improved public safety from appropriate supervision. Only 10% of jurisdictions use pretrial risk assessments, but those that use them have seen cost savings and increased public safety.

Alaska's Risk Assessment Tool

Dr. Payne explained that jurisdiction-specific risk assessment tools are created by collecting and analyzing local data and determining which factors, and to what degree, are predictive of pretrial success and failures. If a jurisdiction decides to use another jurisdiction's tool, that tool must be validated on the local population. All tools need to be revalidated periodically. Ms. DiPietro added that Dr. Bechtel, who developed Alaska's pretrial risk assessment tool, had stressed the need for revalidation and said that she would be very upset if Alaska was using exactly the same tool in 3 years.

Chair Claman said that he recalled reading research showing that pretrial assessments bring the re-arrest rate to 8-12% range, and wondered if Dr. Payne could verify that. Dr. Payne said he didn't have numbers offhand, but the research shows risk assessments generally lower that rate.

Commissioner Razo asked whether the revalidation would look for whether the tool has a different effect depending on race. Dr. Payne said yes, a risk assessment tool must predict equally well regardless of race or gender. Alaska's tool as designed predicts equally well for Alaska Natives and Caucasians, and for men and women.

Dr. Payne explained that Alaska's pretrial risk assessment tool is called the AK 2S, because the tool has two different scales for different pretrial outcomes. Dr. Bechtel and her team at CJI ran the analysis of data on Alaska's pretrial defendants from 2014-2015, testing dozens of risk factors for predictive validity. They ran over 4000 tests, so it was an extensive analysis.

They found that different factors were predictive of new criminal arrests (NCA) and failures to appear (FTA); this is a relatively common finding. The factors that were chosen for the final tool were those that were the best predictors that worked best together and predicted outcomes

equally well across race and gender categories. The base rates for pretrial failure were 14% for FTA and 37% for NCA.

Dr. Payne listed the risk factors for each scale. For FTA, the factors are age at first arrest, number of prior FTA warrants, number of prior FTA warrants in the past three years, whether currently booked on an FTA, whether currently booked on a property charge, and whether currently booked on a non-DUI motor vehicle charge. For NCA, the factors are age at first arrest, number of prior arrests in the past five years, number of prior convictions in the last three years, number of sentence that included a period of probation, number of sentences that included probation in the past five years, and number of sentences that included incarceration in the past three years. Each response to each factor gives a score, the scores are tallied, and the final tallies give the risk classification (low, moderate, or high).

Regarding the different time windows (e.g. three years or five years), Dr. Payne explained that as part of the testing, the researchers ran tests comparing the predictive capability of different time frames and selected those that were most predictive.

Nancy Meade, general counsel for the Court System, asked whether a current charge for vehicle theft would give one point or two on the FTA scale. Ms. DiPietro said it would be counted once as a property charge; non-DUI motor vehicle charges are offenses in title 28 of the Alaska Statutes.

Judge Stephens recalled that when the tool was rolled out, a score of 9 on the NCA scale was labelled moderate, though the researchers noted it was borderline. He wondered whether that might change with the revalidation. Dr. Payne said the classification of the scores could change, along with the factors used to determine the score.

Deputy AG Rob Henderson reminded the Commission that there was a working group to determine how to classify the scores according to the statutory scheme. The scales created five classification categories, and the working group had to lump those categories into three because of the structure of the law. Commissioner Steiner added that when those classified as 9 were included with those classified as 10, the bulk of people were categorized as high risk. Ms. DiPietro added that the tool would not be effective if everyone was clumped into one category. Mr. Henderson said it was the hope of the ad-hoc workgroup was that revalidation will address the classification issue.

Dr. Payne continued that out of state criminal history was not included in the creation of the tool because the FBI restricted access to that data; it doesn't allow researchers to get national criminal history data in bulk. However that information can be collected on an individual basis, which is what DOC has been doing- this information has also been included in the report to the court for each defendant. As part of the revalidation study, he will be able to assess whether and to what extent out of state criminal history is predictive. Most states do not include this information, and it does not necessarily improve predictability.

Deputy Commissioner of DHSS Albert Wall asked whether juvenile history was included in the data analyzed for the tool. Dr. Payne said it was not included. Chair Claman noted this information could be presented on a case-by-case basis to the court, and the judge could account for that and override the recommendation. Mr. Henderson noted that Law has access to juvenile history but does not pull that information as a matter of course. Judge Stephens noted that in a small community, prosecutors and judges would know about a defendant's juvenile history, but that would not necessarily be true in Anchorage or Fairbanks. Mr. Henderson agreed. Dr. Payne said he was not aware of any pretrial tool that includes juvenile history. Mr. Henderson noted that if a juvenile was tried as adult, that would count as adult criminal history.

Commissioner Razo asked about the interplay between bail schedule and the risk assessment tool. Judge Stephens said that if a person has been released per the bail schedule, that person is not assessed. Commissioner Steiner noted that in such cases, the prosecution can request an assessment. Mr. Henderson agreed but was not sure how often that happens.

Chair Claman clarified for those who weren't familiar with it that the bail schedule sets standard bail amounts (or release on one's own recognizance) for certain offenses. Judge Stephens noted the bail schedule only sets standard bail for some misdemeanors and does not include DV offenses. If an officer believes bail in a certain case should be different, the officer can always call a magistrate for a different bail. Mr. Henderson noted that if the bail schedule sets an amount for an arrestee who cannot pay the required amount, that person will not be released and will be assessed.

Revalidation Study - Objectives

Dr. Payne outlined the research questions for the revalidation study:

1. Have the baseline rates for FTA and NCA changed?
2. Are the AK-2S FTA and NCA scales valid instruments?
3. Do the scales classify risk levels appropriately?
4. Do the scales predict similarly across subgroups of race and sex?
5. Does out-of-state criminal history improve prediction?

Judge Stephens wondered whether, since many of those arrested for a non-violent misdemeanor are released per the bail schedule, PED was only assessing high risk individuals. Dr. Payne said that was also a question they'd be looking at. Judge Stephens asked whether they would be able to compare people who were assessed with people who were not assessed. Dr. Payne said he thought so.

Commissioner Stanfill asked whether the FTA and NCA rates would be expected to change compared to the baseline rates. Dr. Payne said that if the tool was valid and used to fidelity, he

would expect the rates to go down. On the other hand, oversupervision would lead to higher failure rates. He didn't have a strong expectation of what the rates would be.

Deputy Commissioner of DPS Michael Duxbury asked whether there was a control group. Dr. Payne said there was not, because the risk assessment wasn't created as an experimental design; the AK-2S was applied to everyone who was eligible for it. Experimental design is not typically ethical or legal in criminal justice research. The comparison will be with the baseline.

In terms of question three, about how the scales classify risk levels,—low vs. moderate vs. high—Dr. Payne said the question will be whether those lines were drawn appropriately. For the question about whether the scales predict similarly across groups of race and sex, they will specifically look at how they perform for Alaska Natives vs. whites, also by sex according to race. Ms. DiPietro added that data shows that Alaska Natives are disproportionately confined pretrial, and this was one reason why validation was so important.

Chair Claman said he recalled that disparity diminished since implementation of the risk assessment. Ms. DiPietro said that was true; preliminary results of a study by the judicial council shows that the disparity has diminished, though that study is not fully "cooked" yet.

Revalidation Study - Process

Dr. Payne said the revalidation would proceed in three phases: (1) data acquisition and planning, (2) data analysis and draft reporting, and (3) findings and dissemination. Right now AJIC was working on data-sharing agreements. Right now they have about 2/3 of the needed data. DOC has given them preliminary data, and they have been able to do prep work and should be able to hit the ground running once they have data from DPS. They should have preliminary analysis by April, and findings by the end of the fiscal year (June). This is a pretty fast timeline for academia. Once they get to June, they might have other lingering questions.

Dr. Payne explained that the revalidation study would use a mix of analyses: receiver operator curve and area under curve analysis and multivariate analysis. Their work will be well documented. The out-of-state criminal history data will prove challenging because the data coming from the NCIC can be unclear—PED has had difficulty categorizing some crimes as felonies or misdemeanors, for example.

Dr. Payne was curious to know whether this group had suggestions for other easy-to-measure factors that should be looked at in the revalidation. CJI looked at a lot of factors that were not predictive of risk—for example, current age was not predictive, a current drug charge was not predictive, and prior felonies were not predictive for Alaska Natives. But he wanted to leave the door open for commentary and suggestions for other factors.

Mr. Henderson asked whether the revalidation could analyze the data for risk of new violent criminal arrests. Dr. Payne said the original tool was not designed to differentiate violent and nonviolent new arrests, though most of the new arrests in the sample were for nonviolent

misdemeanor crimes. There might not be enough in the sample to provide sufficient numbers for that analysis but they could look into it.

Commissioner Stanfill said she was surprised that a current charge for a drug crime was not predictive for pretrial failure, and wondered whether the researchers had only counted the highest charge. Dr. Payne said he would need to verify with CJJ's data, but would guess they had looked for whether any drug crime was currently charged. He said that current charge being predictive was hit or miss in the nationwide literature on pretrial risk instruments.

Medicaid 1115 Waiver

Gennifer Moreau, acting director of the Division of Behavioral Health, explained that the Medicaid 1115 waiver is an opportunity to get a waiver of federal rules regarding Medicaid reimbursement in order to better serve justice-involved populations. Typically Medicaid reimbursement is only available for limited services.

Medicaid Reimbursement and Justice-Involved Populations

Ms. Moreau explained that Medicaid is a state/federal partnership, and the amount of federal matching funds for healthcare services depends on what group is being served. For example, the Medicaid expansion population (childless adults) has a 90% federal match; others might be 50%. Commissioner Crum explained that Alaska's expansion population is about 43,000 people.

Ms. Moreau said that justice-involved populations were a good example of the kind of latitude allowed in Medicaid policy. For example, while people in prison typically are not Medicaid-eligible, Medicaid will reimburse for inmates receiving inpatient care outside a correctional facility. This provision has allowed DHSS to retain inmates on Medicaid with that inpatient limitation; in the past, Medicaid coverage has been terminated during incarceration and the person would have to reapply once released, a lengthy and time-consuming process.

Mr. Wall noted that some states have had really creative applications of the 1115 waiver for justice-involved populations – for example, funding a diversion to treatment program. Ms. Moreau noted that the 1115 waiver is a population-level waiver; the state must maintain budget neutrality.

Goals and Target Populations

Ms. Moreau explained that Alaska's goals for the 1115 waiver are to:

- Intervene as early as possible in the lives of Alaskans to address behavioral health symptoms before they cascade into functional impairments

- Increase access to robust and sustainable community- or regionally-based and culturally appropriate outpatient treatment services that have been designed to promote family wellness, stability and reunification, and child health and development
- Rebalance the current behavioral health system of care to reduce Alaska's over-reliance on acute, institutional care and shift to more community- or regionally-based care
- Increase access to local crisis and community- and regionally-based sub-acute treatment and wrap-around services designed to prevent over-utilization of deep-end, acute services
- Increase access to a comprehensive continuum of SUD services designed to maintain individuals in community settings and to address long-standing gaps in services and needs related to Alaska's opioid crisis
- Improve overall behavioral health system accountability by reforming the existing system of care

Barry Wilson from DPS asked whether Medicaid could reimburse costs associated with AST transporting someone to an area where they can receive services. Ms. Moreau said that it would depend on the person's eligibility. Medicaid recipients can be under some correctional supervision but must have "freedom of choice" to be eligible.

Mr. Duxbury noted that there are those who are subject to a Title 47 hold and are often transported in police cars. He wondered if they could be transported by Medicaid instead. Ms. Moreaus said that might be possible— she would have to get back to him. Title 47 might be out of the Medicaid domain—the recipient must be Medicaid eligible and the service medically necessary. She noted that one proposed service under the 1115 waiver is a mobile crisis response.

Ms. Moreau went on to explain that Medicaid will not reimburse costs after 24 hours outside a medical facility, and Alaska is also requesting waiver for that, allowing coverage for things like therapeutic foster care. Another rule Alaska wants to waive is that Medicaid won't reimburse adults ages 17-64 at an institute for mental disease (IMD) that has over 16 beds. Mr. Wall noted that 16-bed facilities just aren't cost effective in Alaska. He added that the waiver will also change billing and reimbursement; services can be packaged into one bill, which reduces administrative costs.

Ms. Moreau explained that Alaska's 1115 waiver application had sorted the proposed services according to population, or Medicaid eligibility group (MEG). Thus far, MEG 3-- adolescents, adults, and elderly people with substance use disorders (SUD)—has been approved. This group has been approved for IMDs over 16 beds, workforce development, and expanded treatment for SUD, including residential treatment, withdrawal management, care coordination, and partial hospitalization. These new services are desperately needed in Alaska.

Mr. Wall explained that the waiver process will also include looking at the professional standards of treatment providers. Currently licensure is not required to be an SUD treatment provider. He didn't think requiring licensure was necessary but some standards as to training were needed.

Ms. Moreau said that the other targeted MEGs were: (1) children, adolescents and their parents or caretakers with, or at risk of, mental health and substance use disorders. Common indicators for child neglect were used as components for Medicaid eligibility for this group. The focus of this group is early intervention, which will be less costly. The proposed waiver includes therapeutic foster care.

MEG (2) is transitional age youth, adults, and elderly people with acute mental health needs. Services under the proposed waiver include mobile crisis response and crisis stabilization, needs that multiple groups associated with the Commission have identified as a priority.

Ms. Moreau explained that the SUD component of the waiver, which has already been approved, requires the state to meet six major milestones by 2023:

- Ensure access to 9 critical levels of care for substance use disorder (SUD) treatment
- Ensure use of evidence-based, SUD-specific patient placement criteria
- Ensure use of nationally-recognized, SUD-specific program standards for residential treatment facility provider qualifications
- Ensure sufficient provider capacity at critical levels of care
- Implement comprehensive treatment and prevention strategies to address opioid abuse
- Ensure improved care coordination and transitions between levels of care

The application for the waiver did not specifically target justice-involved populations, but did target their needs, particularly those with SUD. The waiver will improve access to community and regional services for justice-involved populations reentering communities from incarceration, and community-based crisis and sub-acute services can serve to intervene and divert individuals from justice-system engagement into treatment. If they IMD waiver for API is approved, then API could expand its forensic population. There is also a potential for outpatient competency restoration.

Mr. Wall noted this last item would require changes to law, but outpatient restoration can be significantly cheaper, and more effective. He was planning to talk about this later in the agenda.

Commissioner Stanfill noted the emphasis on opioid abuse and wondered whether there will be treatment for meth abuse as well. Ms. Moreau said that was highlighted because it was a

focus of the federal agencies right now, but abuse of other substances will still be covered. She reminded the group that alcohol was still the most abused substance in Alaska. Regarding meth abuse treatment, Brita Bishop, deputy director for DBH, said they were looking into some emerging medication-assisted treatment for meth abuse; this would be covered under the waiver.

Mr. Duxbury said that Alaska spent millions on the effects of drugs, and the same amount on alcohol. The federal focus is on opioids but Alaska's problem is really one of poly-drug use. AST collects data on the drugs seized; they have seized enough heroin to dose everyone in Alaska twice, and enough meth to dose everyone in Alaska five times. He suggested looking at the McDowell report. Commissioner Williams said the report was on the Trust website and that he could circulate it to the Commission.

Mr. Wall noted that opioid addiction costs have been tracked, but alcohol corollary costs are not necessarily studied.

Ms. Moreau said that the next steps were to:

- Complete administrative requirements to implement the SUD portion of the Waiver—end of February 2019
- Draft/publish regulations – April 2019
- Ensure adequate provider network—June 2019
- Hire administrative entity—April 2019
- Initiate SUD service delivery—July 2019

Ms. Moreau added that there was already a solicitation out for the administrative services entity, which will be needed for the substantial data reporting requirements (though the decision to use a separate administrative entity is not final). The Alaska Mental Health Trust has also funded a statewide survey of infrastructure needs, physical needs, and provider needs.

Ms. Moreau said that the negotiation with CMS for the next parts of the waiver application should (tentatively) be completed in the next six to ten months. When approved, those parts will likely be part of the same demonstration period (i.e. through 2023).

Chair Claman noted that the question of whether the Medicaid expansion will continue in Alaska bears on this process.

Anchorage Assessments for Mental Health Crises

Commissioner Case said that APD was seeing increasing officer time spent on responding to the mentally ill. There are not a lot of options in Anchorage for places to take a person who is in a mental health crisis. The majority of these cases don't necessarily reach the level of Title 47, or the people around them might not want to admit to the threat they might pose to themselves or others. Either way, the officers aren't comfortable leaving that person with their family. Often they will go voluntarily to hospitals; APD has essentially been providing transport.

Commissioner Case said that APD used to get patients into the hospital in a timely manner, but now each visit takes over an hour. Hospital staff doesn't want to have them taking up ER beds—which is also not the right place for them.

Other communities have tried mobile response teams involving the police, fire department, and social workers. In Colorado Springs, they were able to use this to cut down on transports by 60%. This is a population that can be served in the community; sending them to the ER can have negative repercussions.

Another model is a stabilization center. This center would provide short-term assessment and referrals for co-occurring disorders. It is also a way to divert those who might otherwise be charged with a crime.

Commissioner Case relayed that APD had recently arrested one person three times in one night—all for stealing basic essentials. Thanks to Cathleen McLaughlin and Partners for Progress, they got that person housed, and the charges were dropped. APD could have taken that person to DOC, or could have walked away, but those weren't the proper solutions. APD is in a unique position to take the time to get people to appropriate services, but those services are lacking. He thought this topic was in the Commission's wheelhouse and wanted to put it on the Commission's radar.

Commissioner Crum said that both solutions were definitely things DHSS was looking to do with the 1115 waiver. Mr. Wall said that this really hits the nail on the head. He noted Commissioner Case was describing an evidence-based practice called ACT. Alaska has been discussing this issue for years; then new administrations come in and everything restarts. He thought Alaska was at a point where there was a need to move quickly on this.

Chair Claman noted that a stabilization center would essentially need a new facility, and that some in Anchorage have suggested the old Johnson's Tire building. It would need funding and regulations, but could be well-suited.

Commissioner Case said that APD has had a social work clinician for some time, and that person reads every police report to get data regarding needs, population, time spent, and money needed, he will keep the Commission posted when that data can be analyzed.

Ms. Moreau added that the Trust has funded a feasibility study for a crisis stabilization center, which will include looking at site-specific requirements. In addition to crisis stabilization, there was also a need for ancillary services—crisis stabilization is a refer-out model. The technical assistance provider for that study is looking at ER, APD, and Title 47 data and will get good data out of that.

Commissioner Stanfill reminded the Commission this was not just an Anchorage problem; Fairbanks has the same issues. As a person who runs a shelter, she deals with the aftermath of what happens when the first responders step away. Shelter staff are not trained clinicians, but behavioral health issues are trickling down into every area. However, great things are being done

with permanent supportive housing. She saw the need to deal with the crisis but also to develop long term solutions. This was the same type of problem that led to using jail as a housing solution.

Mr. Wall agreed there was a need for a couple centers, and agree those efforts will fail without ancillary services. The waiver process brings funding for some things that were not previously billable, but Alaska will need to provide a full continuum of care. There might be some statutory and regulatory constraints that need to be adjusted

Commissioner Stanfill added that there was also an issue of workforce development; no one will be able to use additional funding for crisis stabilization if there is no one to do the work.

Commissioner Williams agreed that there needs to be a continuum of care. He observed that this conversation itself served as a red flag that Alaska's community services are not adequate. If basic needs are not met in the community, the community will need stabilization centers. He reminded the Commission that it endorsed the recommendations regarding crisis stabilization and mobile crisis from the Behavioral Health Standing Committee.

Judge Rhoades said she wanted to echo the comments from Commissioners Williams and Stanfill. This has been an issue since she started to work with justice-involved individuals with SMI. There is still a huge need for crisis stabilization because there is no place for police to divert those who do not meet civil commitment standards, so those people end up in jail. She noted that forensic services are very costly. There was a need for ancillary services but also connections to ancillary services. Without a police drop off and an assessment, people can't be connected to those services. She warned the Commission that full-spectrum can paralyze the process.

Mr. Wall said he has gone to many conferences, which are attended by groups of advocates, in which everyone identifies these problems and lists solutions. It is frustrating when those conversations keep happening and the needle doesn't move.

Title 47 Holds

Commissioners present noted that a lawsuit between the Public Defender Agency, DHSS and DOC was pending; they would not be discussing anything specifically related to the lawsuit at this meeting.

Mr. Wall explained that the process of evaluating psychiatric needs is cut and dried: for people experiencing a mental health crisis, on-call DHSS grantees go to the ER to evaluate their danger to self or others. The outcome of that inquiry is either yes (in which case the person will be subject to a Title 47 hold and go to treatment) or no (in which case they are not treated). There are no other questions. In his view, this was too simplistic; people in crisis have a lot more going on than just that. It is frustrating when a person is not safe left alone and there's nowhere for them to go.

Mr. Wall continued that some of these people could be stabilized faster and at a lower level of care. There are options out there. DHSS is having conversations about how to change this.

All the needs previously mentioned at this meeting need addressing, but changing the laws around Title 47 is one thing that can be done now. Title 47 is an old law based on other states' laws; there was a need to revisit the legal structure, and DHSS has started that process. He wanted to inform the Commission, and if any of the Commissioners had suggestions, his ears were open.

Judge Stephens said that personal view was that Title 47 was based on how things work in Anchorage and nowhere else in Alaska. For example, in Southeast Alaska, there are two evaluation facilities (in Ketchikan and Juneau), and getting to one of them from an outlying area can take longer than the statutory evaluation period. Title 47 was built with the understanding that you can take someone to a facility that has beds open right away.

Commissioner Crum wondered whether this was an appropriate topic for the Behavioral Health Standing Committee. Chair Claman thought it was. Commissioner Crum said that DHSS will be in touch with that group regarding its proposed changes.

Mr. Wall mentioned that the UNLV report had already done a lot of this work. Justice Bolger noted that the Commission had asked DHSS (under the previous administration) for its views on whether to go forward with any of the recommendations in the UNLV report and the department's response had been fairly negative. Mr. Wall said he was aware of that.

Judge Rhoades agreed that the same issues recycling over and over again can be frustrating. She was very interested in working on this. She noted the UNLV report also looked at the intersection of Title 47 (civil commitments) and Title 12 (legal competency for criminal trials). She hoped DHSS would also look at this intersection.

Commissioner Williams said that in 2015 when the UNLV report was presented to the Criminal Justice Working Group and the Commission, there was some discussion about the Commission's purview regarding civil issues. He thought the intersection between the criminal and civil realms should be addressed by the Commission, but wanted to bring up that it had been a topic of discussion.

Commissioner Steiner moved to send the UNLV report back to the Behavioral Health Standing Committee with input from DHSS. Commissioner Stanfill seconded the motion.

Mr. Henderson was hesitant, agreeing with Commissioner Williams that the report has been discussed for years. Before the Committee dedicated its energy to this, he thought the administration should make sure it was aligned. Commissioner Williams asked the representatives from DHSS to get clarity on whether and how it wants to proceed on the UNLV report before March.

Chair Claman asked to add a friendly amendment to the motion that proceeding be subject to official communication that DHSS can move forward with this. Commissioner Crum said that made sense and Commissioner Steiner agreed to the amendment. The motion so amended passed without objection.

Sex Offenses Report Preview

Ms. Dunham explained that the legislature had asked the Commission to write a report on sex offenses in SB 91. The report had no due date, which had been both a blessing and a curse. The Sex Offenses Workgroup had been discussing this report since November 2017. Ms. Dunham walked the Commission through the various sections in the report:

- Data, including:
 - Rates of victimization
 - Reports to law enforcement
 - Arrests by law enforcement & referrals to Department of Law
 - Charges filed by Department of Law
 - Resolutions of charges filed
 - Incarceration after conviction, sentence length & length of stay
 - Recidivism of individuals after release from incarceration
- Sentencing Laws
- Treatment and Reentry
- Victim Services, Safety, and Healing
- Review of current sex offense statutes (appendix)

Regarding the data section, Mike Matthews from DOC said he had different numbers on sex offender recidivism, and that he would send them to the Commission staff. Mr. Henderson asked that staff also report victim ages and suspect ages by region.

Ms. Dunham explained that the workgroup was nearing the final draft of the report. The workgroup would next meet all day on February 7. If the workgroup could finalize approval of the report on that day, staff would send a final draft out to the full Commission by February 15 for consideration by the full Commission at the next plenary meeting March 4.

Public Comment

Don Habeger of the Juneau Reentry Coalition said that the reentry coalitions are all active and stand ready to help and offer solutions to their community. For example the local coalition partners with an organization that has a navigator system that can get people to the treatment they need. They could partner with the State on that to begin to address the Title 47 issues raised.

Mr. Habeger also wanted to inform the Commission that the Juneau Reentry Coalition was working on three items to move the community forward: Housing, Peer Support, and Behavioral Health. On behavioral health, their goal is to ensure that when ready, people can access treatment they need immediately. He wanted to emphasize that housing is real challenge. Housing agencies in Juneau typically have a zero tolerance policy. On person, a client of the Coalition's case manager received some tragic news, relapsed, and had to leave their housing in midwinter to live under a bridge. He just wanted the Commission to be aware.

Cathleen McLaughlin from Partners for Progress reminded the Commission that Partners was created by SB 64. Since then, they have served 7500 people, and housed 3500 people; they now have more beds than needed. They want to look into having centers in other locations. They think their model is replicatable; to start, they're looking into Fairbanks.

Ms. McLaughlin explained that Partners has conducted informal recidivism studies of their clients; those housed had an 18% recidivism rate. Once they left housing after 60 or 90 days, that rate went up to 61%. After that finding, they are now housing people up to a year but the clients are required to pay part of the rent. She provided handouts on Partners and encouraged the Commissioners to ask questions.

Geri Miller-Fox, former director of the Pretrial Enforcement Division, wanted to commend Dr. Payne on his presentation. She also wanted to remind the Commissioners that PED had implemented a fidelity tool for risk assessments: about 10% of assessments are blind reassessments (i.e. the assessor does not realize it's a redo). They analyzed the fidelity data in July and found 95% fidelity, which is very good. She wanted to make sure the Commission was aware that data point is available, and exists for each question. She suggested keeping that in mind moving forward.

Regarding the statutory problem of the statute requiring three categories (low, moderate, and high) and the data grouping into five categories, Ms. Fox reminded the Commissioners that that was fixed through the ad-hoc workgroup, then DOC formed a regulation group. A regulation was enacted, and was written broadly enough to accommodate a changed tool. If the tool does change, however, it will require a change to the database, as well as retraining officers and all partners.

R.D. Parks from Petersburg said that his daughter Molly was killed in a vehicle crash in 2016 which also killed one other person and injured a third. The driver of the van they were in had a seizure and crossed a barrier at 60mph. When the car landed Molly was killed instantly. The driver had been under doctors' orders not to drive under any circumstance. He pled guilty to manslaughter with a sentencing aggravator. Without the aggravator he would have been eligible for discretionary parole at a quarter of time served, which would have worked out to being released in 9 months with good time. The judge decided to double his time to serve, making him eligible for discretionary parole in 2021. In Mr. Parks' view, this was not appropriate, nor was it appropriate that the defendant got credit for time spent on electronic monitoring while sitting at

his parents' house watching TV given that he committed a felony and two people were killed. That kind of policy cheapens the life of the victims.

Future Meeting Dates and Tasks

- Sex Offenses Report (no due date)
- Sex Offenses Workgroup February 7, 2019
- 2019 Plenary Sessions:
 - March 4, 2019 (in Juneau)
 - May 31, 2019
 - August 23, 2019
 - October 7, 2019

Alaska Criminal Justice Commission

Meeting Summary

Wednesday, November 28, 2018

9:30 am – 12:30 p.m.

Snowden Training Center, Anchorage
And teleconference

Commissioners Present: Jay Butler, Matt Claman, John Coghill, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams, Steve Williams

Commissioners Absent: Joel Bolger (Nancy Meade served as proxy for Justice Bolger), Sean Case, Jahna Lindemuth (Rob Henderson served as proxy for AG Lindemuth), Walt Monegan

Participants: Nancy Meade, Lizzie Kubitz, Kim Stone, Brad Myrstol, Diane Casto, Tony Piper, Don Habeger, Teri Tibbett, Mike Matthews, Araceli Valle, Lizzie Kubitz, Leslie Heber, Triada Stampas, Michael Berger, Rob Henderson, Pete Harrison

Staff: Teri Carns, Staci Corey, Susie Dosik, Barbara Dunham

Approval of Meeting Agenda

Judge Rhoades asked to add the issue of using jail for mental health holds to the agenda. There was no objection to the agenda as amended.

Approval of Previous Meeting Summaries

Judge Rhoades moved to approve the summaries of the previous two meetings; Judge Stephens seconded the motion. There was no objection and the summaries were approved.

Update on Sex Offenses Report and Directive to the Workgroup

Project attorney Barbara Dunham gave the Commission a brief update on the report to the Legislature on sex offenses. The report had data, legislative history, information on treatment and reentry, and information on victims' issues. Some members of the Sex Offenses Workgroup wanted additional time to review the latest draft and provide comments before forwarding the draft to the full Commission. Comments were due to Ms. Dunham by December 8 and the Workgroup would meet again on December 18.

Chair Claman explained that there had been a question at the last Sex Offenses Workgroup meeting about what the Commission had asked the workgroup to discuss at the last plenary meeting. He said it sounded like there was some uncertainty from the workgroup about whether there should be a discussion on the sex offense statutes and gaps in the law.

Commissioner Stanfill said that she thought the idea was to get a recommendation to the legislature before the start of the legislative session in January. Her understanding was that the request was not necessarily to include a recommendation in the report, but rather to review sex crimes in the report, and separately to look at the statutes and assess them for potential recommendations. At the last workgroup meeting, there wasn't a willingness to do that. She was

not sure where that left the Commission. She believed the Attorney General's office would be doing something about this and that the Public Defender wasn't interested, but she was very interested in having the Commission review the statutes and assess them for potential recommendations. She was not sure whether a workgroup could reject a request from the Commission.

Judge Rhoades wondered where the Alaska Federation of Natives (AFN)'s request fit into all this. Commissioner Razo explained that it was just a request from another organization that suggested the Commission review the statutes, and not binding. He believed it was important the Commission look at this. He knew that the Attorney General's office was working on various proposals, but observed that that has not stopped the Commission before. It was important to take a look at these statutes to see if additions or changes should be made. He requested that the workgroup do this.

Judge Rhoades said she was curious whether any work had been done about the AFN resolutions. She thought reviewing the statutes was within the mission of the Commission and in particular the workgroup, and she thought it should be done.

Deputy AG Rob Henderson said it was accurate to say that the AG's office was preparing legislative proposals for sex offenses. As a practical matter, he was not sure the workgroup could finish a recommendation in time for the legislative session. Commissioner Razo said that even so, he thought it was important to provide the legislature with the Commission's perspective.

Chair Claman said his impression from the September meeting was that this would be included in the sex offenses report, but not necessarily in a detailed way. He thought it was the consensus view that it would be included, and that not to include it would not be fulfilling the Commission's role. He asked if there was any objection to continuing that direction.

Commissioner Stanfill noted that Commissioner Steiner, who had voiced his objection to the workgroup taking up this issue, was not present. She thought there could be a subcommittee of the subcommittee for those that want to be involved. The issue raised by the Schneider case was not the only gap she knew of. Something might come out of the upcoming legislative session that might fix this identified gap, but there might be other gaps that Alaska has in comparison to other states.

Commissioner Razo said that this kind of criminal activity was the hardest to grapple with, but making recommendations regarding sex offenses was clearly part of the Commission's statutory mission. Judge Rhoades endorsed that idea, and said that if there was going to be movement on this in the Legislature, it would be better for the legislators to have the best thinking of the Commission on the subject to inform their discussion.

Commissioner Steve Williams thought it was important that the Commission look at the whole system with regard to sex offenses rather than a couple of issues. Statutes are often not reviewed in a holistic way, and statutory responses to individual situations can have unintended consequences long term.

Chair Claman wondered if the Commission needed a motion to make this happen. Mr. Henderson thought that would be best.

Commissioner Razo moved to have Sex Offenses Workgroup specifically take a look at the conduct alleged in the Schneider case as well as other statutes to determine if the Commission should make a recommendation. Mr. Henderson seconded the motion. The motion passed unanimously.

Ms. Dunham asked whether this topic should be included. Chair Claman said that it should be included to the extent possible with the time constraints already set. Commissioner Stanfill agreed.

Victim Listening Sessions Planning

[Commissioner Steiner joined at this point.]

Ms. Dunham reminded the group that the Commission had also agreed to hold victim listening or roundtable sessions at the September meeting. Staff was in need of direction on this, so she had contacted the Commissioners who would be remaining on the Commission to form an ad-hoc workgroup to plan the listening sessions. This ad-hoc group would meet Monday, Dec. 3 at noon.

Chair Claman asked what the timing would be for these listening sessions, and Ms. Dunham replied that she was happy to take direction from the Commission on that as well. Commissioner Razo noted that there are a number of events that involve a gathering of rural Alaskans. He recalled that Commission trips to Nome and Kotzebue were very beneficial. The Tanana Chiefs Conference was specifically devoted to tribal justice, and the Commission would probably find a lot of interested people there. There was the BIA providers' conference happening now. Since the Commission did not have much of a budget, it should take advantage of existing gatherings. He was planning to participate in the ad-hoc group. He also noted there was a need to do these sessions in urban areas, as there was no shortage of victims in urban centers as well.

Commissioner Stanfill asked if the previous facilitator, Anne Seymore, was available. Ms. Dunham said that she was contracted with Pew and theoretically available to the Commission through CJI, but she was booked through the end of the year and was not sure about her availability after that. Chair Claman asked if a facilitator would be helpful, and Commissioner Stanfill said yes, because a facilitator can allow the Commissioners present to just listen to the victims who want to speak and the facilitator is seen as a neutral party.

Preliminary Report on Bail Study

Ms. Dunham explained that the Judicial Council had performed a study of a sample of files to review bail and pretrial practices, as a follow-up to a similar study the Council had done in 2015. The new study was of cases that began between April 1 and June 30 of 2018, and took a sample from a variety of courts that was comparable to the sample taken for the 2015 study.

Ms. Dunham reminded the Commissioners that the new pretrial practices enacted through criminal justice reform had been based on research showing that actuarial risk assessments help judges make more accurate decisions than just using their professional judgment alone, that unsecured bonds were just as effective as secured bonds at ensuring appearances in court, and

that third-party custodians were detrimental to pretrial success for low-risk defendants but helpful for high-risk defendants.

Commissioner Stanfill asked what was meant by “more accurate” decision making. Ms. Dunham and Judicial Council researcher Teri Carns explained that there were a number of studies showing that the judges could more accurately tell who was low, medium or high risk for pretrial failure and what conditions should therefore be imposed on their release.

Ms. Dunham explained that the 2015 study showed that just under half of the defendants sampled were released pretrial, that most defendants were assigned a third-party custodian and/or a cash bond requirement; that on a given day, and that Alaska Natives were more likely than Caucasians to be held pretrial.

Ms. Dunham explained that the 2018 study asked similar questions, namely, what percentage of people were released pretrial, whether there were any regional differences in release rates, whether the ethnic disparity changed, whether cash bond amounts had changed, what percentage were released by the bail schedule, and what percentage failed to appear for trial. Initially the study did not seek to determine the rate of new criminal arrests for the sample. The study looked at a sample of 366 cases from Anchorage, Nome, Bethel, Fairbanks, and Juneau.

In 2015, about 48% of the defendants in the cases sampled were released at least once pretrial. In 2018, about 75% of the defendants in the cases sampled were released at least once pretrial. In 2018, about 30% of the defendants in the cases sampled were released according to the bail schedule. Of the cases that did not involve the bail schedule, 64% of defendants were released after a judicial hearing. This was the statewide average; release rates varied by location, from 53% in Bethel to 78% in Fairbanks (non-bail schedule cases).

In 2015, 10% of defendants were released on an unsecured bond and money bond was set in about 67% of cases; in 2018, 22% of defendants were released on an unsecured bond and money bond was set in 41% of cases. In 2015, there was a heavy reliance on third-party custodians; in 2018, there were only 4 cases where a third-party custodian was required (SB 91 limited the use of third-party custodians to areas where supervision from the Pretrial Enforcement Division (PED) was not available).

In 2018, about half of all defendants had drug/alcohol and/or electronic monitoring equipment conditions of release. Similarly, judges ordered PED supervision for about half of the people released at arraignment. According to recent DOC counts, about half of all defendants on PED supervision were assessed as low risk.

Commissioner Steiner wondered what the level of supervision was for those assessed as low risk. He has heard anecdotal evidence that judges are ordering conditions for some defendants that are not appropriate, which might be a training issue.

Commissioner Dean Williams noted that the number of people assigned to PED is creating capacity issues. The level of supervision is not standard, and there are cases of PED being ordered to “overwatch” some individuals. They would like the ability to go back to the court to alert the judge if conditions are inappropriate. Practices vary by jurisdiction. In cases where no specific method of supervision is ordered, PED will follow best practices.

Commissioner Razo said that he worried that PED was taking the place of third-party custody. It spoke to the need for ongoing training for DOC and the judiciary. Judge Stephens said it was also a training issue for DAs and PDs. Chair Claman said it sounded like there was a lot of uncertainty in this area and that the various departments could use a little clarity or perhaps legislative action.

Judge Rhoades noted that the therapeutic court officers could request bail review hearings, and thought that could be a model for PED officers.

Pete Harrison, Deputy Director of PED, noted that in areas with lower case volumes, PED officers will attend arraignments and can interact with the judge, but this is not possible in Anchorage or Fairbanks. There was a steep learning curve for the new division in the first 6 months, but they are now getting the hang of things. Regarding the level of supervision, they follow whatever the judge puts on the bail order. When they see orders that don't seem to match the defendant, they try to alert the court, but in some cases have been told by the DA's office not to ask for bail review hearings.

Judge Stephens noted that several PED officers came to the judicial conference in October for a training session, and that the court system intends to follow up with PED for further dialogue. Mr. Harrison said that attending the judges' conference was very helpful to them. They heard from the judges that they wanted more PED boots on the ground, and that they weren't satisfied with EM alone.

Commissioner Razo wondered if a court rule could clear up the confusion. Judge Stephens said it had not been discussed. Judge Rhoades said she didn't think a new court rule would be helpful, but a mechanism to re-set bail hearings might be.

Ms. Dunham continued her presentation on the 2018 bail study, explaining that the Failure to Appear (FTA) rate from 2015 was 14% and from 2018 was 13%; this was not a statistically significant difference.

Ms. Dunham explained that about half of the files did not include a risk assessment; upon further follow-up from the judicial council, more assessments were discovered and in the end, about one third of the files did not include a risk assessment. Nancy Meade said that Judicial Council staff had alerted the Court System to this issue and the Court System was now ensuring that the risk assessment made it to all the files. She reported that some judges do not have confidence in the utility or accuracy of the risk assessments. Judge Stephens added that the most common complaints he hears about the risk assessment is that it doesn't account for the current charge and doesn't account for out of state history. He didn't necessarily agree with that take but that was what he was hearing. Chair Claman noted that HB 312 addressed those concerns.

Commissioner Dean Williams said that he was not sure that a greater percentage of people being released pretrial meant that the pretrial population itself was decreasing. They were seeing the highest pretrial number they'd ever seen. Commissioner Steiner theorized that it was because charging was skyrocketing. Mike Matthews from DOC confirmed that the sentenced population was decreasing while the pretrial population was increasing. Bookings were up. Length of stay was decreasing. Ms. Dunham noted that the current study looked at the percentage of people released at least once, meaning that some of those who were released could cycle back in.

Ms. Dunham noted that the 2018 study seemed to show that racial disparity in pretrial release was decreasing, though this was a preliminary finding. The Judicial Council would look at this more closely, and would also look at the rate at which the defendants in the sample accrued new criminal arrests. Because the sample was taken from between April and June of this year, they would need to wait until the cases are resolved to get an accurate picture. They will also distinguish between arrests for new crimes and arrests for violating conditions of release. Preliminary analysis shows there are a lot of arrests for violating conditions of release.

Commissioner Razo thought it was important to point out that the Commission does actually review the implementation of its recommendations as required by statute. This work was important.

Brad Myrstol, director of the UAA Justice Center, explained that Troy Payne in his office was taking the lead on the revalidation study of the risk assessment tool. They will validate the existing tool and evaluate the available data for possible new metrics to include in the tool. He estimated that the whole project would take about a year to complete. Mr. Payne said they were hoping to have preliminary information to the legislature for the upcoming session.

Chair Claman noted that changing the tool based on the results of the revalidation would not require legislative action. Commissioner Stanfill wondered whether DOC had the final say in what a new tool would look like. Commissioner Dean Williams said that DOC did have final say, but they will follow whatever comes out of the revalidation study. Commissioner Stanfill suggested including the court system on the development of any new tool. Commissioner Dean Williams noted that there were extensive stakeholder meetings in the initial development of the tool, including representatives from the court system. Judge Rhoades said that there was an enormous effort to include these stakeholders the first time around, and noted that just because a group was involved does not mean the tool turned out the way they specifically wanted. Mr. Henderson observed that the law requires DOC to engage stakeholders in the development (or redevelopment) of the tool.

Commission Planning and Committee Chairmanship

Ms. Dunham explained that she had circulated a memo summarizing the recent active workgroups as well as previous workgroups that had been inactive for some time. The current workgroups were all chaired by continuing Commissioners, with the exception of the Sex Offenses Workgroup, which was chaired by Deputy DOC Commissioner Karen Cann on behalf of Commissioner Dean Williams. Commissioner Stanfill said she could serve as workgroup chair for the time being, provided that the Barriers to Reentry Workgroup was not meeting at the same time. Commissioner Razo moved to appoint Commissioner Stanfill as chair of the Sex Offenses Workgroup and Commissioner Rhoades seconded the motion. The motion passed without objection.

Chair Claman noted that the leadership of the House was still in question and therefore so was his participation in the Commission. Ms. Dunham reminded the group that Commissioner Stanfill still served as vice chair and could fill in at the start of the next meeting until a new chair was elected if need be.

Use of Jail for Mental Health Holds

Judge Rhoades said she thought most people were aware that this issue has been in the news recently: The Alaska Psychiatric Institute (API) is on divert mode and those who are the subject of a civil commitment order are being held in DOC facilities. She thought this was a civil rights violation. The Commission has recommended that prison beds be used for high- to medium-risk sentenced offenders, and the policy of holding the mentally ill in prison beds contravenes that. Also for some time there has been a number of people who are waiting to be assessed for or restored to competency languishing in prison beds. They need treatment before their cases can go forward.

Judge Rhoades continued that there was recently an unfortunate incident lately in which a person was found not restorable but released into the community [who is now charged with killing someone]; it was not clear why this person had been released to the community. There is a gap in the standards for civil commitment and competency that can allow dangerous people to be released to the community untreated. She recalled a case that she had to dismiss because the defendant was not able to be assessed and restored within the timeframe of the maximum allowable sentence for the crime charged.

Judge Rhoades noted that this issue had previously been put before the Commission. The UNLV report had made many statutory recommendations on these issues. Tragedies continue to happen behind a veil because of confidentiality. She wanted to make a pitch for distinct movement from the Commission. She felt very strongly that these were serious issues that must be attended to.

Commissioner Steiner alerted the group that the Public Defender Agency had filed a habeas petition about this and named DOC and DHSS as defendants. He didn't think their representative should discuss this without counsel. He thought it was appropriate for the Commission to discuss this topic but there was a need to address the lawsuit issue first.

Mr. Henderson added that he also needed to abstain from this conversation.

Commissioner Dean Williams noted that this was his last meeting with the Commission, and said it had been great to participate in these policy discussions. He said that generally his sense was that this had been a serious issue for some time on a national level. He agreed with Judge Rhoades that this was serious.

Commissioner Butler summarized previous comments he had made publicly: generally speaking, this issue is a "predictable surprise"—a theory from natural disaster and terror response preparedness. A predictable surprise is one that everyone can see coming, like being killed by advancing glacier, because humans have a tendency to maintain the status quo. It will take collaborative effort and dialogue to make headway on this.

Chair Claman asked for the thoughts of the Commission on whether to refer this issue to the Behavioral Health Standing Committee (BHSC). Commissioner Steve Williams said that he was the chair of the BHSC, and noted that the UNLV report's legal competency recommendations had been discussed thoroughly; it has been sitting in a holding pattern because there was not a lot of energy behind taking it up. He thought the UNLV report discussed interrelation of the statutes in Title 12 and Title 47. He thought the BHSC should take up this issue but needed to be clear about the expectations of the BHSC in light of pending litigation and other issues surrounding API. The Commission should know there is a lot of work being done on this subject within the various

departments. He didn't want the Commission to complicate or cause problems with that work that will impede progress.

Judge Rhoades thought the whole Commission needed to understand the issues, and could start by reconvening the Committee just to get information out there. There were wider policy issues to discuss beyond the subject of the current litigation.

Commissioner Steve Williams thought it was important for the BHSC to get a briefing on what's being done at various levels, as well as the statutory issues informing this crisis.

Commissioner Razo agreed with Judge Rhoades on this. The Commission saw in the visit to Anvil Mountain that mental health issues in Alaska were being treated by incarceration. He thought the BHSC was the right place to discuss it. He moved that the BHSC make the interplay between Title 47 and the criminal justice system a high priority. Commissioner Stanfill seconded the motion.

Commissioner Stanfill said she thought she spoke for Fairbanks when she said that there was no comprehensive behavioral health system in Fairbanks; they see people cycling into criminal justice system because there was no behavioral health system to help them. She thought the issue was even broader than the criminal justice arena and that the Commission should deal with this issue but needed to partner with actors in other fields.

Judge Rhoades said that regarding the interplay between Title 12 and Title 47, the civil commitment standard does not kick in when a person is found incompetent. Some states have assisted outpatient treatment. That was recommended by UNLV report.

Commissioner Razo said this mirrors the problem the state has with addiction. Many people have co-occurring disorders—they are two sides of the same coin. There is a deficit in Alaska for humans who need treatment. The Commission's job was to identify and call out this deficit, as it has a significant effect on the justice system. This should not be ignored.

Chair Claman suggested that since the next meeting was in January, if there was time for the BHSC to meet before then, the BHSC could report to January the plenary meeting on any issues identified and steps going forward.

Commissioner Razo's motion was approved unanimously.

Judge Rhoades said she thought that some of these things had been addressed in the Commission's reinvestment recommendations. She noted that so far, reinvestment treatment funding has only gone to DOC, and was not entirely spent; nothing was added to prevent people with treatment needs from becoming justice-involved in the first place. The new administration has signaled it will be looking closely at DHSS's budget, and she thought the Commission could help highlight importance of allocating resources for this purpose.

Closing Announcements

Commissioner Steve Williams said he wanted to acknowledge the Commissioners who might not be around for future meetings, as well as their staff who have participated in the Commission's work and probably put in a lot more legwork and effort into implementation of criminal justice reform. Commissioners Claman and Razo echoed this sentiment.

The Commission decided to move the January 18 plenary meeting to January 24, starting at 11:00 a.m. in Juneau.

Commissioner Stanfill suggested that if the next meeting was going to be in Juneau, the Commission should make the most of its time there and do something legislative- or Juneau-specific—e.g. a lunch and learn. Chair Claman said that he could facilitate something along those lines.

Commissioner Butler announced that DHSS just completed its Opioid Action Plan. The Opioid Action Plan is the product of engagement in over a dozen communities around Alaska over the past year. DHSS hosted the events and compiled information, but the Action Plan is based on what was said by community members around the state, including those in active recovery or currently suffering from addiction.

[The report is available online at <http://dhss.alaska.gov/dph/Director/Documents/heroin-opioids/Statewide-Opioid-Action-Plan-2018-2022.pdf>]

Commissioner Butler added there had been 41 deaths confirmed through early November of this year, compared with 100 during all of 2017; however, it should be noted that there can be a delay of up to 2-3 months before the case counts are confirmed.

Public Comment

Michael Berger said that he had, all told, probably served around 20 years in the criminal justice system in Alaska. He was tired of seeing friends fall into addiction and homelessness. When he first came out of prison 1989 there was very little help for people like him but there was now a lot, especially from Partners for Progress. He added that he used to be the editor of the Bristol Bay Times and the Arctic Sounder. He wanted to comment on including former prisoners in the Commission's process.

Mr. Berger noted that everything he did to get involved in the criminal justice system was because of his addiction, though he was clean for three years now. He said that despite the ongoing discussion of SB 91, no matter what the law was, if a person is on drugs, that person will go out and steal for it. That was what he did.

Mr. Berger added that there had been a lot of discussion on risk assessments and studies but he could tell if someone will reoffend or not. The reasons people offend are usually same. People released in to Anchorage never make back to their village because they are facing addiction and homelessness. He thought state could save time and money by getting more input from reentrants. He lives with a lot of reentrants now, and thought that there were things that could be done for them to help them address their addiction. He also noted that IV drug use is much more prevalent now. Lots of people are forced into treatment, but they won't succeed unless they're actually ready, and have reason to succeed.

Mr. Berger said that he has had to face the issue of barrier crimes. He tried to get a drug and alcohol counseling certificate, but has a lifetime ban because of his criminal history. He understood why barrier crimes existed, but in this case it stopped someone with experience from helping others. He can't help friends who are felons because they are all on probation/parole; it's hard to see them suffering from addiction and not help.

Commissioner Stanfill explained that the Commission has been looking at barrier crimes, and she knew revisions were made to the regulations. She asked Mr. Berger if he was able to do peer support through the reentry center. Mr. Berger explained that he had a permanent barrier because he was convicted of robbery, although he didn't use a weapon, and he was not able to do peer support. There is a variance process, but employers typically don't get to that point.

Leslie Hiebert explained that she was a local attorney and that she sat in on Commission meetings a few times previously. Regarding pretrial release, she didn't think "better safe than sorry" was the right approach; she thought generally people should be released before conviction and punished after conviction, and thought that some pretrial practices were a way of creating predicates for new charges. She said she appreciated how much the Commission has done. She asked Commissioners to remember that the constitution guarantees a person's release unless there is a reason to keep them in jail or they are found guilty.

Josh Fannon said that he was a local attorney and just found out about meeting about 30 minutes prior to calling in. He wanted to alert the Commission to loopholes in the felony DUI license reinstatement process; these are significant loopholes that go against the intent of the new laws. In short, form CR-741 allows someone convicted of a felony DUI to get their license back. This procedure was attached to the therapeutic courts in several locations. People in those locations are now in a catch-22. If someone has a felony DUI conviction from a location with a therapeutic court, that person can't apply to get their license back if they didn't complete therapeutic court. If there is not room in the program or the person is not assessed to be at the right level of therapeutic need for the therapeutic court, the person can't apply to get their license back.

Clinton Serta explained that he was a client of Mr. Fannon, and wanted to echo what Mr. Fannon was saying. The statutory language reads that to get your license back, you must be court-ordered to therapeutic court. He got a flat sentence, so never got that court order, and had no opportunity to go to therapeutic court. He tried submitting the forms anyway but was denied.

Janet McCabe said that she was representing Partners for Progress, and she wanted to pass out their latest data sheet. They served 343 people in November; participation typically increases in winter. She also noted that reentry center director Cathleen McLaughlin was in Juneau where they want to start their own reentry center. She thanked Chair Claman for attending their last meeting.

Janet Kincaid from Palmer said she wanted to echo what Mr. Fannon said. She said that alcoholism is a problem, but thought there needed to be a way for people to get their license back. She has worked with a faith-based program and knew firsthand that it was possible for people to get sober, and she wanted those people to get a second chance.

Alaska Criminal Justice Commission

Meeting Summary

Wednesday, October 31, 2018

12:00 – 12:30 p.m.

Audio-teleconference

Commissioners present: Jay Butler, Matt Claman, Greg Razo, Brenda Stanfill, Steve Williams

Commissioners absent: Joel Bolger, Jahna Lindemuth (Rob Henderson served as proxy for Commissioner Lindemuth), Stephanie Rhoades, Trevor Stephens, Dean Williams (Karen Cann served as proxy for Commissioner Dean Williams)

Participants: Andy Greenstreet, Lizzie Kubitz, Laura Russel

Staff: Susanne DiPietro, Barbara Dunham

Approval of Meeting Agenda

Commissioner Greg Razo moved to approve the agenda and Rob Henderson seconded the motion. The agenda was approved without objection.

Annual Report Draft

Commissioner Steve Williams moved to approve the final draft of the Commission's Annual Report to be sent to the legislature. Commissioner Razo seconded the motion. The Report was approved without objection.

Staff had created a document compiling the public comments at plenary meetings over the past year. Commissioner Steve Williams suggested putting this document on the Commission's website and mentioning it in the report. Commissioner Razo agreed, saying he had revised his thinking on this since the previous meeting.

Commissioner Steve Williams asked what the distribution of the annual report would look like and whether there would be a press release. Susanne DiPietro, staff to the Commission, said that the report is always sent to the legislature and the governor; it could also be part of a press release. Chair Claman said he would be speaking with a reporter the next day about criminal justice reform and that a press release might make sense. Commissioner Stanfill also thought it was a good idea, and there was no objection from any Commissioner.

Public Comment

Cathleen McLaughlin from Partners for Progress said that she applauded the work done for the Annual Report and that Partners was proud to provide the information they had on implementation of criminal justice reform.

Alaska Criminal Justice Commission

Meeting Summary

Thursday October 25, 2018

4:00 – 4:30 p.m.

Audio-teleconference

Approval of Meeting Agenda

Commissioners Present: Joel Bolger, Sean Case, Matt Claman, John Coghill, Jahna Lindemuth, Walt Monegan, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Jay Butler, Quinlan Steiner, Dean Williams (Karen Cann served as proxy for Dean Williams)

Participants: Jon Woodard, Rob Henderson, Laura Russell, Juliana Melin, Teri Tibbett

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

Agenda

Commissioner Razo moved to approve the agenda and Commissioner Steve Williams seconded the motion. The agenda was approved without opposition.

Annual Report Draft

Commission Project Attorney Barbara Dunham walked the Commission through the draft of the annual report. Several Commissioners noted that some of the charts used shades of blue that were difficult to distinguish from one another. Ms. Dunham said she would use different colors.

Commissioner Razo noted that the Commission had received public comment from Partners for Progress that morning, and that it had occurred to him that public comments to the Commission are generally not memorialized anywhere. He suggested adding an appendix of the year's public comments to the annual report.

Commissioner Steve Williams said he didn't have any objection to that idea, but suggested making it a separate document available on the website. Judge Rhoades said she liked that idea. Commissioner Razo said that could work, but wanted to emphasize that public comment has at times swayed the Commission in its work, and that the Commission's work was the product of a public process, not just 15 people around a table.

Commissioner Stanfill wondered whether everyone commenting at Commission meetings would expect their name to be published by the Commission in a public report that would be searchable on the internet.

Commissioner Monegan wondered whether it would be possible to include public comments in the sections of the report that pertain to the comments. Ms. Dunham said that would be possible where comments related to the report, but not all comments related to the report.

Chair Claman suggested that staff look at the volume of comments, how they relate to the report, and that they think about the confidentiality issue. The Commission could decide what to do with the next draft. There was general agreement.

Chair Claman also suggested that there was room to edit the executive summary to include highlights of the report that were missed. He wondered if Commissioners wanted to meet informally with staff to rework the summary to pinpoint additional items. Commissioner Steve Williams and Chair Claman agreed to work with staff before the next draft.

Staff agreed to send a final draft to the Commissioners by close of business on Monday, October 29, and the Commissioners would get any final comments to staff by the close of business on Tuesday October 30. The Commission would meet again telephonically on Wednesday October 31.

Public Comment

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

Alaska Criminal Justice Commission

Meeting Summary

September 24, 2018

9:30 AM

Snowden Training Center, Anchorage Alaska

And Audio-teleconference

Commissioners Present: Greg Razo, Jahna Lindemuth, Brenda Stanfill, Quinlan Steiner, John Coghill, Matt Claman, Sean Case, Steve Williams, Dean Williams, Trevor Stephens

Commissioners Absent: Stephanie Rhoades, Joel Bolger, Walt Monegan, Valerie Davidson (Gennifer Moreau-Johnson sat in for Commissioner Davidson)

Participants: Alys Wooden, Gennifer Moreau-Johnson, Tony Piper, Janet McCabe, Rob Henderson, Nancy Meade, Diane Casto, Edie Grunwald, Barbara Pierce, Juliana Melin, Teri Tibbet, Carrie Belden, Alison Hanzawa, Troy Payne, Gwen Kennedy, Dave Walker, Rita Bishop, Laura Russel, Araceli Valle, Cathleen McLaughlin

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

Agenda and Previous Meeting's Summary

The agenda and summary of the previous meeting were approved with no opposition.

New Commission Chair

Outgoing Chair Greg Razo said that it had been an honor to serve as chair of the Commission, and he considered it a source of pride and accomplishment. He noted that Commissioner Matt Claman had offered to be chair, nominated him for the position. He asked if there were any other nominations. There were none. Commissioner Razo noted that when the Commission has made recommendations to the legislature in the past, he has typically presented the recommendations. He was happy to keep doing that so Commissioner Claman could avoid conflicts and was sure other Commissioners would volunteer as well. There was no opposition to Commissioner Claman assuming the chairmanship of the Commission.

Chair Claman thanked the Commission and said he appreciated the support. He noted that with previous chairs being Justice Bryner and Commissioner Razo, he had big shoes to fill. He would strive to continue their tradition of trying to find common ground and consensus decisions.

[Later in the meeting Chair Claman clarified that Commissioner Stanfill had agreed to continue on as vice-chair; there was no opposition to this either.]

Reinvestment Recommendations

Gwen Kennedy, guest facilitator, explained that she had learned last time that the principles for reinvestment identified in the Commission's 2017 annual report were still consistent with the

Commission's values for reinvestment this year, and she walked the Commission through those principles to refresh the Commissioners' memories. Those principles are (as summarized in the slide show presented):

- 1) Reinvestment should be strategic, data-driven and collaboratively implemented.
 - Funds should be appropriated according to a strategic plan
 - Focus should be on treatment
 - Coordinated approach can target high utilizers
- 2) Most reinvestment should be directed towards programs in the evidence base.
 - Maintain 90% ratio of evidence-based programming for state investment in criminal justice programs
 - Focus on treatment
 - Allow some non-evidence-based programming to address Alaska-specific needs; must include evaluation component
- 3) Reinvestment should be directed towards evidence-based programs that have been shown to reduce repeat offending, thereby decreasing future crime.
 - Focus on treatment
 - Evaluate batterer intervention programs
- 4) Whenever possible, reinvestment should be directed towards programs that generate tangible monetary benefits and positive return on investment.
 - Expensive but effective programs should evaluate costs
- 5) Prioritize funding for programs that target high risk (and medium risk) offender groups.
 - Use risk-needs-responsivity principles
- 6) Reinvestment should be targeted at all areas of the state, including rural Alaska.
 - Allow returning citizens to complete programming in their home communities to the extent possible
- 7) Maintain and expand funding for victim's services and violence and other prevention programming.
 - Support CDVSA prevention programming
 - Support programming that targets children affected by ACES
 - Support victims' services including bridging funds for restitution

Commissioners Razo and Lindemuth asked whether principles 2 and 3 couldn't be combined. Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, explained that the third principle was more intended to highlight the recidivism reduction aspect but she agreed there was not much difference. Commissioner Steve Williams pointed out that principle 3 is subtly different, and in the extended text explaining the principle in the 2017 annual report, included language that also called for a need for some experimental programs, given the unique nature and needs of Alaska's communities. Commissioner Razo thought the two principles could be combined without losing the substance in the text accompanying each principle.

Dr. Kennedy said she wanted to use these principles to analyze the draft recommendations generated at the previous meeting. She had placed the draft recommendations in a grid with the principles, to visually represent whether the recommendations align with the principles. She walked the group through the first few recommendations together, then broke the meeting up into small groups so

they could discuss each category of recommendations and how the recommendations aligned with the principles.

Commissioner Razo said that the workgroup preparing for today's meeting had proposed analyzing the information in this way in order to create a tool for legislators to make funding decisions with—a tool that is broad enough to apply the principles with specific ideas to fulfill them. It would be a kind of measuring stick. Dr. Kennedy asked the legislators present if they thought this idea would work. Chair Claman thought it could be useful and Commissioner Coghill said that the principles address questions that the legislators will undoubtedly have.

The Commissioners and participants then broke out in to small groups to analyze whether the recommendations identified at the last meeting aligned with the principles identified the previous year.

Public testimony

Barbara Dunham, project attorney for the Commission, read an emailed public comment to the Commission from member of the public Nanette Greer. The comment was:

"Since hearing the outcome of Justin Schneider's charges, plea deal and sentencing, I have been outraged. Please review the current sexual assault laws that could allow this case not to be considered a sexual crime, and explain.

As for it not being attempted murder, he strangled her to unconsciousness. He had no reason to believe that he had not killed her before he stopped. Please explain how he avoided an attempted murder charge."

There was no other public comment.

Reinvestment Recommendations, continued

The group then reviewed the results of the small group work. The recommendations were categorized as treatment, competency, precharge/pretrial diversion, alternatives to incarceration, probation/parole, reentry, and victims. The Commissioners agreed that the recommendation for crisis stabilization was more related to treatment, and it was agreed that it would move to the treatment category rather than competency.

Commissioner Dean Williams noted the precharge/pretrial diversion group had not labeled street diversion as being cost-effective. Commissioner case said one could assume that's the case, but outcomes for diversion programs are not easy to quantify, track, or assess. Commissioner Dean Williams said he agreed, although it was clear that dropping people off at DOC who are in need of other services is the most expensive route.

Commissioner Razo said that it appeared particularly for this category that more data was needed to assess whether the recommendations fit within the principles. Commissioner Steiner said that there was a need for data across the board. He suggested recommending that all programs funded by the state have a certain percentage set aside for evaluation. Even established programs in the evidence base can drift from fidelity. The recommendation could pertain to every department and agency that works in criminal justice.

The alternatives to incarceration group discussed the recommendation for electronic monitoring (EM) expansion to "more areas," noting the language was vague, and made the assumption that the

recommendation pertained to areas outside urban hubs. They thought it might be better to have more detail on this recommendation, including what kinds of charges, what status, and what target population—e.g. low-risk offenders who should not necessarily be exposed to jail—the recommendation pertained to. There was also a need for more data here.

Commissioner Dean Williams said he agreed and was not sure EM reduces recidivism per se—it depends on targeting a specific population. He thought it did reduce recidivism for some population. Commissioner Steiner said that it also brought up the issue of net widening. Expanding use of EM could lead to oversupervising low-risk defendants; this reinforced the need for regular evaluation of outcomes. Commissioner Dean Williams said that a new area DOC is exploring is using EM for people serving sentences of less than 90 days, which will allow them to remain in their local community and remain accountable to that community. He thought there was enough research to support this use of EM as an alternative sentence.

Dr. Kennedy suggested wordsmithing the recommendation to reflect this discussion.

Commissioner Stanfill asked the alternatives group how therapeutic courts relate to principle 7 (victims). Judicial Council attorney Susie Dosik said the discussion involved child and family courts.

Regarding the recommendation to add medium-risk misdemeanants to those eligible for reentry case management, Commissioner Stanfill wondered if that was in the evidence base. Commissioner Steiner said he couldn't remember but thought that both medium- and low-risk reentrants should not be oversupervised. He was not sure anyone would want voluntary supervision. Commissioner Stanfill said her understanding of the recommendation was that it was more about getting access to more services. Commissioner Steiner agreed people would sign up for that. He added that the individual services provided with case management were evidence-based—e.g. housing which benefits rehabilitation.

Regarding the victims category, Commissioner Stanfill said more data was needed on how best to assist restitution collection.

[Break for lunch]

Dr. Kennedy explained that she had sorted the recommendations into “hows” and “whats.” She said the next step was to ascertain the Commission's priorities within each category. Commissioner Steve Williams questioned what the end product might be, noting that just choosing the top three in each category might still produce a laundry list. Commissioner Lindemuth said that was a good point, and added that not every category has the same level of need. Commissioner Razo agreed and suggested prioritizing the #1 results but also mentioning the #2s and #3s. Chair Claman noted that some recommendations were similar and might be combined.

For the “hows,” (i.e., principles for applying the recommendations across the continuum of categories/intercepts with the criminal justice system), the Commission prioritized:

1. Continue to evaluate programs and assess their costs/benefits to inform funding recommendations. (I.e. redo Results First), recommend successful programs for further funding, recommend against funding unsuccessful programs, and review programs not currently used in Alaska for possible use.

2. Use a problem-solving approach rather than a punitive-only approach, throughout the continuum of justice involvement/at each intercept.

The Commission then broke out in to small groups to determine the priorities for the “whats” (i.e. action items) in each recommendation category; the small groups then reported their results to the full group.

Treatment

The Commissioners discussed whether to combine recommendations to build infrastructure for substance use disorder (SUD) treatment or to provide flexible funding for mental health treatment and social services. Commissioners noted they were different items and both reflected urgent needs. Commissioner Lindemuth thought SUD treatment was the priority. Gennifer Moreau-Johnson, sitting in for Commissioner Valerie Davidson, noted that funding for social services was more difficult to obtain because it was not covered by Medicaid. Commissioner Steiner suggested recommending the legislature take balanced approach to funding both. The group agreed.

Commissioner Stanfill said she didn’t think that domestic violence (DV) programming was comparable to behavioral health treatment, and didn’t think it was fair to lump DV programming in the treatment category. DV offenders have the highest recidivism rate, and this problem should be a priority as well. Ms. DiPietro asked whether the DV recommendation should be moved to the “victims” category. Commissioner Stanfill said it would depend on the focus of the program to be implemented. If it focuses on recidivism then it is not really about victims. The Commission agreed that DV programming was a priority and that including that recommendation would not “count” against victims’ services.

Treatment priorities identified were:

1. Provide flexible funding for DBH to be used for community-based providers for mental health treatment and social services.
2. Increase substance use disorder funding, including investing in physical infrastructure.
3. Increase the agility and sustainability of drug/alcohol and mental health treatment statewide, across timeframes of a justice-involved individual (school, pre-charge, pretrial, prison, reentry).
4. Provide timely and available assessments and treatment.

Competency

The Commission agreed that the two top identified priorities (which were tied for the most votes) could be combined. They were:

1. Build infrastructure to care for incompetent incarcerated population/remove from incarceration institutions and expand API.
1. Add forensic psychologists and psychiatrists.

Pre-charge/Pretrial Diversion

The Commission agreed to combine two of the recommendations regarding pretrial diversion, combining expanding access to diversion with tribal court agreements. The priorities were:

1. Fund a data-driven, evidence-based pre-charge/pretrial diversion program with behavioral health supports to sustain it.

2. Provide expanded access to pre-charge and pretrial diversion including tribal court agreements for youth and providing more services through tribes.

Alternatives to Incarceration

Commissioners also agreed that two recommendations (develop a strategic plan for therapeutic courts, expand beyond Anchorage) in this category could be combined; the priority recommendation was:

1. Develop a strategic plan for statewide development of therapeutic courts, including exploring the use of therapeutic court models in other areas beyond Anchorage.

The remaining recommendation in this category involved expanding the use of EM. Chair Claman noted that the use of EM is itself a reinvestment (money saving) mechanism so wouldn't necessarily need to be a recommendation for reinvestment.

Incarceration

The priority recommendations in this category were:

1. Train and retrain DOC staff to focus on rehabilitation by employing principles of normalcy, effective conditions of confinement, dynamic security, education, vocational training, and transitional incarceration.
2. More resources for "behind the walls" treatment.

Commissioner Lindemuth said both recommendations should make the Commission's final list.

Probation/Parole

The priority recommendation in this category was:

1. Provide more outpatient services for those on parole, probation and upon release.

Commissioner Stanfill noted that this recommendation could also be included in the recommendation for community based treatment in the treatment category. Ms. DiPietro wondered if it should be made explicit that the recommended services include those available for justice-involved individuals. Commissioner Steiner noted that justice-involved individuals are not really a targeted group in the current DHSS structure. Commissioner Stanfill thought that it would be implicitly understood the treatment should be for justice-involved individuals because the recommendation was coming from the criminal justice commission. Commissioner Coghill agreed.

The Commissioners noted that while state funding and Medicaid reimbursement did not target justice-involved individuals, generally funding treatment could potentially work as a mechanism for crime prevention. Commissioner Steve Williams thought it was important to note that our system is largely Medicaid funded, but not everyone is Medicaid eligible or has access to needed services funded by Medicaid. It is a prescriptive structure that can't do things like case management. Being able to have flexible funding is therefore crucial.

The Commission agreed that providing services for those on probation/parole would remain a priority in its own category.

Reentry

The priority recommendations for this category were:

1. Provide more outpatient services.
2. Provide expanded access to reentry services and make available flexible funds for immediate individualized transitional supports (e.g. housing, clothing medications, transportation, etc.).

Victims Services

The small group looking at the victims' services recommendations prioritized the recommendation to revisit the action items identified from the victim/survivor/advocate roundtables conducted in 2015. The identified four priorities from the roundtables. Those were:

1. Increased services for child victims and witnesses in Alaska should be provided to address their myriad trauma and safety needs.
2. Law enforcement officers who respond to domestic violence calls should receive additional training and oversight on how to determine which person is the primary aggressor, to avoid situations in which victims are misidentified as offenders.
3. During the parole and reentry phase of the criminal justice system, crime victims should also be considered clients; educated about their role and rights; and included in case planning.
4. Institutionalized training for criminal justice professionals should be regularly offered to teach about victims' rights; victim sensitivity; victim trauma (including the neurobiology of trauma, PTSD, and invisible disabilities); how to talk to victims; trauma-informed responses to victims; cultural diversity and competence; and crime prevention and bystander intervention.

DV Intervention

Commissioner Stanfill noted that the DV intervention programming issue was still outstanding. One reason this kind of programming was not easily categorized was that it was not well understood. She thought the Commission should prioritize this population. Ms. DiPietro noted that this issue was also being discussed in the Commission's sentencing workgroup.

Commissioner Steiner said he and Commissioner Stanfill had been discussing this. The problem was that there is research showing that the widely-used Duluth model doesn't work, but it seems that Alaska isn't exactly using that model. They have discussed the need for evaluating Alaska's programs. He wanted to forward a recommendation to that effect.

Diane Casto, director of the Council on Domestic Violence and Sexual Assault (CDVSA) explained that they had just completed a program survey/inventory of all programs, both state-funded and unfunded. CDVSA will put together a report. A cursory initial review shows that the Duluth model was not being used exclusively – if a program was using it, it was being supplemented with other things. The grantees are eager to get more state support for monitoring and evaluation. They are looking at the full continuum of care for those convicted, not just victim services. Everyone agrees that a one size fits all approach does not work, that there are varying patterns of DV.

Commissioner Stanfill asked what would be beneficial to put in the report for the next legislative session. Ms. Casto said CDVSA wanted the support to revamp the intervention program and really get a good program for the state. Providers currently don't feel like they are a priority to the legislature.

The Commission agreed that the final recommendation would be:

1. Evaluate existing DV programs in Alaska, and if they are not shown to be effective, find or create and adequately fund an evidence-based model of intervention programming for DV offenders. This model should include an adequate risk-needs assessment process for those convicted of a DV offense.

Reporting

The Commission agreed that the "what" recommendations identified above would be reported out as a list. The "how" recommendations would be incorporated into the principles identified last year, which will also be in the report. Commissioner Steve Williams will work with staff to distinguish principles 2 and 3.

GBMI Clarification

Ms. Dunham explained that the Commission had voted to amend the Guilty But Mentally Ill (GBMI) statute in April. As written the recommendation that had been forwarded to the Commission called for a hearing on the current dangerousness of someone found to be GBMI at sentencing 60 days from the prisoner's release eligibility date. After that draft was sent to Commissioners it was pointed out that parole hearings occur 90 days before release. The Commission had discussed amending the recommendation to put the dangerousness hearing at 180 days before release eligibility, but the record of the meeting was not clear that the Commission had actually amended the recommendation.

Commissioner Stanfill moved to amend the recommendation to reflect that the hearing should take place 180 days before release eligibility. Commissioner Lindemuth seconded the motion, and it passed without opposition.

Reinvestment language

Commissioner Dean Williams had to leave the meeting early and wanted to address some aspects of the draft reinvestment language for the report. He had noted that the report said that it would cost \$3.8 million to reopen a closed facility, but looking at it now it would be at least \$10-15 million. He wanted to be careful about reflecting this idea accurately. He will work with staff to get a more accurate picture. He also wanted to be really clear that prison population numbers look like they are rising, particularly pretrial. He shared some preliminary data with the Commission to that effect.

Commissioner Lindemuth said that the report should also include language noting the increase in crime, including violent crime, that began before SB 91 was passed. The implication is that the original projections for Alaska's growing prison population and the savings that were projected from avoiding that growth by passing SB 91 may not have accounted for these increases in crime. Crime rates must be put in context; the prison population has been going up for reasons unrelated to changes in legislation, including the opioid crisis and an increase in arrests and case filings. It is important to put all this together. Recently the criminal justice working group learned that there were 1000 more felony filings in FY18 than FY17.

Commissioner Steiner said that the increase in the pretrial population also might suggest that the bail reforms are not being implemented as intended. Ms. DiPietro said that staff were working on a bail study that would tell us more about what's happening in pretrial decision making. She also noted that the increasing arrest rate could likely be tied to the increase in APD hiring. Commissioner Dean Williams added that the increasing pretrial numbers also added a logistical headache in that many in the pretrial population must be held at Goose Creek, and often need to be transported for hearings.

Ms. Dunham noted that there were two data sections in the annual report, one devoted to the implementation of criminal justice reform and prison population data, and one related to other trends such as crime rates and law enforcement staffing levels. She said she would welcome any comments on the layout and suggested data reporting and would include whatever the Commissioners thought relevant.

BJA Funding Application

Ms. DiPietro reminded the Commission that the Commission could still apply for Bureau of Justice Assistance (BJA) grant funding for implementation of criminal justice reforms. She summarized the Commission's previous expenditures from this fund. On the table now were two new proposed projects. The first was an extension or follow up of the work Mary Geddes did as the diversion planner at DOC. This person would develop a street-level diversion program which would divert those who come into contact with police pre-charge. Ms. Geddes had identified APD as the agency in best position to move forward with a diversion pilot program.

The second proposal addressed ways for people in rural communities to serve time in their community, rather than being flown from those communities to a hub to serve short sentences. DOC has started this project in a couple of sites, but staff needs support to carry the program forward. DOC thinks it can identify a few more new sites for this program, but needs technical assistance and logistical help. A program like this needs the support of the community where it is to be implemented, and getting that buy-in takes significant effort.

Commissioner Razo asked if there was enough money left in the fund for both proposals. Ms. DiPietro said there was, and that the Commission would need to work with grant manager CJI to strengthen the application so that BJA will approve it.

Commissioners asked if the vision was for one consultant for both projects or one for each project. Ms. DiPietro said it could be for either. Chair Claman asked if it was the will of the Commission to distinguish the two proposals by having funding allocated separately for each, even if ultimately the same person is hired to be the consultant on both projects. The Commission agreed that it was.

Commissioner Steve Williams asked who would be receiving the money. Ms. DiPietro was not sure. State agencies such as DOC might have a problem getting the necessary federal receipt authority. Commissioner Lindemuth said that DPS should have ample receipt authority, and that it might not be much of an issue to fund the diversion proposal directly through APD. She asked Commissioner Case what he thought might be needed to stand up the diversion program. Commissioner Case said that the consultant would determine what resources would be needed; the consultant would come up with how the project would be implemented but would not be responsible for implementing it. Also once

implemented APD would not be a service provider, but would refer diverted individuals to needed services funded through other sources.

Commissioner Steve Williams said it was important to delineate which resources would go to which project. Commissioner Lindemuth said her sense was that the division looked 2/3 of the remaining funds would go to the diversion proposal and 1/3 would go to the DOC proposal. Chair Claman noted that travel expenses for the DOC program might cost more than a consultant fee, and the two might not be directly comparable.

Commissioner Razo wondered whether coordinator could decide what they need and how many trips they will take and then ask for what is needed later. Barbara Pierce of CJI said that it would be best to ask for all the remaining money available using the best estimate and then if needed the Commission could seek an adjustment for how the funds would be used. This can be done relatively easily if the adjustment is under certain a percentage of the total. She also noted that BJA has been taking a while to approve applications, and it would be best not to leave money on the table.

Commissioner Stanfill moved to forward the application with funding proposed at \$78,320 for the diversion proposal and \$45,400 for the DOC proposal. Commissioner Razo seconded the motion. The Commission agreed that this was generally reflective of the Commission's priorities and that funding could be flexible as to whether it was designated for travel or for consultant fees within those numbers. The motion passed without opposition.

Behavioral Health Standing Committee Recommendations

Commissioner Steve Williams explained that the Behavioral Health Standing Committee had approved forwarding several recommendations at the last meeting. These recommendations aligned with those identified in the earlier discussion, and they also share significant overlap with other strategic plans and initiatives. The recommendations were to:

1. Expand data sharing capacity, infrastructure, and formalized agreements among agencies.
2. Expand Crisis Intervention Training efforts and include a co-response mental health practitioner element.
3. Develop crisis stabilization centers.

Commissioner Razo moved to adopt the recommendations and Commissioner Lindemuth seconded the motion. The group discussed where the appropriate place was to put these recommendations in the report. Commissioners reflected that these were both funding and policy-based recommendations. Commissioner Coghill said it made sense to discuss funding and policy separately, and that the legislature will often make those calls separately. Commissioner Lindemuth suggested letting staff integrate the recommendations appropriately.

The Commission approved the motion without any opposition.

Sex assault crimes

Commissioner Stanfill explained that she had asked for this item to go on the agenda for today. She, like many present, had been getting a lot of calls regarding the plea deal approved by Judge Corey the previous week. For one thing, it has raised questions of what the definition of a sex crime should be. The Sex Offenses Workgroup has been talking about some of these issues but she thought it would help

to get some direction from the Commission. She thought there was a need to go through sexual assault statutes and look for loopholes such as defining contact with semen as a sex crime and the fact that it is a defense to the sexual assault of an incapacitated person if the defendant is the victim's spouse. There is also a need to get input from victims on how best to listen to them. She asked the Commission to direct the Workgroup to discuss these issues and potentially develop recommendations.

Commissioner Lindemuth said she supported this idea. She thought that anyone would say that contact with semen should be a sex offense. The Governor's office will be proposing a law to that effect next session. The administration was already looking at a larger package addressing other loopholes in the sex offense statutes. She thought it would be helpful to also have analysis from the Workgroup. The Governor's office will present the package of sex offense reforms on Monday.

Chair Claman asked what Commissioner Stanfill was thinking in terms of timing. Commissioner Stanfill said she thought that the workgroup could meet and prepare something in advance of the November meeting. Commissioner Claman thought that the opportunity for a public listening session was important and that any final recommendation could wait until the January meeting if necessary.

Commissioner Stanfill moved to have the Sex Offenses Workgroup review the sex offense statutes in title 11, to address any loopholes found, and to garner victim input in how best to address victim needs in sex offense cases. The motion passed unanimously.

Judge Stephens offered to address the earlier public comment on this case. The conduct alleged was not a sex crime because of the way the law is written; the law defines that conduct as harassment and harassment is not a sex crime in the statutes. Deputy Attorney General Rob Henderson noted that offensive contact with semen was not included in the definition of sexual contact as set forth in AS 11.81.900 (a)(59). Judge Stephens said it wouldn't be possible for those not parties to the case to know why attempted murder wasn't charged. Commissioner Lindemuth suggested referring to the comments made by Criminal Division Director John Skidmore over the weekend explaining the charging decisions in that case.

Annual report

Ms. Dunham explained that she had circulated a draft of the annual report to give the Commission an idea of the report's scope and substance. She welcomed any and all comments on the draft.

The Commission agreed to have a telephonic meeting to approve the final draft. Commissioners agreed to get back to staff with their initial comments by October 4. Staff will then send another draft out on October 10. Commissioners will get any additional comments to staff by October 19, and staff would have a final draft ready in advance of a telephonic meeting to approve the final draft on October 25 at 4pm.

The meeting adjourned at 3:47 p.m.

Alaska Criminal Justice Commission

Meeting Summary

July 20, 2018

9:30 AM

AMHTA, Anchorage Alaska

And Audio-teleconference

Commissioners Present: Greg Razo, Joel Bolger, Sean Case Matt Claman (arrived 9:40), John Coghill (telephone), Valerie Davidson, Jahna Lindemuth (arrived 9:40), Walt Monegan (arrived 10:00), Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams, Steve Williams

Commissioners Absent: None

Participants: Tammy Axelsson, Laura Brooks, Randal Burns, Diane Casto, Karen Forrest, Don Habeger, Rob Henderson, Grace Jang, Andy Jones, Karen Kahn, Suki Miller, Gennifer Moreau, Tony Piper, Donald Runnels, Kaci Schroeder, Kim Stone, Dave Booker, Alyssa Wooden, Travis Welch

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

Special Guest: Organizational consultant Gwen Kennedy, Ph.D., Kennedy & Associates

Agenda & Summary of the last meeting

Chair Razo called the meeting to order at 9:30. The meeting agenda and the summary of last month's meeting were approved, as revised.

Meeting Scheduling

Commissioners discussed preferences for scheduling the next year's meetings. They agreed that advance meeting dates were helpful. Staff was requested to review prior meeting dates as a guide and schedule meetings through the end of the year, and to suggest dates for 2019.

Old Business

Sentencing Workgroup: Two proposals from the public were proposed at the last ACJC meeting: (1) a mandatory minimum for homicide of a domestic partner and (2) increased sentences for violation of a protective order. These proposals were referred to the Sentencing Workgroup for consideration. Workgroup members met with the CDVSA for a roundtable discussion. The CDVSA declined to proffer a position on either proposal. The Sentencing Workgroup recommended to the Commission that it take no further action. The Commission considered the proposal and decided without opposition to take no further action.

BJA Phase II Funding: Susanne DiPietro reviewed that the purpose of the BJA Phase II funding was to assist with implementing criminal justice reforms. The Commission decides what projects it would like to pursue and then works with CJI, the BJA technical assistance provider. CJI submits the proposals to

BJA, and the BJA evaluates them for eligibility. There is about \$140,000-\$150,000 available. Some of that is available because it was not requested, and some because allocated money was not spent. The optimal time for spending the money is September/October. Commission staff solicited proposals for the BJA funds and received two: a proposal from Rep. Matt Claman for mental health treatment and a proposal from Dean Williams to implement the “Norway model” of correctional institution management. Commission members decided to reserve 45 minutes at the end of the meeting for further discussion.

New Business

With facilitation provided by Dr. Gwen Kennedy, the Commissioners discussed reinvestment priorities and options. Dr. Kennedy explained the process for the facilitated discussion. The Commissioners reviewed the statutory charge and duties of the commission, and principles of reinvestment. Commissioners agreed they have not yet made any formal recommendations regarding reinvestment to the legislature.

Commissioner Rhoades asked about the parameters of reinvestment. Commissioner Lindemuth stated that the issue has been difficult because of the lack of information, although the Results First process was helpful; the goal is to educate the commission on where the money is and where the needs are. Commissioner D. Williams stated explained that when the DOC received money for treatment there were challenges; it was a failure. The money was not spent. It was an example of a good intention that didn’t work, which should inform the commission going forward. Commissioner Coghill explained that the legislature will look at what has been spent versus the allocation. The legislature has changed its approach during this process; savings as a result of criminal justice reforms are a dynamic area and are hard to quantify. The “savings” would run across three years of appropriations. The result is that it is difficult for the commission to know what it can reinvest. He stated that the legislature usually lags behind the commission in policy areas.

Susanne DiPietro referred to a handout describing allocations and actuals spent.

Commissioners discussed what the legislature would find helpful in their recommendations. Commissioner Coghill and Claman expressed that savings from criminal justice reforms for reinvestment were difficult to quantify because the reforms were implemented over several years and that “reinvestment” is a moving target. They remarked that the commission should focus on effective programs and then look at their adequacy and availability. They also agreed that the legislature is most interested in proven practices, especially those already in place, but that the legislature was willing to take some chances because Alaska is a diverse state with many different economies and social structures. Commissioner Lindemuth stated that she has struggled with reinvestment because it is difficult to know what works due to lack of information but that Results First was helpful. Commissioners Rhoades and Stanfill remarked that collaboration with those working with the programs was important. Commissioner D. Williams expressed that the DOC’s inability to spend reinvestment monies it was appropriated for mental health treatment should inform the commission’s process going forward. Commissioner Razo stated that what hasn’t worked is individual, ad hoc proposals.

Commissioners discussed what level of detail should be in reinvestment recommendations. Many commissioners agreed that they should focus on identifying needs, prioritizing them, looking to what works, then looking at what amounts are available. Commissioners agreed to be as detailed as possible while still achieving consensus.

Public Comment

The commission broke from its discussion of reinvestment to receive public comment at 11:00 a.m.

Don Habeger from the Juneau Reentry Coalition spoke. He thanked the Commission for its discussion on reinvestment. He stressed the need for data so that organization can make informed decisions. He assured the Commission that departments are working on data collection but emphasized that it is a continuing need.

The line for public comment was left open until 11:25. There was no further comment.

New Business, cont.

The Commission continued to discuss reinvestment priorities and options.

DHSS

Karen Forrest presented information on DHSS funding and priorities. (See handouts.)

Alyssa Wooden presented information on DBH re-entry funding and priorities. (See handouts.)

Randall Burns presented information on DBH other funding and priorities: (1) Substance Use Disorder programs (residential treatment, withdrawal management, sobering centers, housing assistance, ambulatory withdrawal). Programs are grant-funded for three years and must become sustainable. For sustainability, they look to commitment from community partners. They have looked at some alternatives for rural areas. Most programs, except sobering centers, are Medicaid-eligible. (2) Forensic feasibility Study to determine the need for a forensic psychiatric hospital.

Andy Jones presented information on substance use trends. In 2017 they saw a downward trend in natural opioid use (e.g. heroin) due to changes in education and prescribing practices and deaths, due to the availability of Naloxone kits. The biggest concern is the rise of synthetic opioids (e.g. Fentanyl) which is coming from China and is sometime mixed with cocaine. Cocaine may be on the rise due to the outlawing of airborne eradication efforts in Columbia. Although methamphetamine is no longer produced in-state, it is imported from Mexico. Mr. Jones stressed the need to take a multi-substance approach. He stated that they were always looking for opportunities and for the high needs areas, and are looking at ways to bridge gaps between DOC, DPS, and community services.

Karen Forrest stated sustainability was important. She also reviewed the 11.15 waiver, which provides services not traditionally covered by Medicaid, such as community and culturally-based services. Lack of appropriate workforce presents issues. DHSS identified recommendations based on conversations with partners and looked at strategic plans from DPS, and DOC to see alignments, and by looking at data to determine unmet needs in the substance use disorder area. The ideas presented by DHS were in draft format brought for more conversation.

DPS

Diane Casto, Director of CDVSA, presented information about the reinvestment funds it received. She expressed the need for working together across agencies rather than “silo”-ing information and efforts. She stated that a few people take up a lot of resources. The CSVSA is focused on the whole

continuum of care. CDVSA received funding for prevention and intervention. They used the money for promoting healthy behaviors and prevention. They have funding youth programs in Kodiak and Bethel. They will have data in 6-8 months. They have also funded Girls on the Run, Boys on the Run, program on teen dating violence, along with other programs. (See CDVSA report.) The Council has not gotten to victim services in rural areas but is strategizing for the future on that.

DOC

Commissioner Williams stated that DOC has looked at what has gone wrong and right. The opioid crisis is driving new people into the system. He stressed the need to keep the main goal as recidivism reduction. Wyoming, Michigan, Scandinavian systems have all reduced recidivism by changing incarceration. Laura Brooks stated that expanded mental health treatment was slow going because they lost their long-term provider so they had to rebuild before expanding. Some projects were done with no state dollars, such as Vivitrol, screening and assessments, Narcan. They redid some curriculum. They implemented many other programs (e.g., started use of substance abuse screening software, peer-based programs in a number of facilities, etc.). They attempted substance abuse treatment in CRCs but encountered many problems and had to cancel a contract. They have since entered a contract with another provider. Commissioner Williams explained that DOC was looking at other opportunities for transitional housing, and work, and looking at conditions of confinement which either exacerbate or reduce criminality, dangerousness, and recidivism. They are also looking at community jails and electronic monitoring pretrial to keep inmates in their communities. Substance abuse treatment in institutions includes intensive outpatient in most facilities, RSAT, psych education, and assessments. A fee-for-service provider was brought in during a gap in contract services and they hired some non-permanent employees. They are looking at training staff capacity for provision of services, as DJJ has done. Institutions are implementing training for mental health first aid and trauma-informed care.

Commissioner Razo commented that all the agencies expressed that a lack of appropriate workforce is hampering the ability to move forward. Commissioner Stanfill commented that it is difficult to attract the needed workforce without stable and adequate funding. Commissioner Rhoades described a voucher system to get around the lack of large providers and focus on using smaller entities to provide capacity.

The Commission then developed a list of reinvestment recommendations (see list)

Old Business, cont.

The Commission continued its discussion of BJA Phase II implementation funds.

Matt Claman's proposal is to review the feasibility for in-custody mental health treatment using direct services rather than contract services (i.e., hiring or training DOC staff).

Commissioner D. Williams commented DOC had a receipt authority problem. He noted that there are problems with mental health treatment because providers are not always willing to provide the treatment in the institutions. He also noted that mental health treatment has been in place for twenty years but has not made a dent in reducing recidivism. He alternatively proposed seed money for implementation of the Norway Model. The focus would be on training line staff on practices such as normalcy, dynamic security, outside/in, education, vocational training. Preliminary training would focus on staff that already have education in psychology.

Stephanie Rhoades asked what happened to the Commission's requested review of pretrial diversion. Dean Williams said that money was spent and that reports by Mary Geddes had recently been submitted to DOC. Stephanie Rhoades expressed concern that the Commission had authorized a direction and that nothing had happened. She wanted to continue that recommendation. Commissioner Williams responded that DOC staff was going to take two trips to visit King County and learn about their program.

Commissioners agreed to work on a Phase II implementation budget and present at a September meeting. Commissioner Razo asked commissioners to forward proposals to Susanne DiPietro.

Susanne DiPietro reminded the commission that the Annual Report and Sex Offense reports were in progress.

Commissioner Razo reminded the commission that he has been Chair for two years and will be looking for nominations for a new chair at the next meeting.

The meeting was adjourned at 4:42 p.m.

Alaska Criminal Justice Commission

Meeting Summary

April 23, 2018

9:30 AM

CIRI Office Building, Anchorage Alaska

And Audio-teleconference

Commissioners Present: Greg Razo, Joel Bolger, Matt Claman (telephone), Jahna Lindemuth, Walt Monegan, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Steve Williams, Dean Williams (arrived 11:30 am)

Commissioners Absent: John Coghill, Sean Case, Val Davidson, Stephanie Rhoades

Participants: Randall Burns, Carrie Belden, Chanta Bullock, Karen Cann (for Dean Williams), Amanda Daily (for Sean Case), Karen Forrest, Mary Geddes, Rob Henderson, Janet McCabe, Suki Miller, Nancy Meade, Kara Nelson, Tony Piper, Gennifer Moreau-Johnson, Adam Rutherford

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

Agenda & Summary of the last meeting

Chair Razo called the meeting to order at 9:37. The meeting agenda and the summary of last month's meeting were approved.

New Business

Terminology: Commissioner Steiner proposed that the Commission stop using the word "offender" because the term is offensive and degrading, and that the Commission use alternative terminology. It was decided after discussion to use as much as possible "people first" language instead of words such as offender, defendant, or prisoner.

Decision making: Commissioners discussed whether decisions should be made on consensus or by majority vote. Commissioner Claman urged the Commission to strive for more unanimity, even at the cost of advancing fewer recommendations. He argued that unanimous recommendations have more legitimacy with third parties, and non-unanimous recommendations seem like the result of just another political process.

After discussion, a majority, but not all, commissioners said they preferred consensus, or "consensus but for 1." Chair Razo indicated that he therefore will try to achieve consensus, and he will ask the group for help with that. If there is disagreement, it will be noted.

Old Business

Redaction Proposal: Ms. Dosik presented the proposal from the Barriers to Reentry workgroup to enact redaction statutes for some offenses, including automatic redaction of private possession of marijuana and minor consuming alcohol (because these offenses are no longer criminal); automatic redaction of successful SIS sentences after a waiting period; discretionary redaction upon petition to a judge for most misdemeanor convictions after waiting periods; and discretionary redaction upon petition to a judge for some felonies after a waiting period.

Ms. Meade said that the proposal as written would involve millions of cases and would be very expensive for the Alaska Court System to implement.

Commissioner Lindemuth said that Department of Law supported the proposal except it objected to the inclusion of standards that judges would use to decide whether to allow redaction in a particular case. Commissioner Lindemuth moved and Commissioner Steiner seconded a motion to delete the standards. The motion passed unanimously.

Ms. Forrest expressed concern from DHHS that any restrictions on criminal history information provided to DHHS in its capacity as an employer might run afoul of federal regulations. The commissioners therefore unanimously agreed to amend the relevant paragraph as follows:

“Some employers, ~~including~~ AND certain state agencies, are required by law to enquire about certain convictions. The legislature may wish to make an exception so that those employers AND AGENCIES may fulfil their legal obligation.”

The redaction proposal was adopted unanimously (with Justice Bolger and Judge Stevens abstaining) with those two changes.

Public Comment

Chanta Bullock asked the commission to look into the telephone system at DOC institutions. She said that the charges are too high and had recently increased. She also commented on the number of people on the sex offender registry.

Kara Nelson commented on redaction. She indicated that going through the process would not be easy and would involve a lot of work. She believes only those individuals who are serious about their rehabilitation would bother making the effort.

Janet McCabe shared statistics from the Anchorage Re-Entry Center and reported she is looking into whether the Bear Tooth TheatrePub would host a viewing of the Norway prison movie.

Connie Beemer from the Alaska Hospital and Nursing Association reported on preventing violence in healthcare workplaces. She said that a planning effort is underway to reduce emergency mental health admissions.

Restitution update: Mr. Wooliver reported that the court system has been collecting restitution for about one year. 4,000 checks were distributed and \$2 million was collected. He said that most of the recipients of restitution are business, not individuals.

Guilty but Mentally Ill proposal: Josie Garton explained the proposal from the presumptive sentencing work group to allow a GBMI individual the opportunity to be eligible for release on parole after a hearing at which his or her mental state is examined for dangerousness to the public peace or safety.

Commissioners and participants discussed the effect of the GBMI and the Not Guilty by reason of Insanity statutes, and the need for further reform. Commissioners and participants expressed that the proposal did not go far enough to address the problems with the two statutes.

Commissioner Steiner moved to adopt the recommendation. Commissioner Stanfill seconded. The recommendation was adopted unanimously.

Reinvestment Recommendations: The commission discussed its responsibility to make recommendations to the legislature for reinvestment in recidivism reduction services. It was agreed that this year the commission will build on its previous work in which it outlined general principles for reinvestment. The goal this year will be to incorporate those principles into a framework for reinvestment that lays out broad areas of spending, including discussion of where spending is currently directed, and identifying any other areas where spending would be useful for reducing recidivism.

Future meeting: The next meeting was set for July 20 at 9:30 am, and the bulk of that meeting will be spent working up the framework for reinvestment. Steve Williams, Quinlan Steiner, and Greg Razo will work with staff before the meeting to plan the agenda and gather the relevant information.

The meeting was adjourned at 2 p.m.

Alaska Criminal Justice Commission

Meeting Summary

February 6, 2018

11:15 AM

Juneau Public Library, Juneau Alaska

And Audio-teleconference

Commissioners Present: Greg Razo, Joel Bolger, Sean Case, Matt Claman, Val Davidson, Jahna Lindemuth, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams, Steve Williams

Commissioners Absent: John Coghill, Walt Monegan

Participants: Randall Burns, Aliza Kazmi, Geri Fox, Teri Tibbet, Mary Geddes, Talia Eames, Clinton Lageson, Karen Cann, Karen Forrest, Rob Henderson, Jordan Shilling, Tracy Dompeling, Leah Van Kirk, Bradley Miller, Butch Moore, Cindy Moore, Sherry Miller, Deanne Robinson, Janice Weiss, Tara Rich, Clare Sullivan, Jeff Edwards, Nicole Gorle, Trey Watson, Amy Meade, Marilyn Clark, Eli Cox, Suki Miller, Diane Casto, Nancy Meade

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

Agenda

Chair Razo called the meeting to order at 11:34 and apologized for the late start; the flight from Anchorage was late getting in. He asked if there were any changes to the agenda.

Commissioner Claman asked to move the discussion on pending legislation up after public comment. Justice Bolger moved to approve the agenda so amended. Commissioner Case seconded the motion. The motion passed without opposition.

Summary of the last meeting

Commissioner Lindemuth moved to approve the agenda and Commissioner Stanfill seconded the motion. Chair Razo asked if there were corrections. Clinton Lageson clarified his remarks: the Kenaitze Tribe supported this effort generally but didn't want to get into the minutiae and take a position on any details. Commissioner Steve Williams noted that he was the Commissioner Williams who had made the comment at the bottom of page eight. There was no opposition to approving the summary so amended.

Proposal Regarding DV Sentencing

Butch Moore thanked the Commission for the opportunity to speak and noted that the Governor had declared that February is teen dating violence awareness month. He thanked the Governor for that effort and appreciated what he's done. He also appreciated what the Commission does trying to make the state a safer and better place.

He explained that he and his wife Cindy had been discussing how to address domestic violence (DV) with an Anchorage violence prevention group. They had discussed how there are wide ranges of murder penalties, and that Alaska has the highest rates of murder of women by men. One idea they had was to make the penalty for killing a spouse or domestic partner equal to the penalty for killing a peace officer.

He was not sure that would fully stop people from killing their spouses and he was not sure it would have stopped Josh Alameda, the man who killed his daughter Bree. But he thought that if the penalty were changed to 99 year minimum, it would make a dramatic change- perhaps even cut the number in half.

In terms of impact, he looked up the year Bree was killed (2014) and found that 11 women were killed by men that year. He knew there was a higher cost to incarcerate someone for life, but thought it was worth the cost. It could also help resolve cases more quickly by encouraging plea deals.

Mr. Moore said that Josh Alameda pled to second-degree murder, and would be eligible for parole in 21 years. An expert witness said it would not be safe to release him then. He had also filed appeal to be released in 10 years. Mr. Moore thought his proposal would eliminate the short time to parole for DV offenders and would save families from going to as many parole hearings.

Mr. Moore explained that his second proposal was regarding violations of a DV no contact order. He had been talking to a law enforcement officer who told him that one of the biggest parts of the problem with DV is the victim contacting the offender. Mr. Moore said he thought that DV victims were like people addicted to opioids, who can't make smart decisions because of their attachment to their abuser. He wondered if that would change if the minimum sentence for violating a DV no contact order was 1 year. He said he spoke to professionals who told him it would typically take 6 months to a year for a victim to get away from their abuser.

Mr. Moore also mentioned the case in Big Lake [from Jan. 1 of this year], where the troopers did not arrest the man who later killed his wife. Mr. Moore looked up the defendant in that case, and found he had had many protective orders and arrests, even before the couple was married. The latest protective order was filed November 16 last year. If the man had been kept in jail away from his wife for a year, she might have been saved. Mr. Moore thought the two ideas together could make a big difference in DV rates in Alaska.

Sherry Miller said there was a lot of talk of rehabilitation for offenders. She viewed the mandatory 1 year sentence as rehabilitation for the victim. It would give the victims one year to retrain their thinking and get back on their feet. She wanted to focus the discussion on the victim, to stop the cycle of abuse.

Bradley Miller explained that their daughter Linda was murdered in September 2014. Her killer pled guilty, and was offered a plea deal that included 50 years to serve. He would be eligible for discretionary parole in over 16 years, which would be 13 years from now. If he is denied parole, he could come before the parole board every two years. His daughter's killer had previous DV protective orders in Montana. The DV cycle is obvious; victims want to believe their abuser can change. He knew that people would be thinking of the cost of this kind of sentence, but he would also ask what a life is worth. He also believed that the 1 year sentence for violating a protective order shouldn't be served on an ankle monitor.

Chair Razo said that he decided to add this topic to the agenda because tackling DV was important to society. He said the Commission recognized the tragedy to the Miller and Moore families, and noted that the Commission was charged with amending criminal laws where appropriate. He opened the floor up for discussion.

Commissioner Lindemuth agreed this was an important topic and thanked Mr. and Mrs. Moore and Mr. and Mrs. Miller for coming forward. She recalled that 6 to 8 months ago, the Commission was looking at the Results First study, and wrestling with what to do with DV programs. The Commission had noted there were no alternatives to the intervention programming currently used. Commissioner Lindemuth couldn't remember if the Commission took any action on that topic.

Commissioner Stanfill noted that Diane Casto, director of the Council on Domestic Violence and Sexual Assault (CDVSA) was present, and that CDVSA was working on developing alternative programs. Commissioner Stanfill said there were many pieces to this puzzle, and that the criminal justice system was not the only place to address DV. Since CDVSA is working to address these issues, she thought they could come back to the Commission with their proposals.

Chair Razo said there was no denying that Alaska is the worst state for DV, and it affects everyone. The state must deal with this issue head on. He thought the Commission should be able to have some impact.

Susanne DiPietro noted that the Commission has a sentencing workgroup for sentencing proposals. She also echoed Commissioner Stanfill's note about CDVSA; they have been doing a lot of work on this issue and could work with the sentencing workgroup to vet these ideas.

Commissioner Lindemuth said she would like to see what other states are doing, and wondered whether other states use strong criminal sanctions, or other approaches. She agreed Alaska needed to make progress on this issue.

Bradley Miller agreed that it would be good to look at what other states are doing, and suggested finding those with the lowest DV rates. But he also propose getting started on solutions here, and he thought Alaska could be the leader in trying strong new measures.

Butch Moore said he spoke to the Governor about this recently, and he thought it was a good idea to take a stand. He noted that most sentences result in a plea deal, so not all eligible offenders would necessarily have 99-year sentences. He also thought that it would encourage defendants to accept plea deals more quickly, and if the defendants spent less time in pretrial there would be savings there. He thought this was something to let the legislature work on, and wanted the Commission to move it forward.

Commissioner Case said he was uncomfortable comparing DV victims to opioid addicts, and said he thought the issue was more complex than that. He also didn't think a 1-year sentence would help with male offenders; they will get back out after the one year, and he wasn't sure leaving someone in jail would change them. Alcohol is often involved in these cases, and cultural differences add to their complexity. He thought the Commission needed to devote time into understanding the issue and make meaningful change.

Commissioner Claman said that the comments from Commissioners Lindemuth and Case both reflect the Commission's approach, which is to make decisions that are evidence-based. That really has

been the commission's charge from the beginning. He thought it was important to look at this issue but also important to give it an evidence-based analysis.

Judge Rhoades moved to forward this proposal to the Sentencing Workgroup and have them come up with evidence-based conclusions. She noted that the Commission had previously heard a presentation on bringing down DV rates through targeted interventions. She also recalled that DV offenders are those that have the rates of offending for all offenses. If Alaska can make headway with this group it might make real progress toward reducing the crime rate. She also noted that the new Pretrial Enforcement Division should help with a lot of these issues.

Commissioner Stanfill seconded Judge Rhoades' motion.

Justice Bolger said he appreciated the proposal, and that it struck him that it covers the most complicated examples of sentencing and criminological thinking. Judges have always struggled with the difficult question of what to do when a victim may be tempted to get back together with their abuser.

Chair Razo said the motion was consistent with the Commission's process, and echoed the need for evidence-based recommendations. He asked if there was any objection to the motion, and there was none.

Sherry Miller said she appreciated the input from the Commissioners and said this was not an easy mountain to climb. She recognized the importance of evidence-based policy, but want to put a personal note into the conversation. The death of their daughter was the most devastating event of their lives. To her, her daughter's life was just as important as the life of a peace officer. She urged the Commission not to look through just the lens of politics but also through the personal side. DV was not going to stop with a slap on the hand.

Chair Razo encouraged the Millers and the Moores to work with staff and CDVSA on further steps. Butch Moore said that he understood the complexity and the need for more research on his second proposal, but didn't think there was much to talk about for the first proposal [regarding the 99-year mandatory minimum]. Was there any reason the Commission couldn't act on that today? Chair Razo said the Commission's process is to research any proposal it decides to take up. The Legislature asked that the Commission be methodical and thoughtful in its deliberations, and that it not forward recommendations without serious consideration.

Pretrial Update

Geri Fox, director of the Pretrial Enforcement Division (PED), gave the Commission an overview of the initial implementation of the PED. She cautioned everyone not to extrapolate anything from only 30 days of data, and discourage making generalizations. She noted fair bail procedures are a constitutional principle, rooted in the 5th amendment right due process and the 8th amendment prohibition against excessive bail. In making the bail decision, she said judges need all the information they can have. The new piece of knowledge they have now is a risk assessment analysis.

Ms. Fox explained that the analysis produces two scores, one for failure to appear (FTA) and one for new criminal activity (NCA). For the latter, she noted that NCA refers only to arrest and not conviction. The scoring is based on data on Alaskans' pretrial performance when released from jail, which included arrests that didn't result in a conviction.

Since implementation began on January 1 of this year, the PED had assessed 1498 defendants as of a week ago. They had FTA scores that broke down as follows:

- Low: 78%
- Moderate: 21%
- High: 1%

And had NCA scores that broke down as follows:

- Low: 46%
- Moderate: 34%
- High: 20%

Ms. Fox explained that these numbers tracked with the data used to create the risk assessment tool and were expected. PED will keep an eye on these numbers as they may change. She noted that Alaska's risk assessment tool is a unique model with the potential for an enhanced public safety benefit.

Ms. Fox said the number of defendants assessed was 1498 as of the previous week; as of today, it might be more like 1600 or 1700. PED has 288 individuals on active supervision. A number are still in jail and ordered to supervision if they make bond. In past, if these defendants had made bond, they wouldn't necessarily have had supervision. Their active supervision caseload is growing at a rate of about 10 cases per day.

Commissioner Steiner asked whether PED was keeping track of scores for those on active supervision. Ms. Fox said they were keeping track, but she hadn't run the numbers yet. She had the impression they were getting the right people.

Ms. Fox said PED had 66 defendants on 3 different kinds of electronic monitoring (EM): GPS with curfew, curfew, and the TAG (transdermal alcohol monitoring). There were also 31 defendants on a handheld breathalyzer. The defendants are complying with the breathalyzer; some have to blow into the device up to 5 times per day. For some, it is their first time achieving sobriety. Some defendants are up front with PED officers and say they need treatment. In that situation, they call the defendant's defense attorney and ask how to facilitate treatment.

As for complying with conditions of release, the majority of defendants are complying. PED officers have remanded some defendants. Typically they will violate the conditions of their release within a couple of days, or they will be compliant. For the most part, PED is minimizing office contacts, which is an evidence-based practice. PED officers do conduct home visits, and there are on-call staff to take calls from defendants who must call to check in.

One of their offices recently had a meth user come in right from arraignment and tell them he would definitely still use meth if left to his own devices. The PED officer called that defendant's attorney and that defendant is in treatment right now. Another defendant was a homeless man who was assigned to EM. The shelter worked with PED to install the EM device at the shelter so the defendant could be in compliance.

DV cases present a tricky situation, especially in cases where a defendant may have contact with the victim but can't live with the victim. PED officers have gone to the victim's residence and discovered the defendant there—and have arrested in that situation.

The supervisor of the Southeast PED office, Leah Van Kirk, also gave the Commission an update. She also works with community jails on pretrial implementation where there is no PED officer present. Local police chiefs have been very involved and proactive. In one community, the local law enforcement is offering EM to defendants. The police chief there said he saw one of their defendants who was on EM at a high school basketball game. The man came over to the police chief to tell him how excited he was to be clean, that his girlfriend was happy with him, and he thought it was such a good idea he wanted to leave his monitoring device on for year.

Ms. Van Kirk said another defendant was ordered to EM that included both alcohol monitoring and location restrictions. The defendant was compliant and motivated despite his longstanding alcohol problem. He told PED officers he was discouraged and ashamed of his behavior. He asked them if it would help his case if he was willing to work to stay clean; he also said his family was trying to arrange treatment for him out of state. PED officers worked with his attorney; the case was resolved quickly and the resolution allowed him to go to the out of state treatment facility, where he went this week.

Ms. Van Kirk said that the PED takes the issue of DV very seriously. For DV offenders with location restrictions, their exclusion zones are monitored with GPS. She noted that GPS does not always give the most precise reading, especially if houses are placed close together. This can happen in villages where families live close by, and a home that is excluded is right next to a home that is okay. In one such case, PED was alerted that a defendant appeared to be in an exclusion zone, and they contacted victim directly and made sure she was safe. They also contacted the defendant through his GPS monitor and asked him to acknowledge the contact, indicating he should go see his PED officer the next day. He did so and the PED officer made sure he understood the exclusion zones. They are focused on making sure victims are safe.

Commissioner Dean Williams said he hoped the Commission understood the dramatic change taking place with this effort. Before the pretrial reforms went into effect, many of these people were unaccounted for. The new PED is about incentivizing change, and relationship-building, plus enforcement. He thought this was hugely important especially in the area of DV. The new system will also help in planning a diversion program.

Judge Stephens said he was pleased to hear about the work PED was doing. He noted he had a list of communities in his district where EM is offered, and wondered why some communities were on the list and some were not, and wondered what needed to happen to get EM offered in all communities.

Geri Fox said it was dependent, to some extent, on the number of positions they have and where those positions are located. PED can't have an officer in every community, so they have been developing relationships with community jails. Wrangell and Haines, for example, signed on to do EM. Sitka was offered the option and didn't take it; Ms. Fox thought it might be a problem with resources.

Commissioner Dean Williams said that DOC had offered resources for community jails to do this; they went to nearly every community. Some were not quite ready, and wanted to see how other communities fared. Ms. Fox said that some chiefs of police were willing to do EM as well, and PED was looking into possibility of partnering with them. PED would be happy to have conversations with anyone.

Ms. Fox said that PED is also looking to open recruitment for a PED officer in Ketchikan. Ms. Van Kirk said that as soon as PED has an officer there, they will have EM as a tool; the police there are willing

to support it. Ms. Fox explained that if there is only one officer in a community, they can't be on call at all times.

Commissioner Davidson said it sounded like the PED had made great progress. She thought public perception of the pretrial reforms might be improved if these positive stories were shared. When Medicaid expansion first started, it helped DHSS to publish a snapshot of the numbers of people served every month. She suggested developing something like that for the PED. Ms. Fox agreed and said it was a challenge to communicate these improvements; there were things in the reforms that would appeal to a wide spectrum of people.

Commissioner Claman said that pretrial reforms had been a hot topic at the 50-state summit on criminal justice reform. One thing he learned was that actuarial analyses were one of the most effective ways to improve pretrial results and public safety. This was borne out by the good news shared today, and it was good to know the reforms were doing exactly what they were set up to do. He noted that Alaska's pretrial re-offense rate was 37%, and other states have reduced it to 10%.

Commissioner Stanfill asked how changing Violations of Conditions of Release (VCOR) back to an offense [per SB54] had worked for the PED. Ms. Fox said it was one of their biggest challenges; there is a debate about whether PED officers can file charging documents. Their officers are thought of as being similar to POs—but violations of probation are more an administrative matter, and not a new charge. For VCORs, PED officers have to file a new charge. Some courts will accept charges filed by a PED officer, and some don't; this is because of differing interpretations of *Sapp*, a Court of Appeals case.¹ Ms. Fox said she had serious public safety concerns about this operating smoothly—if someone is high risk and assigned money bail, has paid bail, and then cut off their EM bracelet, PED needs a warrant to arrest that person as soon as the bracelet is cut off.

Judge Stevens asked what was happening with defendants who had out of state criminal history. Ms. Fox said that was another area of concern. Out of state history was not part of the score right now; there are bills in front of the legislature right now which could fix the issue.

Public Comment

Butch Moore said he wanted to thank the Commission for hearing his proposal, and appreciated the Commission moving it forward in the process.

Sherry Miller agreed and said she wanted to prevent other families from going through what her family went through.

Pending Legislation

Barbara Dunham, project attorney for the Commission, explained that there were two bills pending in the legislature that related to previous Commission recommendations. One was from Rep. Kopp's office, and dealt with the way the Violent Crimes Compensation Board (which provides restitution funds to victims of violent crimes) was funded. The other was to make the Commissioner of DHSS a voting member of the Commission. [The Commissioner was made a non-voting member with SB54.]

¹ *Sapp v. State*, 379 P.3d 1000 (Alaska App. 2016)

Chair Razo noted that Rep. Kopp had explained his bill to the Commission last year, and he didn't think any action was taken on that. Ms. Dunham explained that Rep. Kopp had wanted to add some language from Sen. Dyson to the Commission's report which essentially expressed the intent of Rep. Kopp's bill. Chair Razo noted that he may be asked to testify on the bill and would try to express the intent of the Commission's findings on restitution if he was able to testify.

Commissioner Claman said he was aware of the governor's bill regarding the DHSS Commissioner. He said that as a nonvoting member he felt he could still participate in the Commission process. He encouraged the Commission not to take a position on this, because it was not something that could be informed by evidence; it was a policy call. He wanted the Commission to avoid becoming a political body.

Chair Razo said he disagreed. He noted that there were times when the three members of the judiciary couldn't vote. And DHSS was an important player in a lot of what the Commission was doing. He thought there were two sides to this coin.

Commissioner Steve Williams recalled that the recommendation from the Behavioral Health Standing Committee that was that the intent was to have the DHSS Commission be voting member, so to him it seemed the Commission had already taken a position.

Judge Rhoades said she wanted to go on record as really strongly supporting this bill. Behavioral health was a very important issue because those with behavioral health disorders were overrepresented in the prison population. To her it made sense to have the head of the executive branch in charge of behavioral health participate in the Commission.

Commissioner Steiner said he wasn't taking a particular position, but noted that if the judges were not voting, it makes the administration heads a substantial voting bloc, which creates an appearance problem that could undermine integrity of the process. He was not sure the Commission would want to take a position here. He would also like to have a discussion about the judges' recusals, as that changes the tenor of the Commission's debates.

Commissioner Steve Williams reiterated that the Commission had already taken a position. Commissioner Claman asked if the recommendation had explicitly stated that the position should be a voting position. Susanne DiPietro said that staff had looked up the original recommendation and it had not been stated explicitly in the language of the recommendation but that was the clear intent in the discussion leading up to the Commission's vote on it. Commissioner Claman noted that the legislature had responded to the Commission's recommendation, and he encouraged the Commission to focus on other topics.

Commissioner Davidson noted that she was in an awkward position. She knew that treatment and recovery played a valuable role in criminal justice reform, and Medicaid and access to treatment was a key part of that. As Commissioner of DHSS, it was awkward role to be in as a non-voting member whose department directly deals with these topics. She had no problem speaking up, but it's problematic without a voting role. She will continue to participate in the Commission process, but couldn't promise that would be the case for the next appointee. At the same time, she didn't want to detract from other asks.

Commissioner Stanfill noted this came up to some extent at the last meeting, and noted there was an interesting vote count then. She also noted she was a public member not necessarily influenced by political pressure, while other Commissioners might be answerable, at least to some extent, to others.

She wanted to discuss this, and have a conversation about how to have meaningful votes. She thought it would be a good idea to be up front about who will be voting on things ahead of time.

Chair Razo said he thought this was a healthy discussion, and noted that he also has a vote, but typically won't exercise it unless there is a tie.

Commissioner Steve Williams thought there was a need for clarity. Even if the voting aspect of the position was not in the narrative of the Commission's previous recommendation, he believed that was the intent of the committee. He thought the Commission needed to consider what Commissioner Davidson pointed out, that commissioners will change. Commissioner Davidson has been participating but the next one may prioritize differently. DHSS is key to this Commission's work, and community health systems keep coming up in the Commission's discussions. He moved that the Commission clarify the intent of the original recommendation was that the DHSS Commissioner become a voting member. Judge Rhoades seconded the motion.

Chair Razo noted that the issue of the judges voting arose when Justice Bolger clarified in December when he could and couldn't vote. Judge Stephens said he planned to email The Commission on Judicial Conduct about exactly what he can vote on. His understanding was that concerns are heightened when the recommendation is to amend a specific statute. He will get clarification before the next meeting.

Judge Rhoades noted she was not in the same category now that she was retired and did not plan to act as a pro tem. She thought this particular issue was important because it came from the Behavioral Health Subcommittee, which recognized the importance of including DHSS in the Commission process. It was never part of the discussion that the Commissioner of DHSS would be a nonvoting member. She felt this specific question had already been voted on.

Ms. DiPietro noted the actual bill in the legislature right now does more than add the DHSS Commissioner as a voting member. The Commissioners clarified that the motion before the Commission was to clarify that the Commission's intent in 2016 was to add the DHSS Commissioner to the Commission as a voting member.

Commissioner Claman said that the legislature would not necessarily view this clarification as a call to further action, and issuing this clarification might undermine the Commission's effectiveness with the legislature.

Chair Razo called the question for a vote. The Commissioners voted yes with the exception of Commissioner Case who voted no.

Chair Razo asked if there was other legislative news. Commissioner Claman said that he and Rep. Kopp had cosponsored a bill which he had introduced and was not in the House Judiciary Committee. It allowed law enforcement officers to conduct warrantless arrests at a medical facility and added an aggravator for assaults on medical personnel. The Committee heard it on Monday, and he expected it to be on the house floor next week. He was happy to take questions about it.

Prison Reform

Judge Stephens gave the Commission an overview of what he learned as part of the Alaska delegation's trip to Norway to study their corrections model (as well as Sweden's and Ireland's). He noted

that the Commission had spent a lot of time discussing pretrial, sentencing, and community supervision, but not a lot of time on how prisoners should be treated while incarcerated. He noted that this presentation comprised his personal view of what he learned and he was not speaking on behalf of the court system or DOC.

Judge Stephens had handed out a copy of Article 1, section 12 of Alaska's constitution, which reads in part: "Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation." Given the latter principle, he thought this topic was within the Commission's purview.

He said that the Norway model is not about being soft on crime, but what to do with people once they're incarcerated, particularly since the reality is that almost everyone who goes will get out at some point. They will be your neighbor, and be interacting with you in the community. So the question is what kind of person do we want that neighbor to be?

Judge Stephens had slides of the materials from the trip. He cautioned he was not an expert on this topic, but would like to start a conversation. He thought Commissioner Dean Williams will be doing what he can in this area, and this presentation would explain the basis for some of that.

The program took place in Oslo last September; Alaska's delegation was joined by a delegation from Oregon. Along with himself, Alaska's delegation included Commissioner Dean Williams, two other DOC staffers, Senator Pete Kelly, and Representative Bryce Edgmon. The trip was sponsored by the Prison Law Office, an NGO in California that made millions suing the state for penal abuses. They concluded that they would rather not have to react to abusive prison policies but rather put that money toward showing people another way.

Their program consisted of visits to Norway's correctional facilities and lectures from corrections professionals. The prisons they visited included Ringerike Prison, Halden Prison (Norway's newest high-security prison), Bastoy Prison (a low-security prison on an island), a halfway house, and Bredtveit women's prison.

The speakers they heard from included Maria Lindstrom, the head of corrections in Sweden; Jan Stromnes, the deputy governor of Halden prison; and Harold Fosker, the originator of Norway's penal model. Mr. Fosker had hand-picked the people now running the corrections service from within the system. He had also been injured in the terrorist attack by Anders Brevik, who also killed over 70 people at a summer camp. Mr. Fosker addressed Mr. Brevik at his sentencing hearing, knowing that he would be sentenced to imprisonment in the system Mr. Fosker created. Despite the attack, Mr. Fosker's belief in that system never wavered. The group also learned about the Irish prison system, which was in the process of implementing what Norway did, but on a shoestring budget.

Judge Stephens had prepared a slide comparing Alaska's incarceration and recidivism rates to those of Norway and Sweden:

	<u>Alaska</u>	<u>Norway</u>	<u>Sweden</u>
Population	742,0000	5,330,000	10,000,000
In Custody	5,267	4,000	5,400
Probation	4,795	7,000	
EM	392	500	
Recidivism	66%	10-20%	29%

Judge Stephens noted that Ireland, Sweden and Norway all had cultural, historical and economic differences. But there was also some commonality among them that drove their successful reformulation of their penal systems. All three jurisdictions recognized there was a need for change, and that it should be addressed on a national basis; they recognized that nearly all prisoners would be released eventually; they implemented evidence-based programs; and they recognized the need to treat prisoners as humans.

Norway's prison reforms were based on a few basic principles. The first was normality. The idea behind normality is that life in prison should be as close to normal life outside prison as possible. In Norway, jail itself – the restriction of liberty— is the punishment; no other deprivation is seen as necessary, so the prisoners' living conditions are not themselves punitive. They have voting rights.

Commissioner Steiner asked whether there was data showing that making prison an unpleasant place was not a deterrent. Commissioner Dean Williams said there was; evidence shows that operating prisons according to the "hellhole" mentality just makes inmates worse by the time they are released, and has no deterrent effect. Respect engenders respect. One thing he noted in the Norway prisons was that there were no subcultures, gangs, or drug trafficking developing. He also noted that there was no incentive for prisoners to behave if they had nothing to lose. In Norway, prisoners had incentives and privileges that could be taken away for misbehavior.

Judge Stephens said another principle was progression toward reintegration. Prisoners start at the supermaximum-security facility, then the maximum facility, then the regular facility, than minimum-security facility. Progressing toward the less-secure facility was not automatic; prisoners must apply for the next step down to show they've earned it.

Commissioner Dean Williams said this was also an expression of the principle of normality, as prisoners have to apply for these placements just like they would do for a job. It also expresses the principle of procedural justice: the process must mean something. Grievances must be answered. There is no "us against them" mentality in Norway facilities among corrections staff.

Judge Stephens added that Norway's prisoners have a choice when in prison: they can go school, work, or stay in the supermax facility. The corrections system makes all kinds of education and training available to the inmates, to discourage prisoners from just sitting and watching TV.

Another principle was the import model, whereby services are provided by community providers. They are the same providers working outside the prison that any Norwegian is entitled to access as a citizen. This helps with exit planning, and maintaining the continuity of services, because prisoners will have the same providers both inside and out.

Norway also reimagined the role of corrections officers: "from guard to social worker." Corrections officers there go through a two-year training, giving them the equivalent of an associate's degree. Corrections officers called contact officers are assigned to three prisoners. The officers interact with the prisoners all day, help them access services, and generally get to know them. All interactions with the prisoner are designed to rehabilitate the prisoner. This is called dynamic security. The idea is that developing relationships with the prisoners reduces the chances of their wanting to act out and helps the officers anticipate any misbehavior.

Commissioner Steiner said there must be a cost to this model, particularly with the staffing and training. Commissioner Dean Williams said there was, as the officers are paid during training. But generally their salaries are not that much more than corrections officers here; being a corrections officer in Norway is seen as a rewarding job. Officers there appear both relaxed and alert. In the US, corrections officers have a lower life expectancy; the stress of the position leads to heart problems and drinking problems. The environment is very different.

Judge Stephens said that Bastøy Prison - the low-security facility on an island - had very few guards; no one was patrolling the beaches. The delegation took a ferry over to the island, and once there, discovered that all of the crew members on the ferry were prisoners except the captain. The facilities on the island have been refurbished; the site used to be that of an infamous juvenile corrections center that was also used as a German prison camp. Despite the lack of security, there has only ever been one escape. Prisoners given day passes to go visit families will always return to the island knowing that if they do not, they could lose the privilege of being housed at Bastøy.

Halden Prison, the newly-built maximum-security facility, has a cement wall seven meters high surrounding it. The interior was consciously planned with landscaping that gives it a park-like feel. The supermax building has the most restrictions, but still has works of art, including commissioned works by a famous Norwegian graffiti artist.

From the supermax building, Halden prisoners can work their way into the less-restrictive living units, which have more of a dormitory feel. The units have communal spaces where the inmates can cook for themselves. These prisoners have access to the activity center, where there are multiple workshops to learn an art or trade. Volunteer organizations come in to help with this training. There is also a gym and a chapel. There is a visiting house for the prisoner to stay with family when they come to visit—a privilege which is earned.

There is also a halfway house on site. In Oslo, there are additional halfway houses, which are not distinguished by any overt signage—they just look like part of the neighborhood.

Judge Stephens also briefly touched on the Swedish corrections model: their motto is “better out.” They also use evidence-based programming and have the same principle of normalization.

Commissioner Stanfill asked how long Norway had been putting these principles into practice, and how they got the country’s citizens to get behind these ideas. Judge Stephens said they started reforming in 1997. In term of the public, he thought you just have to ask the right question in the right way- most people, when questioned, would be behind this. He noted that as a sentencing judge, he often gets many letters of support for defendants. Those same supporters might have a different view if they didn’t know the defendant. There must be a way to tap into the empathy people have for the defendant they know. And it is important to remind people that these defendants are getting out eventually. In Ireland, it was about convincing people that nothing changes if nothing changes.

Rob Henderson asked if there was any pushback from staff to these changes. Judge Stephens said the staff now are very proud of their system. Commissioner Dean Williams said that there was some initial resistance. In the first four years it was not easy with staff used to the old ways. There was a lot of resistance to getting to know inmates at first. North Dakota just started to use parts of this model— officers there are instructed to have conversations with prisoners in solitary confinement three times per week for at least 15 minutes. There have been similar changes in other states; it was about starting small. The word was spreading about results that can be achieved with dynamic security and how promising the model is.

Commissioner Stanfill asked how the prisoners were incentivized to work or take classes – was it just that they wouldn’t step down to the next less-restrictive placement? Judge Stephens said that was it; the prison staff also made their expectations clear from the start. Commissioner Dean Williams said that if a prisoner fails to engage in work or education or they drop out, they go back to the next higher level of security, so that there are consequences to inaction; the prisoners have something to lose if they don’t do something to better themselves.

Judge Stephens added that a similar principle worked to incentivize prisoners to get to the halfway house they visited in Norway; prisoners couldn’t be placed there unless they already had a job. He added that it was not all bliss in Norway; 30% of their prisoners are foreign-born and that can pose challenges. Commissioner Dean Williams said that the prisons also had big drug trafficking issues.

Commissioner Claman said he had been reading an article about the culture in an Indiana prison— it was very different from the description of the culture in Norway’s prison. He thought there were some amazing stories from these countries but also thought it took a significant cultural shift to achieve their success. He noted it took 20 years for them to get to this place.

Fairbanks Community Restorative Justice Initiative

Jeff May, professor at the University of Alaska Fairbanks (UAF) and Chair of the UAF Justice Department, gave the Commission an overview of the Fairbanks Community Restorative Justice Initiative. He was joined by professor Rob Duke.

Prof. May explained that their program is a cooperative partnership between the Fairbanks community and state justice agencies. The court, prosecutors, public defenders, the Division of Juvenile Justice (DJJ), and the local probation office were all involved. The program is a pretrial diversion program,

focusing on individuals who admit to an offense and are willing to take steps to repair the damage they've caused. People not willing to do either are sent back to the referring agency (DJJ or the prosecutor).

The program began at the UAF Justice Department with courses on restorative justice over a number of years, along with workshops. Superior Court judges reached out to the Department noting that Criminal Rule 11 had a new provision clarifying that defendants can participate in community based programs as a form of resolution to a case, and they wanted to know if such a program existed in Fairbanks or if they could create one. They engaged in a two-year process with community partners to develop the program.

Potential participants are prescreened by prosecutors before arraignment. At arraignment, judges will let the defendant know about the program, and program staff are on hand to explain the program in more detail. If the defendant accepts, the judge will continue the arraignment. The program will take over and facilitate mediation between the defendant and the victim and/or the defendant's family. If the defendant successfully participates in the program, the prosecutor will let the judge know the case can be dismissed at the continued hearing.

The program director is Prof. Duke, and the program is staffed with interns who earn academic credit. Prof. Duke trains and oversees the interns. The program is designed to offer a non-adversarial alternative to case resolution. Defendants discuss what harms they have committed, and what should be done to make it right. They form a contract and agree to complete it in a set time. Typically, if a contract is completed, the criminal case will be dismissed (sometimes there will be an alternative disposition agreed upon at the beginning of the process).

Prof. Duke explained that typically the program will have two 2 social work interns, one justice intern, and perhaps one psychology intern. They are in court two days per week for arraignments, and attend juvenile hearings two days per week. They have had 38 cases so far, and expect that number to double by the end of the year. He thought they were at about one-quarter capacity, and will hopefully reach full capacity next year.

Of their cases thus far, 36 out of the 38 were successful. Prof. Duke explained that they had provided slides which explain the restitution amounts; some were paid in cash, others in kind. Participants also performed community service hours, typically at places like animal control or the food bank. The program can be flexible; one participant who was Alaska Native agreed to learn how to create works in a dying art form from an elder.

They had also provided slides on their cost savings estimates. They estimated that when defendants are diverted, it would reduce the prosecutor's work to one hour of time (based on Anchorage data).

Prof. Duke explained that the UAF dean allowed him to use his time for the program now, but they will need a sustainable model going forward.

They plan to have an independent evaluation of the program, and they are also trying to learn more about the victims' perspectives with exit interviews. The victims have been surprised to hear about case outcomes, and grateful for being included and getting a better understanding of what happened. One victim got restitution a defendant who blew up her mailbox, and she re-donated that restitution back to the program and donated an additional amount on top of that.

Prof. May said he had just wanted to introduce the program to the Commission. He was grateful for all the players involved in getting the program implemented. He said he would like the Commission's support. They have tried to make the program as cheap as possible, and estimate they will need around \$50,000 per year in future to keep it running. They would like to hire a part-time director and to be able to offer a stipend to the student interns. Some students don't pursue the opportunity because they need to work. He said he would appreciate any insight on funding sources to keep the program alive and going. He noted that he had also sent the Commission a document with more details about the program.

Chair Razo said he thought it sounded like a great program, espousing the principles of the rule of law and restorative justice, and teaching students about restorative justice to boot. He thought it was admirable, and something the Commission should support.

Commissioner Steve Williams asked to clarify—was their data from the six-month month period from July to December? Prof. Duke confirmed that it was.

Justice Bolger asked how the communications worked among stakeholders when there was a successful completion. Prof. Duke said that when a defendant signs the contract, they provide it to prosecutor, and once they hold the mediation and family conferences, they provide an exit form to the prosecutor. If the case is successful, they then go to the continued arraignment hearing and report the success to the judge, and the judge confirms with the prosecutor that the case should be dismissed. If the defendant is not successful, they have a warning system in place to give the defendants due process. If they are still not successful, the defendant will then go back in for arraignments and enter a plea.

Ms. DiPietro asked about the program's eligibility criteria. Prof. May said that longer program description he had circulated explains eligibility in more detail. Certain offenses are automatically eligible for referral. Fairbanks DA Gregg Olson was instrumental in developing the eligibility process, and agreed that for the listed offenses, the DA's office was comfortable with a referral if it was a first time offense. These are the kinds of cases that typically result in complete dismissal. All other types of cases are discretionary and referral usually involves a Rule 11 agreement.

Ms. DiPietro also noted that it seemed the program had tried to control for net widening. Prof. May confirmed that was something they wanted to avoid. They have a case review team that meets every other week to discuss cases in the program, and they check to make sure the cases are suitable. They want to make sure they get cases that wouldn't have been rejected for lack of probable cause anyway.

Ms. DiPietro said there used to be a juvenile offender-victim mediation program that had the same results the Fairbanks program was showing. That program found that if the offenders were involved in their own case resolution they were more likely to follow through with what they were supposed to do, and the victims buy in to the criminal justice process.

Chair Razo said he liked the process behind the Fairbanks program, in that it was not a series of ad-hoc diversion decisions but had more rigor; he thought that was fairer for everyone involved.

Commission work plan

Chair Razo noted that staff attorney Barbara Dunham had circulated an updated memo on the Commission's work plan for the year.

Ms. Dunham explained that the Sex Offenses Workgroup would now be chaired by Deputy DOC Commissioner Karen Cann; the group would have one meeting in February to wrap up the sex trafficking discussion and then turn to finishing the report to the legislature.

For the Sentencing Workgroup, Commissioner Steiner said that there was a GBMI proposal that should be ready to go; he also thought the groups should meet sooner rather than later to discuss the DV proposal discussed earlier in the day.

Commissioner Stanfill noted that the CDVSA would meet March 6 and 7, and suggested that Commissioner Steiner connect with them to see how the DV proposal fits in with what they've been doing. Commissioner Steiner said he agreed and would come to that meeting, as he would like to know more about what they're doing. Commissioner Stanfill said she would be there too. Diane Casto said she would coordinate details with Commissioners Stanfill and Steiner and said the CDVSA would appreciate their participation.

Commissioner Steve Williams said that the Behavioral Health Standing Committee would hear more from Mary Geddes on diversion planning at DOC, and would look into working with a technical assistance provider on the Sequential Intercept Model. Ms. DiPietro asked whether anything had been decided about the Arrest and Intoxication Workgroup. Commissioner Steve Williams said that the Workgroup had been folded into the Standing Committee, but the Committee had not taken any action on the arrest and intoxication issue.

Ms. Dunham noted that the Barriers to Reentry Workgroup would take a hiatus after wrapping up the discussion on expungement as Commissioner Stanfill had expressed interest in participating in the Restorative Justice Workgroup. Commissioner Stanfill said staff also needed more time to get information on the changes to the barrier crimes regulations, and whether the group should address housing. Ms. Dunham also explained that the group had been talking to the Alaska Workforce Investment Board last year and would look to get an update on their employer outreach efforts.

Justice Bolger noted that he was ready to take action on the previous recommendation to remove SIS cases from CourtView as soon as he could get assurance from DOC that it would not interfere with their PFD eligibility determinations.

Commissioner Davidson said she'd been hearing a lot about employment on the Medicaid front, particularly about adding a work requirement. She noted that the folks most impacted by such a change would be reentrants, who are in the Medicaid expansion population; she thought it was important to keep an eye on this. Reentrant access to healthcare and behavioral health treatment is very important to have on the Commission's radar.

Ms. Dunham noted that Chair Razo had agreed to chair the Restorative Justice Workgroup and that group would resume meeting in March. She had already reached out to those who had participated in the restitution discussions, and asked anyone interested in participating in the new iteration of the group to contact her.

The next meeting was set for April 23 in Anchorage. There was general interest among the Commissioners in meeting in Fairbanks at some point.

Alaska Criminal Justice Commission

Meeting Summary

January 12, 2018

2:30 PM

Audio-teleconference

Commissioners Present: Joel Bolger, Sean Case, Matt Claman, Val Davidson, Jahna Lindemuth, Walt Monegan, Greg Razo, Stephanie Rhodes, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams, Steve Williams

Commissioners Absent: John Coghill

Participants: Tracy Dompeling, Rob Henderson, Mike Duxbury, Randall Burns, Tony Piper, Teri Tibbet, Carrie Belden, Suki Miller, Alison Hanzawa, Denali Daniels, Chelsea, Phil Shanahan, Bill Comer, Cindy Strout

Staff: Teri Carns, Staci Corey, Susie Dosik, Barbara Dunham

Approval of Meeting Agenda

Chair Razo called for a motion to approve the meeting agenda. Commissioner Lindemuth so moved, and Commissioner Steve Williams seconded the motion. There was no opposition and the motion passed.

Approval of Last Meeting's Summary

Chair Razo called for a motion to approve the summary of the previous meeting. Justice Bolger noted that he was on the phone for the meeting, and Chair Razo said the summary would be updated to reflect that he was present. There was no opposition to approving the summary so amended.

State Forum on Public Safety

Commissioner Claman explained that as part of the 50-State Summit on Public Safety, the Bureau of Justice Assistance is funding state forums on public safety.¹ He is coordinating with Commissioner Coghill and DOC to host Alaska's forum. He anticipated that it would be a half-day forum, with a target date in September 2018, and he expected a good number of people to show. The application for the forum is in, and he will coordinate with the ACJC if the application is

¹ From the Council on State Government (CSG)'s website: "[In 2018,] the U.S. Department of Justice's Bureau of Justice Assistance (BJA) will provide support for up to 25 states to host a State Forum on Public Safety. Criminal justice experts from the CSG Justice Center or the Crime and Justice Institute (CJI) will travel to selected states to facilitate a data-rich public safety discussion between a broad cross-section of policymakers, criminal justice professionals, behavioral health practitioners, and advocates, and meet with state leaders to identify opportunities to increase public safety."

accepted. He saw the commission as a partner in their efforts for public awareness on public safety issues. He was thinking of hosting it at a convention center in Anchorage.

MICS Proposal

Overview

Commissioner Lindemuth explained, for the benefit of those who weren't at the December meeting, that the administration had proposed an A-level felony offenses for drug trafficking. After SB 91, there was no longer a class A felony for drug trafficking unless it was charged as a conspiracy. The Department of Law viewed this as a gap. The proposal was to penalize dealing 25g or more of a Schedule IA drug or 50g or more of a Schedule IIA or IIIA. At the December meeting, the discussion indicated there was general support for this idea but Commissioners were not sure if these amounts were the right threshold at which to set the A-level felony.

Commissioner Lindemuth noted that Barbara Dunham and Deputy AG Rob Henderson had both put together memos looking at similar offenses in other states. In her view, an A-level felony set at the amounts proposed, with a presumptive sentencing range of 3 to 6 years with a maximum of 20 years, was fairly conservative. She noted that Alabama's punishment for trafficking 14-28g of heroin was a 10-year minimum. She thought the current proposal was on the right track.

Deputy AG Henderson explained that his memo was not a 50-state survey, but looked at selected states. Georgia, for example, set the penalty for dealing 14-28g of heroin at a 10-year minimum. He thought the proposal was on the nose. He noted that Captain Mike Duxbury of the Alaska State Troopers could tell the Commission more about the effect this level of drug dealing has on the community. He thought that was also important to consider; this law should be relevant to Alaska and what law enforcement is seeing on ground on a day-to-day basis.

Heroin Dosage

Captain Duxbury explained that around 60-70% of the time, opioids are collocated with methamphetamine (meth). Alaska's drug problem is a poly-drug use problem, which is getting worse. In terms of dosage amounts, heroin is almost always sold in .1g amounts. His slides demonstrating the relative scale of heroin mimic the look of black tar heroin, which is the form most often used. He said that 90% of street users keep 2-3 doses, and sell the rest of what they buy.

Each individual's capacity is different, and dosage and reactions can also be affected when drugs are adulterated with more serious drugs like fentanyl or carfentanil. Alaska's drug scheduling considers substance's propensity for abuse, but not necessarily lethality. Adulteration can alter lethality. For example if oxycodone has a potency of 1, then morphine has a potency of 10, heroin has a potency of 100, fentanyl has a potency of 1000, and carfentanil has a potency of 10,000. Cocaine and meth are starting to be cut with these other drugs too.

Captain Duxbury showed a slide with doses of heroin compared to a penny; one dose was much smaller than a penny. The depicted single dose was what addicts will use to stay "normal"—

around .1g- for the average user. The proposed 25g of heroin would therefore be equivalent to 250 doses. Chair Razo noted that the 2.5g example looked about the size of a milk dud. Capt. Duxbury said the 10g sample, about 4 times larger, would be worth \$10,000 in Bethel

Capt. Duxbury further explained that dealers can make up to 10 times as much money in Alaska as in the Lower 48. In Seattle 1g would sell for \$90, and in San Diego it would sell for \$50. There are dealers going from Mexico to Kodiak on a regular basis. Over the last year, AST has been dealing with the Sinaloa Cartel there. Dealers from the Lower 48 know they can make money here.

Capt. Duxbury said that heroin cut with fentanyl was found in Alaska with increasing regularity. Fentanyl is a synthetic opioid 100 times stronger than heroin, and is believed to be responsible for the deaths in Quinhagak. AST is starting to see it in meth and cocaine too. Carfentanil is a synthetic opioid 1000 times stronger than heroin, and law enforcement is starting to see heroin cut with carfentanil in California, Oregon, and Washington. It is cheaper than heroin, and is very lethal. Commissioner Monegan noted that in some jurisdictions, people are putting it on police car door handles to act as a weapon.

Meth Dosage

Capt. Duxbury explained that meth actually has a therapeutic dose of 5mg. For recreational use, an oral dose can be as much as 100mg (.1g). Commissioner Lindemuth noted that the proposal for meth would cover 50g or more. Capt. Duxbury explained that would be 500 doses.

DPS Deputy Commissioner Bill Comer asked Capt. Duxbury to describe an overdose of meth, would it be over 100mg? Capt. Duxbury said it depends on the person; it could also be cut with something more potent. In cases of a serious overdose, users are in an excited delirium, and have superhuman strength. It takes multiple officers to control them, they can create standoff situations. In cases where they are seeing people use both meth and heroin together, it is because heroin is suppressant, and can put to sleep. People use meth at same time to be “functional”—it boosts their awareness level.

Capt. Duxbury also noted that Alaska’s overdose death rate is twice the national average. Obviously there are greater overall numbers in the Lower 48, but it is a much more resource-intensive problem here because of the limited access to villages. If there were 10 overdose deaths in Alaska in a weekend, it would overwhelm the criminal justice system. Right now AST’s focus is on large-scale dealing. AST doesn’t have the resources to round up each dose, so they are looking for high-impact arrests.

Deputy AG Henderson walked the Commission through his memo, noting that Georgia had a 10-year minimum for dealing 25g of heroin or 50g of cocaine or meth. Idaho had a 10-year minimum for 25g of heroin, a 3-year minimum for 50g of cocaine, and a 2-, 3-, or 5-year minimum for 50g of meth. Mississippi had a 5- to 30-year range for dealing all three substances and a 10- to 40-year range for trafficking 30g or more of all three.

Discussion

Commissioner Steve Williams wondered if any of the states in either memo was in the process of criminal justice reform—was there any talk of modifying these sentences? Deputy AG Henderson said that Georgia had done criminal justice reform, but he was not sure specifically about drug offenses. Project attorney Barbara Dunham noted that Texas was included as an example in her memo but had not done any reform of sentencing, only of supervision. She offered to get information on states that have enacted drug laws. Commissioner Lindemuth noted that the memos both reflected the current state of the law.

Capt. Duxbury wondered if there was a way to deal with cutting drugs with other, more lethal substances, like a weapons enhancement for violent offenses. Commissioner Lindemuth said she thought that was worth discussing but also thought it was a separate issue for future discussion. Chair Razo agreed it deviated from the immediate topic but it was part of the Commission's purview and a valid issue.

Judge Rhoades asked how many possible prosecutions this might affect, and whether it was possible to get a sense of the corrections flow. Deputy AG Henderson said that in the last 3 years there were 114 cases that would have fit the bill for this proposal. Those were DPS numbers of eligible cases and didn't reflect APD cases or number of cases actually prosecuted. Law did not intend to use this statute regularly— they saw it as a tool to have available for big cases. For the biggest cases, they will continue to work with the federal authorities. Judge Rhoades noted that cases prosecuted under the proposed statute would still be sentenced as normal and subject to all existing reforms from SB 91.

Motion

Commissioner Lindemuth moved to recommend that the legislature enact a Class A felony for Misconduct Involving a Controlled Substance (MICS) for dealing 25g of a Schedule IA substance and 50g of a Schedule IIA or IIIA substance. Commissioner Monegan seconded the motion. Chair Razo called for discussion.

Commissioner Steiner said that this proposal raises a couple of questions: one, where to draw the line in terms of amounts, and two, whether this proposal will have any impact. He noted that under existing law, the "large quantities" aggravator could be used to sentence someone charged with a B-level felony to up to 10 years. The Commission does not have any information that this proposal will have any effect. The only information the Commission has is the Commission's previous research indicating that this is the kind of strategy that will end up warehousing people. That strategy was the old approach that the Commission knows is ineffective. He opposed this motion without any evidence that the proposed offense will achieve its intended effect.

Deputy AG Henderson noted that a first-time Class B felony carries a presumptive penalty of 0-2 years. Commissioner Steiner said that was true, but his point was with a large quantity aggravator, the sentence can go up to 10 years, which will do much the same thing as what Law is proposing in the cases that warrant it. The evidence from the justice reinvestment research

process showed that longer jail sentences have no deterrent effect offenders, and there is no evidence this will get drugs out of the community. More likely the effect will be to just warehouse people who will be replaced quickly on the outside by other dealers.

Commissioner Monegan said that another aspect of the proposed offense was that it would provide an incentive for defendants to cooperate with law enforcement to flip other operators. Commissioner Steiner said that would still just result in some people spending time in jail while other people step in to sell the drugs. Commissioner Monegan said that getting a defendant to cooperate means that law enforcement can find out more about the operation from the defendant, which would help dismantle the whole chain of dealers. Commissioner Steiner said he appreciated those efforts to dismantle drug organizations, but this proposal won't get drugs out of Alaska's communities. Commissioner Monegan said it would hold offenders accountable.

Commissioner Lindemuth noted that the reform process had reduced penalties to get users into treatment. This proposal is not about the users, but is about taking a trafficker off the street. This level of trafficker won't go back to village they have been selling to. She disagreed that the steeper penalty would not be a disincentive. Criminals will know what the drug laws are. Commissioner Steiner said that the data shows that longer sentences don't change a potential offender's risk-taking calculus; if a vacuum is created in the market, someone else will step in.

Commissioner Claman said that when this proposal was first brought up, he thought that the 25g/50g threshold was low, and he still views it as too low. He would think that the appropriate threshold would be in the realm of 200g/300g.

Commissioner Case said that if the threshold is set much above 25g/50g, it's won't be a state case, it will be a federal case, and it won't be used often. Chair Razo asked what happens when a case is referred to federal law enforcement, and they choose not to take it. Commissioner Lindemuth said the case would go back to the state, and right now would be prosecuted as a B or C Felony.

Chair Razo said that he recalled that during the justice reinvestment process, the Commission's recommendations regarding drug quantities was trying to get at the difference between the user level and the commercial dealing level, and treating the latter more harshly. He didn't recall if there was a discussion about whether commercial dealers should be distinguished. The question was whether dealers dealing more than 25g/50g were a distinct group.

Public Comment

Cindy Strout, a criminal defense attorney, said she understood the dangers of drug use; her nephew died of a drug overdose. But she seconded Commissioner Steiner's view. This approach is something that has been tried, and it just doesn't work. If one dealer is prosecuted, it just creates a vacuum. She viewed this proposal as a step back from the Commission's previous research on lack of deterrence and lack of rehabilitative effect for longer prison terms. She thought resources should instead be directed towards expanding drug courts, and treatment, as that will have more impact.

Capt. Duxbury said that each case matters to each victim. He noted that in Sitka, dealers from lower 48 came up just to take advantage of dealer-users. They had to use federal law enforcement to prosecute them, and making them unavailable to prey on Sitka. They are not the kind of people who are candidates for treatment; they came up because they could take advantage of people in Alaska, making money off of misery. Also in a recent case in Juneau, the threat of federal prosecution convinced a suspect to flip and cooperate with law enforcement.

Phil Shanahan, also a criminal defense attorney, agreed that the proposal amounted to the same thing Alaska did for many years. It didn't make the community safer, Alaska just spent more on locking people up. Using aggravators and maybe updating them for the current scheme might be better. The evidence from the Commission was that the old ways weren't working, and he saw this as step back to the old ways. He thought that state resources were better spent on treatment.

MICS Proposal

Discussion cont.

Judge Rhoades said she was just reading about the Municipality of Anchorage considering prosecuting felony cases. This made her wonder whether, if Alaska raises the bar, the federal authorities will pass more cases on to the state. Commissioner Lindemuth said that the Department of Law works closely with the federal authorities; they take the biggest cases, and she didn't expect that to change. She viewed this proposal as a gap filler. Cases involving 1000g or more will be federal cases. Cases involving the quantities in the current proposal aren't the kind of case federal prosecutors usually take. Deputy AG Henderson agreed, and added that as administrations change, federal priorities can change, and this proposal will allow the state to prosecute drug cases as necessary.

Capt. Duxbury noted that a dealer was convicted last year of taking 1200g meth into various Alaska villages. The federal prosecutors didn't have resources for the case so the state prosecuted the case. The dealer got 32 days and then went back to dealing once she was released.

Commissioner Stanfill asked how to reconcile that with Commissioner Steiner's point about using aggravators in such cases. Were there really no tools to deal with them? Deputy AG Henderson explained that the aggravator case law is all based on old case law, and the presence of an aggravator doesn't necessarily mean there is a great departure from the presumptive range. A case would need to have facts well outside the ordinary to get the maximum term with an aggravator, a situation that was very unlikely.

Judge Rhoades wondered if it was possible to fix the aggravators. Deputy AG Henderson said he was not sure, and noted that the presumptive terms provide certainty for everyone. Increased use of the aggravators will result in disparate sentences.

Commissioner Monegan reiterated that this proposal was for people who are in this to make money. Alaska has been watching death rates climb. He felt this was needed to protect the community. If it provides enough incentive to flip the offender, it can take a whole string of dealers

out. He added that families were impacted by drug use and there was a downstream effect to letting this problems fester; essentially, drug dealing creates ACES which create future costs.

Commissioner Claman noted that the focus of the Commission is public safety and getting the best results for state resources. Nationally, overdose deaths are now four times the rate of homicides. Figuring out where to spend state resources is critical. He was concerned that this proposal would mean spending a good deal of resources on incarceration and thereby limit resources for treatment.

Commissioner Lindemuth noted that the opioid problem has been increasing exponentially in recent years. Drug use is not the same as it was 3-5 years ago when the Commission was initially discussing justice reinvestment—the state needs more tools. She was not blaming this rise on justice reinvestment, but the Commission was not aware of the potential extent of this problem during its initial discussions.

Commissioner Stanfill said it sounded like the administration was not wanting to lock people up necessarily, but needed more tools to barter with. Chair Razo said that was certainly one factor, and other factors to consider included community condemnation.

Commissioner Steve Williams said he was conflicted about this proposal. One role of the Commission is to consider the community condemnation element, and he was struggling to balance that with evidence that Commissioner Steiner noted—for example, the this is the way the state approached the crack epidemic in the 80s, which was not necessarily effective. But the broader community was very concerned about drugs then. The question was whether the Commission was looking at this proposal as a form of community condemnation or as an effective way to get drugs off street and increase public safety? He was not sure it was latter, and he agreed that if a dealer is prosecuted, someone else will come along to fill that space.

Chair Razo said he didn't want to lose track of the fact that public safety is the Commission's primary goal. He noted that there is a great deal of outrage on this topic in rural Alaska. The rural Alaskan opinion is that drugs have created an insurmountable problem and rural Alaska has no resources to deal with it. As was revealed by today's discussion, enterprise-level drug trafficking is significant in the villages. Dealers can take small package into a remote location with no law enforcement resources. Small populations are greatly affected when they lose someone to drugs. Rural Alaskans have fewer tools than ever to deal with this problem, which puts him in favor of the proposal. He still agreed with the need to focus on treatment for people who need it, and goals of criminal justice reform. This is something different. There might be something the Commission missed the first time around. The problem has grown worse since the Commission first submitted its recommendations. He was in favor of what the administration was proposing, and thought it made sense for where the state is right now. He didn't think it would make a big impact on jail bed usage.

Judge Rhoades said she was also very ambivalent. She understood the law enforcement perspective and the need for a bargaining chip and a way to address the gap in cases not taken by

the federal system. But she also knew that the presumptive system can widen the door to include people with behavioral health and mental health problems, who can get swept into the system. She also knew that the reinvestment money didn't go to treatment as much as she had hoped. The Commission was also bound to make improvements based on evidence and she was not hearing that there was evidence this will actually reduce drug dealing. She was also worried it could negatively impact minorities disproportionately. The quantities proposed felt like a guess.

Commissioner Lindemuth responded that one item in the Public Safety Action Plan was to provide an additional \$3 million in treatment over the next 3 years.

Commissioner Dean Williams agreed that the opioid crisis made this a different situation than it was two years ago. Alaska is in an extreme situation, and he understood the need for another tool. He supported the proposal for a lot of the reasons mentioned.

Chair Razo called for a vote. The Commissioners voted as follows:

- Joel Bolger - abstain
- Sean Case - yes
- Jahna Lindemuth - yes
- Walt Monegan - yes
- Stephanie Rhoades - abstain
- Brenda Stanfill - yes
- Quinlan Steiner - no
- Trevor Stephens - abstain
- Dean Williams - yes
- Steve Williams - no

In explaining his vote, Commissioner Steve Williams said he was voting no because he couldn't be certain there would be any positive impact on public safety or negative impact on DOC. In explaining her vote, Commissioner Stanfill said that she hoped that the Commission and the departments will continue to pay close attention to funding for treatment services, which she thought was much more important.

Chair Razo said that the yesses carried, and that staff will prepare a recommendation that notes the vote was not unanimous. Any member of the Commission can provide input at any time. Staff will send a draft before sending the recommendation to the legislature.

Commissioner Williams noted that the information provided in advance of the meeting was helpful. He hoped the Commission could gather information on the impacts of this proposal should it become law, as he thought this was something the Commission would want to know. He also thought, as Judge Rhoades mentioned, that there might be an impact on federal prosecutions and it would be good to track that as well. He thought it was a good idea to start thinking about the needed data now.

Future Meeting Dates & Tasks

Barriers to Reentry/Expungement: January 22 at 10:30

Behavioral Health Standing Committee: January 30 at 10:30

Full Commission meeting: February 6, Juneau

Alaska Criminal Justice Commission

Meeting Summary

Thursday, December 7, 2017

12:00 PM

Snowden Training Center

820 W. 4th Avenue, Anchorage

And audio-teleconference

Commissioners Present: Greg Razo, Joel Bolger, Sean Case, Val Davidson, Jahna Lindemuth, Walt Monegan, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Steve Williams, Matt Claman, John Coghill

Commissioners Absent: Stephanie Rhoades, Dean Williams (DOC Deputy Commissioner Karen Cann served as proxy for Commissioner Dean Williams)

Participants: Nancy Meade, Clare Sullivan, Devon Urquhart, Gennifer Moreau, Alys Wooden, Randall Burns, Karen Forrest, Araceli Valle, Heather Parker, Aliza Kazmi, Jordan Shilling, Jeff Edwards, Juliana Melin, Talia Eames, Jeannie Monk, Cathleen McLaughlin, Sarah Perman, Tara Rich, Brandon Biddle, Daniel Quisenberry, Nelson Price, Kim McDowell, Sarah Martin, Megan MacKeirnan, Karen Scroggins

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

Approval of Meeting Agenda

Chair Razo called for a motion to approve the meeting agenda. Commissioner Lindemuth so moved, and Commissioner Steve Williams seconded the motion. Commission Project Attorney Barbara Dunham suggested adding an update on expungement; Chair Razo called for approving the agenda as amended. There was no opposition and the motion passed.

Approval of Last Meeting's Summary

Chair Razo called for a motion to approve the summary of the previous meeting. Commissioner Steve Williams so moved, and Commissioner Lindemuth seconded the motion. There was no opposition and the motion passed.

Pretrial Friday Announcement

Ms. Dunham explained that the Pretrial Enforcement Division (PED) would be putting on webinars to explain the pretrial tool and associated logistics to practitioners. She said she would

email the Commission with the details. Department of Corrections (DOC) Deputy Commissioner Karen Cann said their outreach focus was on the webinar, and PED will do follow-up with specific groups as needed.

Alaska Court System General Counsel Nancy Meade said she has also been doing trainings on the new pretrial provisions in the law as well as SB 54. She recently held these trainings in Fairbanks, Anchorage and Juneau, and will do more in Kenai and Bethel. Chair Razo encouraged everyone to go to a training or webinar or have staff attend; it was important to have a smooth roll out of the new system.

Commission Work Plan

Ms. Dunham explained that the Commission had five active workgroups and two dormant workgroups. If the active groups met every other month, the Commission could have three meetings per months including the plenary meetings. Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, said that she wanted the Commission to be cognizant of its resources. Meetings take preparation time for staff. Chair Razo noted that the Commission's process is to have the workgroups focus on individual items, and then bring more fully-formed ideas to the Commission. He would like to have productive workgroups. He asked to hear from Commissioners about their thoughts on how to proceed with each work group.

Commissioner Case said that the focus of the Arrest and Intoxication Workgroup had been on the need for some kind of alcohol hold at DOC, which was addressed somewhat by legislature in SB 54. The more immediate issue was to his mind taken care of, and he wanted to look at more long-term issues. Specifically, he wanted to look at how law enforcement interacts with people on the street, and whether it was possible to change the initial interaction with people to address drug use, alcohol use, and mental illness more immediately, very early on in the criminal justice process.

Commissioner Steve Williams noted that many of the same members of the Arrest and Intoxication Workgroup were part of the Behavioral Health Standing Committee (BHSC), and the workgroup's focus is on areas where behavioral health issues overlap with the criminal justice system. It also ties into the work of DOC's jail diversion planner, which the BHSC was going to help with. The BHSC is also looking at the UNLV report and Title 12 reform. He noted that Judge Rhoades brought up the idea of combining the two groups, and that idea was put on hold.

Commissioner Case said his only concern with combining the two groups would be overloading the BHSC. Chair Razo agreed, and said his concern was that when he has attended the BHSC, there are so many issues that it is hard for the group to focus on one. He suggested making one issue a priority.

Commissioner Claman said that the reason to create the Arrest and Intoxication Workgroup was to address the pressing issue [of sober holds]. He noted it was possible to be "meeting'd" to death and would support consolidating the two groups. He also thought there was nothing wrong with taking the patient approach. Commissioner Stanfill said she believed the groups could be combined, perhaps with a subcommittee for Arrest and Intoxication. She thought there should be serious consideration of what the groups would prioritize.

Commissioner Steiner said he had no strong feelings either way, and agreed the two groups were related. There is an emergent need to address issues of intoxication, and he knew that the legislature would continue to look at it. He didn't want to de-prioritize it. He also noted that the workgroup had been bringing stakeholders who don't normally participate in Commission meetings into the workgroup. The issue of intoxicated individuals was very much falling on DOC, hospitals, and police, and he wanted to keep them on board because they will bear the brunt. Legislative fixes won't be a whole solution and Alaska will need them to help address this issue.

Commissioner Steve Williams noted that a BHSC meeting was scheduled for December 15. He offered to meet with Commissioner Case beforehand to discuss combining the groups and then have the BHSC look at its priorities.

Chair Razo suggested that each workgroup should report out at the next full meeting; the workgroups should reverify the chair of the workgroup and identify 2018 priorities.

Commissioner Stanfill asked that the Restitution and Restorative Justice Workgroup reconvene; there are restorative justice issues the Commission has yet to address. Chair Razo agreed that it was important to continue to focus on those issues, and said he would chair the workgroup and include tribal leaders as well. Commissioners Lindemuth, Davidson, Steiner, Case, and Stephens wanted to be included in the group; DC Cann volunteered Commissioner Dean Williams as well.

Ms. Dunham asked whether the Commissioners would like a summary report of the activities of the workgroups to keep abreast of what's going on in each workgroup. Commissioner Lindemuth suggested a summary paragraph each month. Commissioner Steve Williams suggested using a standard template each time, as that would be easier to read.

Ms. Dunham updated the group on the work of the expungement discussions in the Barriers to Reentry Workgroup. There had been several meetings, which was warranted given the complexity of the issue. Among other things, the group was grappling with how to balance sealing records for background check purposes but retaining them for law enforcement purposes, and how to approach the issue of restitution payments. She said the group would welcome any Commissioner's thoughts on these or any other expungement issue.

Commissioner Lindemuth agreed that expungement is very complicated. Law supports idea of expungement—people who have been clear of criminal justice involvement for 20 years should have a better chance to turn things around – but she also supported the idea of retaining the record for law enforcement purposes. Aside from that and restitution, there were other hot button issues too, and she would recommend participating in the workgroup. Ms. DiPietro noted that this was not the first time the Commission has looked at this topic; because of its complexity, the final package will be quite dense, and she encouraged the Commissioners to stay abreast of what the workgroup was discussing.

Alaska State Hospitals and Nursing Homes Association Presentation

Jeannie Monk explained that she was the Vice President of the Alaska State Hospitals and Nursing Homes Association Presentation (ASHNHA). She noted that their President, Becky Hultberg, addressed earlier in the year, and the Commission asked for data on the scope of the

problem. They have some now, though it was not easy to get good uniform data. ASHNHA wanted to have some hospital representatives talk to the Commission to present their data, as well as anecdotes. Hospitals continue to report an increase in violence over the last several years. Staff report feeling unsafe in the workplace. ASHNHA believes this is not acceptable, but for many staff, it has become the new normal. Many factors contribute to this problem. She was not here to talk about causes but actions and solutions.

Alaska Regional Hospital

Daniel Quisenberry, the Director of Security for Alaska Regional, explained they had had 80 incidents since the beginning of 2017, 25 in which they called APD. His security team is noticing more reports, but not everything is reported-- their staff now think much of the violence is the new normal. They are trying to shift back to having clear lines on workplace violence. Stress because of this violence over time can cause a lot of anxiety among staff. They have now developed strong patient care contracts. These include expectations they would from anyone in a facility, but the purpose of the contracts is to try to spell this out and make very clear that it's okay to report violence to security. He spoke to the night shift about this last night. Staff still feel there are no teeth behind reporting— they feel that if they report, there won't be any consequences.

Fairbanks Memorial Hospital

Sarah Barton, ICU and ED director at Fairbanks Memorial Hospital, said they had been experiencing many of the same things. They had over 180 reports over the last 18 months. Violence appears to have escalated significantly within the last couple of years. They are encouraging reporting, have instituted mandatory crisis intervention training, and have instituted education as to expectations that staff should not be subjected to violence.

Chair Razo asked what security staffing looked like at the hospitals. Ms. Barton said that Fairbanks has security officers around the clock in uniform; one stationed at the entrance and one making rounds. Mr. Quisenberry said that Alaska Regional also has uniformed officers, some equipped with tasers, with two on roving patrol. The outside area (including the parking lots) has a separate team with 2 officers on duty.

Norton Sound Regional Hospital

Megan MacKeirnan from Norton Sound Regional Hospital in Nome said they have round the clock security. In recent months they have had 194 security officer hours devoted to one-to-one attention for patients with suicidal ideation. They have also seen an increase in violence in recent years. They had 14 reported incidents the previous month and 140 calls for security in that time.

Bartlett Regional Hospital

Kim McDowell, calling from Bartlett Regional Hospital in Juneau, said that it was hard to pull data together on workplace violence incidents, and it was something they were working on. Since September, they have had 21 incidents. In the last six months, staff have been punched, and

patients have flipped stretchers, and thrown heavy equipment (an oxygen tank, for example). They are seeing an increase in the severity of incidents, and are very concerned about staff safety.

Central Peninsula Hospital

Karen Scroggins called in from Central Peninsula Hospital in Soldotna, a 49-bed facility. They have also seen an increase in violence against staff. There is a new indicator for assault from the National Database of Nursing Quality Indicators which they have been tracking since July, in which time there have been 9 assaults on a healthcare worker including sexual assault, as well as biting, kicking, scratching, and throwing equipment. They have a psych safe room, in which they had to lock two patient; the patients became so violent they broke the door.

Alaska Native Medical Center

Anne Kreutzer, COO at the Alaska Native Medical Center (ANMC), said that ANMC's campus includes a 167-bed hospital and sees about 60,000 emergency department visits every year. They also have two patient housing facilities. Addressing workplace violence was identified as a top priority for ANMC's leadership in 2015; it seemed to them to be related to increases in drug and alcohol use. They have given their staff crisis intervention training, increased security staff, increased parking lot patrols, and revised security measures. Incidents have continued. One-to-one watch hours were five times higher in 2017 than in 2015. (The hours numbered in the thousands). Assaults have included bites, punches, and spitting. One bite from a patient alone cost lost staff time, two hospital stays for the staff member and \$46,000 in medical costs. Ms. Kreutzer added that it was not always the patients who were the cause; recently a belligerent visitor had to be escorted out of the hospital and then that person sprayed the security officer with bear spray.

Providence Hospital

Nelson Price, head of security at Providence Hospital, said that they have one assault reported every three days (according to the criminal definition). He believes there are more incidents that are not reported; caregivers now assume that assault is part of the job. In terms of responses, they are looking nationwide for best practices. Assaults have created difficulty with recruitment and retention, which is already an issue in Alaska. They are doing what they can, but feel they need outside help.

Ms. Monk described the need for law enforcement assistance. ASHNHA urged law enforcement officers, prosecutors and courts to take hospital workplace violence seriously. They want to change the attitude among staff that violence is part of the job. Violence has negative impacts for facilities—not least that when violence occurs, it diverts attention from other patients, and puts them in danger. Hospitals understand the need to define the difference between intentional and unintentional assaults.

Ms. Monk noted that staff don't report violence for many reasons, including the fact that the criminal justice process is time consuming and intimidating. In explaining their decisions not to report violence, staff also cite the fact that if law enforcement responds to a report of an

assaultive patient, the patient is cited, not arrested, and remains at the facility. In those situations, ASHNHA would like the patient removed from the facility if it is medically possible.

ASHNHA's Legislative Recommendations

Ms. Monk explained that ASHNHA had developed recommendations for the Legislature and for the hospitals. On the legislative side, ASHNHA recommended stiffer penalties for violence against health care workers by including "medical professionals" in the list of enhanced Class A felony sentences in AS 12.55.125(c)(2) and in the list in the aggravating factor found in AS 12.55.155(c)(13). These lists already include emergency responders, and Ms. Monk said it would make sense to include medical professionals as they face many of the same issues.

Commissioner Davidson said that it sounded like the patients committing these assaults are inebriated or suffering from a mental health breakdown. She was not sure that enhancing the sentence would have a deterrent effect on a group of people unlikely to be thinking clearly about the long-term consequences of their actions. She was also worried about the "medical professional" term. That could apply to staff at API, and she didn't want them to have to worry about patients getting felony convictions when they're seeking treatment. She was concerned there could be a chilling effect for people going to hospitals.

Ms. Monk said she recognized that, but ASHNHA also wanted a way for the state to recognize the seriousness of the issue, and the value of health care workers.

Ms. Monk said ASHNHA's second legislative recommendation was to enhance law enforcement's ability to arrest people for a fourth-degree assault in a health care facility. They don't want a mandatory arrest; that idea made the behavioral health staff nervous, because they didn't want to get their patients in trouble. ASHNHA has learned that the reason officers will issue a citation may have to do with the need for a warrant in misdemeanor assaults. She said they understood that getting warrant is not necessarily hard, but they are hearing that when police respond to assaults, that the assaulter will be cited and left with same staff member who was assaulted.

She didn't think these recommendations were magic bullets, but hoped they would add to the available tools to deal with the problem of workplace violence in hospitals. ASHNHA was planning to take these recommendations to the legislature this session. They wanted help from the Commission in identifying other solutions. As healthcare industry workforce representatives they were not experts in criminal justice; they did not seek to jump into the criminal justice arena but hospitals cannot bear burden of this increasing violence.

Judge Stephens asked what the breakdown was for patients who are becoming assaultive -- were they there for mental commitments or medication-seeking? Mr. Price said that it varies. A lot of the violence is fueled by alcohol or drugs. Patients who may be assaultive because of dementia or a TBI-type trauma are different and not part of the problem they're seeking to address. Ms. Kreutzer said she was surprised how many assaults are committed by visitors, or patients who are cleared to leave but are angry about leaving. Ms. McDowell agreed that it varies;

a large percentage seem to be opiate related or medication-seeking—someone at Bartlett once flipped over exam tables because they were denied antibiotics.

Judge Stephens said that it seemed that the most immediate concern was to change the ability to arrest in these situations. Ms. DiPietro said she understood part of the problem was also reluctance on the part of the victim/staff member to sign the necessary affidavit for the warrant. Commissioner Claman said that it was his understanding that the affidavit is essentially a request for a citizen arrest, and wondered why staff were reluctant to fill it out. Commissioner Case pointed out that if the victim was not willing to participate, there was no ability to prosecute.

Mr. Quisenberry said it was his understanding that the reluctance stemmed from fears that there might be some kind of retaliation from the community if a hospital staff person were to sign the affidavit. He gave an example of a gunshot victim who had behaved unpleasantly toward staff in addition to assaulting a nurse; the nurse refused to fill out the form out of fear. Staff also believe there is a lack of consequences for a report, so it is not worth doing. Mr. Price said he also thought it was based on fear of the perpetrator's community – that the identity of the staff member would be spread on social media, etc. The Anchorage community is small enough for such a thing to happen. Commissioner Monegan added that the perpetrator would also have access to police reports with identifying information.

Commissioner Davidson asked if the victim/staff member was needed as a witness at trial, how they would be protected from retaliation. If they were not willing to sign an affidavit, would they be willing to testify?

Ms. Scroggins said that nurses hesitate to sign the affidavit because their name and address would be on a document that the perpetrator could have access to, and despite the signed affidavit, there would be no consequences for the perpetrator. But if nurses thought that something would actually happen [i.e., there were consequences], they would be more willing to sign.

Commissioner Claman said it sounded like hospital staff had two different concerns: getting assaultive patients out of the hospital, and being identified as the victim or being asked to testify later. Chair Razo said he was hearing that the primary concern was de-escalating the violence and getting the assaultive patient out of the hospital. Mr. Price agreed that was a big part of the problem; if the assaultive person is not removed, they continue to be a problem. Commissioner Monegan said another issue was that if the person was brought to corrections and bleeding, they would be sent back to the hospital. Mr. Price said they would only ask to arrest people who were medically cleared to leave.

Commissioner Steiner said ASHNHA might want to consider that if their proposed legislation passed, it would not change that identifying information will be in police reports.

Commissioner Steve Williams noted that retention was an issue in a number of healthcare areas. He wondered how word about hospital workplace violence in Alaska was passed around, and whether the hospitals had any data on retention and assaults. Mr. Price said he was still

working on collecting data and improving data collection. They haven't shared the data publicly, but are looking to do so. Anecdotal reports pass by word of mouth through staff. Ms. Kreutzer said that the vacancy rate in the emergency department at ANMC is higher than that of other healthcare. They "traveling" staff for a trial period—those folks will move on.

Commissioner Steve Williams said he was trying to get sense of scope as related to substance use and behavioral health issues. He was not trying to minimize the legislative approach, but wondered if there had been any success in other states that have gone with that approach.

Chair Razo asked whether ASHNHA's recommendations were final. Ms. Monk said their workplace violence task force has approved them, and the executive committee will decide whether to give final approval next week.

Commissioner Claman noted that the Commission doesn't always move quickly, and asked whether ASHNHA would be moving ahead without the Commission weighing in or whether they wanted to wait on the Commission process. He also wondered whether ASHNHA would be willing to consider any alternative recommendation that the Commission might develop. Ms. Monk said she appreciated the Commission process and wished ASHNHA could wait on the Commission, but ASHNHA's members want action now. They will make a final decision next week. They want to work with the Commission and respect its process but their timeline may not allow for that. Most likely they will proceed, but they welcome any suggestions for improvement. They want to have a public dialogue.

DC Cann asked if there was any way to classify which assaults were driven by behavioral health or substance use disorders. Ms. Monk said that most hospitals have a qualitative way of reporting that kind of information and it was hard to quantify. Mr. Price said the recent increase in violence has made them aware that they need to collect this data in a way that can be used to compare hospitals, and it is something they're working on. Ms. Kreutzer said that a person's behavioral health or substance use disorder may not necessarily be the reason they are in the hospital, and it was hard to categorize an unrelated diagnosis and correlate that with an assault. The data collection for this issue is complicated.

Judge Stephens said he was not used to thinking about security in hospitals. He was not sure about the security situation at the hospital in Ketchikan, and noted that smaller facilities are even less equipped to handle these incidents. He hears about them most often in the context of mental commitments, so no warrant is needed and the hospital is not asking for criminal charge. Ms. Monk and Mr. Price noted that in the culture of caregivers, violence has long been accepted but it is now getting to the point where it's too much to handle.

Commissioner Stanfill said she agreed with Commissioner Claman that the Commission process would take some time. She wanted to look at data and see whether there were any successes in other places. She noted that her son-in-law works in healthcare, and heard from him that it was not just a problem of violent individuals but there were other issues as well, such as a lack of bed space – which keeps people crowded into waiting areas and delays needed behavioral

health treatment. She thought any solutions should not be just about criminalization. Since a lot of this was behavioral health- related she could understand why nurses don't want to press charges.

Ms. DiPietro noted that part of ASHNHA's plan was to implement increased communication between hospital emergency departments, and she would be interested to what they learn from that. In the criminal justice world, a relatively small population is responsible for a large portion of the crime, and might also be true that those who are assaultive are also "frequent flyers."

Ms. Monk said she wanted to put in a plug for community behavioral health services. The availability of those services definitely has an impact on this issue and AHSNHA supports efforts to get more community behavioral health services.

Commissioner Monegan noted that ex parte and Title 47 orders might help with frequent fliers. Judge Stephens noted that those mechanisms require certain criteria. He agreed with Commissioner Stanfill that this is part of a larger societal problem. He has noticed that mental commitments have been increasing over last few years. Commissioner Steiner said it was the same for the public defenders.

Commissioner Lindemuth thanked the presenters. She noted that everyone on the Commission was a stakeholder in the criminal justice system, and it was helpful to have this information even if the Commission had no concrete action or advice to give right then. These issues fit in with a lot of what the Commission has been talking about. Chair Razo agreed, and noted that coming to the Commission made sense, as the Legislature often wants to know what the Commission's thoughts are. He suggested continuing to participate in the Arrest and Intoxication workgroup, and to keep the Commission posted.

Juneau Shoplifting Project

Ms. DiPietro reminded the Commission that it had approved requesting funding from the Bureau of Justice Assistance (BJA) to fund several programs, one of which was the Juneau Avert Chronic Shoplifting Project (JACS). JACS is intended to address Juneau's issues with chronic shoplifting. The program will take high-risk chronic shoplifters and trespassers and divert them into the program where they must complete a risk assessment, identify a small measurable goal, and participate in anti-shoplifting course. The program involves a risk assessment because it is designed for chronic, high-risk shoplifters. It doesn't want to take in low-risk participants because those people will not need the help of a relatively intensive program. JACS just identified its first participant.

Talia Eames, program coordinator for the Second Chance Reentry program with the Central Council Tlingit and Haida Indian Tribes of Alaska (CCTHITA) explained that they were feeling a little behind, but have submitted a proposal to extend the length of the grant. They have hired

a caseworker, and CCTHITA and the Juneau Reentry Coalition donated incentives for participation. The program will have its first class in January.

Ms. DiPietro said the Commission also needed to approve the restructured funding. JACS can get a no-cost extension, and the grant manager, Melissa Threadgill at CJI, doesn't object. The budget also needs an adjustment to include software for case management, and to allow the caseworker to work on other projects if JACS does not need full time attention.

Ms. Eames added that CCTHITA was looking to replace Second Chance with another program; they are worried the caseworker will not have enough to do since the program only accepts high-risk participants.

Chair Razo asked if there was a motion to approve the restructured funding. Judge Stephens so moved, Commissioner Monegan seconded the motion and there was no opposition.

Public Safety Action Plan

Commissioner Lindemuth gave the Commission an update on the Public Safety Action Plan. Since assuming the role of Attorney General, it has become clear to her that public safety agencies were operating in silos. The idea with the Public Safety Action Plan is to have one concrete plan for the whole administration. The plan was rolled out on October 30, but it is meant to be a work in progress; they are adding to it all the time.

She walked the Commission through some of the items on the plan, noting that each could involve an hour-long discussion. Commissioner Lindemuth highlighted the following:

- The first item on the plan was to pass SB 54, which just passed during the special session.
- Pretrial delay: this had been identified as an issue at the Criminal Justice Working Group—a small subcommittee of that group has been working to address pretrial delay. The Presiding Judge issued an order today that address pre-indictment hearing continuances. This should help with the problem, though the subcommittee is also looking at other ways to address delay.
- Concentrating on maximizing existing resources; for example facilitating information flow between criminal justice agencies.
- The Department of Law is asking for more prosecutors (two in Anchorage, one in Bethel, one in Kotzebue) and two new criminal investigators housed at the Department of Law focusing on domestic violence and sexual assault. These investigators will remain with a given case until it goes to trial or is otherwise resolved.
- Creating a statewide domestic violence/sexual assault hotline- there are regional numbers but nothing statewide. The statewide line will likely refer to regional services.
- Increasing trooper presence and improving trooper response times by lifting travel restrictions and focusing trooper retention and filling vacancies. (Commissioner Monegan noted that the retention issues are lessening but still present. DPS officers went to a national conference on this; it is a national problem.)

- Other rural justice initiatives include strengthening the VPSO program and adding telecommunications resources in more jails for remote court hearings.
- Tribal diversion: this program is just starting, and as it ramps up, other areas might get interested. Law will be holding a training on this next year. Tribal diversion will allow villages and tribes to attach consequences to the low level crimes that Law doesn't have resources to prosecute.
- Smartphone technology: Law hopes to use a smartphone app for central evidence collection –particularly for photographic or video evidence.
- Access to treatment: Law supports moving toward treatment on demand and is in the process of discussing that with DHSS.
- Title 47 holds: Law supports a long-term strategy to look at ways to use Title 47 holds and address intoxication and criminal justice interaction. The provision in SB 54 regarding the bail schedule will address some of the issues, but there is also a need to look at more holistic solutions.

Judge Stephens noted that the language in SB 54 will be included in the bail schedule which will be released tomorrow. He also wondered, in regard to facilitating telephonic appearances from remote jails, whether it would require amending the court rules. Commissioner Steiner said that Alaska tried that before. Part of the problem is the lack of communication between defense counsel and their clients in the jail. If there was a way to improve that, it would cut down on transports because if the defendant can talk to their lawyer, they can waive their presence. Judge Stephens noted that he allowed defense counsel in Ketchikan to use the court polycoms for this purpose, and this was an idea that could be expanded.

Commissioner Lindemuth noted that the opioid task force was now meeting every 3-4 weeks, and a new focus on training drug dogs has helped, as there has been a lot of success there. Judge Stephens wondered if with retraining the dogs would no longer alert to marijuana. Commissioner Monegan said that marijuana was not the focus now, though some dogs were trained on that, as DPS still needed to track illegal grow operations and the like.

Commissioner Lindemuth said that Alaska is working in collaboration with federal law enforcement at an unprecedented level of cooperation. Alaska is seeking a federal high intensity drug trafficking area (HIDTA) designation. Chair Razo wondered if letters of support from the Native community would help with this. Commissioner Lindemuth said it would. Commissioner Claman said he thought members of the legislature would also be willing to write letters.

Commissioner Steve Williams asked how the public safety action plan would work with Commission. Commissioner Lindemuth said she believed the Commission's role was to make recommendations to the Legislature and the Administration. Some things that are already being discussed at the Commission were included in the plan, such as expungement.

Commissioner Monegan noted that there were other items in the plan that could be dealt with internally by the affected agency; for example, the Commission wouldn't need to sign off on the new criminal investigators. Commissioner Lindemuth added that if policy issues need to be

discussed, the Commission would be the appropriate venue. That is also why it's important to have Commissioner Davidson join the Commission. The Governor supports the Commission, which is why Law will continue to bring ideas here to vet them. Legislators kept mentioning need to do this during the special session.

Commissioner Stanfill said she was glad to see the plan included new tools for domestic violence/sexual assault, and hope the plan would involve the Network on Domestic Violence and Sexual Assault and the Council on Domestic Violence and Sexual Assault, as they can contribute knowledge and resources. Regarding tribal diversion, she thought that could tie into the Commission's Restorative Justice Workgroup. Commissioner Lindemuth noted that the plan had been presented to the Council and Commissioner Monegan noted that Council Director Diane Casto will be involved in developing the hotline.

Public Safety in Rural Alaska

Chair Razo said that at AFN that week, they spent over two hours discussing public safety in rural Alaska. In some areas there is a perceived lawlessness. The Alaska Native perspective, almost universally, is that public safety is a huge problem, especially if there is no trooper presence. This creates responsibilities for local leaders they are not trained to deal with. If there are serious issues, people in the villages with no trooper presence just have to wait until someone can come. AFN will have a special session just on this. He thought this was something the Commission should pay attention to.

Commissioner Davidson agreed and said there was also a very common perception in the Native community that Alaska Native women in particular are targeted for violent crimes, and not taken seriously when they report it. This was not just in the rural areas but in the cities as well. To illustrate, she related an anecdote: about seven years ago an Alaska Native woman, not a drinker or drug user, went out dancing with two friends in Anchorage. While out that night, she was punched by a stranger on the street without provocation. She called the police, and their questions were immediately about what she had to drink, and why she let her boyfriend hit her. It took a lot of effort for the victim to convince the officers that she had not been drinking and did not know her assailant. She and her two friends were all Native women and all were attorneys. Her friends collected evidence and offered to be witnesses, but there was no follow up from law enforcement. The reason she knew about this crime: she was the victim. Her perception at the time was that the police thought she was just another Alaska Native woman in the wrong place at the wrong time in Anchorage.

MICS 2 Proposal

Deputy AG Rob Henderson explained that Law was proposing a new Misconduct Involving a Controlled Substance in the Second Degree (MICS 2) offense intended to prosecute high-level drug traffickers. He explained there was already a Class B felony for possession with intent to sell over 1 gram of heroin, or 2.5 grams of meth or cocaine. At the street level, heroin usually sells at .1g, meth at .25g or .5g. The proposed offense would cover possession with intent to sell over 25g heroin and 50g of meth or cocaine. At a dose of .1g, 25g of heroin is 250 user amounts.

Mr. Henderson noted that a lot of cases involving these quantities are currently referred to federal law enforcement. But they can't handle all of the cases, and federal priorities can change. That was why Law was proposing this new statute.

Commissioner Lindemuth said that the criminal justice reform response to the opioid crisis has been about getting users into treatment, but the other half of addressing the crisis is about stopping the flow of drugs to Alaska. Alaska can't afford to ignore this epidemic. She was interested to hear the Commission's thoughts.

Commissioner Steiner said that his concern was about how the quantities were set. He wondered who would be considered a high-level dealer. There have been similar policies in past. He thought the Commission should talk about what made meaningful distinction between mid-level dealing and high-level trafficking; in other words, at what point is someone making a lot of money off of drugs as opposed to just some money.

Commissioner Lindemuth said that with their proposal, the amount would equal 250 doses. Mr. Henderson said that it amounted to almost an ounce. Commissioner Steiner noted that there are some people bringing in pounds.

Judge Stephens wondered whether it would be helpful to look to the *Pocock* decision [an Alaska Court of Appeals opinion from 2012], which looked to federal law to determine whether the quantities at issue were considered small or not.

Deputy AG Henderson noted that the federal cutoff is over 100g; under 100g will result in a sentence of under 5 years. The suggested amounts were in part based on his experience as a drug prosecutor. This proposal would not cover a huge number of cases. These are cases where a lot of money is involved, and it involves more of a criminal enterprise.

Commissioner Claman said he understood that most drug prosecutions at this level have involved federal law enforcement because they had more resources. He was troubled that the federal break is at 100g and this proposal is at 25g. He recalled that when he clerked in a federal court in El Paso, big drug cases were measured in tons. He was also concerned that a bill with this proposal would wind up getting "Christmas treed". He wondered if Law considered this a priority for the legislative session.

Commissioner Lindemuth said she expected many proposals in the upcoming legislative session on criminal justice issues. The opioid crisis is a priority for the Governor.

Deputy AG Henderson said that the state will always partner with the federal authorities on big drug cases. Commissioner Lindemuth said the federal authorities will take the cases they want.

Commissioner Monegan said that he could bring in Captain Mike Duxbury, who has a lot of experience in state drug enforcement, and have him speak to the Commission about quantities. He also noted that heroin can be cut with very small amounts of fentanyl which can be deadly.

Ms. DiPietro asked if Law had looked at what other states had done in this area. Deputy AG Henderson said a lot of states look at purity as well as quantity, and he didn't think there was interest in going in that direction. All states do things differently. Ms. DiPietro said that it makes a

lot of sense to have an A felony MICS offense, and though that it sounded like the issue was where the cutoff quantity is set.

Deputy AG Henderson explained that .1g of heroin will go for about \$50 in Anchorage, \$100 in Juneau, and \$400 Bethel. Judge Stephens agreed, noting that the economics can be staggering. In Southeast Alaska they are seeing people bringing drugs in body cavities—people who have no connection to the local community.

Chair Razo asked what action the group wanted to take. Commissioner Coghill said he was interested in Commissioner Monegan's suggestion. He thought a recommendation should come from the Commission after hearing a report from Captain Duxbury or someone similar. He also thought having a class A felony MICS offense was a good idea, and was just wondering about the amounts. He also wondered if Alaska had a class A offense, whether there would be fewer federal prosecutions.

Commissioner Monegan noted that troopers just found 6oz of heroin in Southeast Alaska. He thought that if Alaska was not invested in tackling this issue, federal authorities may not want to invest in Alaska. He thought it was important to send the message that Alaska doesn't want these drugs.

Commissioner Coghill agreed and said it was important to put those signposts up. He wondered if there were existing aggravators that achieve what Law was looking for. Deputy AG Henderson said there are aggravators on small and large quantities and case law to interpret those aggravators. A new MICS 2 classification could be similarly aggravated/mitigated. Judge Stephens noted there were also aggravators for transporting drugs, and commercial operations.

Commissioner Lindemuth said she was not sure the Commission would find consensus on an exact threshold quantity. She proposed that the Commission just recommend enacting a Class A felony and suggest that the legislature solicit testimony on where to draw the line.

Commissioner Monegan moved to adopt Commissioner Lindemuth's proposal, and Commissioner Case seconded the motion. Chair Razo called for discussion.

Commissioner Claman noted that the Commission often looks into what other states do, and said he would like the Commission to do that in this instance. Chair Razo said that another option is to hold a special meeting to discuss just this proposal, as it sounded like some Commissioners wanted to have more information. The Commission could call a telephonic meeting in January.

DC Cann said she would like to have more information. Her concern was that leaving the recommendation wide open as to threshold quantity was not much of a recommendation. Chair Razo said the Commission could get research on the threshold quantities. Commissioner Coghill said he seconded that idea—sitting through an open legislative process is painful. He also noted that the Commission is about evidence-based approaches, something the legislature appreciates.

Commissioner Lindemuth said she would be fine with that, and suggested also adding a discussion about how to address situations requiring mandatory release where the defendant has serious out-of-state criminal history that isn't considered by the risk assessment tool.

Commissioner Claman said he didn't get sense that people were worked up about that issue. He thought it was addressed by the change to the 48-hour hold in SB 54. He also wanted to give the tool a chance to work, and was reluctant to change things at this point. Commissioner Lindemuth said she didn't think the 48-hour old addressed this. The question was whether the judge can do anything about mandatory release in those situations – this was something that was not anticipated until after the tool was developed.

DC Cann said that DOC will be tracking the out of state criminal history, and it can be evaluated for later inclusion.

Commissioner Monegan withdrew his motion.

Commissioner Claman suggested that the January meeting look only at the Class A felony MICS 2 proposal. Chair Razo agreed and the Commission decided to schedule a meeting to discuss the Class A felony MICS2 proposal in early January.

Clemency

Commissioner Lindemuth said another item on the action plan is clemency, and Law had provided an amended draft of the recommendation the Commission had looked at earlier in the year. She didn't think there was any need to describe or recommend any specific process, and that the Commission could just tell the Governor to move forward with clemency. The Commission's recommendation would not include the attachment included with the previous version. The process the governor is working on will look a little different.

Chair Razo said he thought the Commission had already agreed to recommend restarting the clemency process. It was the Governor's province to decide how to go about that, but it sounded like the Governor wanted the Commission to weigh in on going forward.

Judge Stephens moved to adopt the recommendation as amended by Law, and Commissioner Lindemuth seconded the motion. Ms. Dunham suggested edits for the last line and there was no opposition to adopting the recommendation as amended.

Chair Razo noted that Justice Bolger informed him that he has decided not to vote on some statutory measures to ensure he was conforming to the judicial code of conduct.

50-State Summit Report

Commissioner Claman reported that he attended a 50-state criminal justice summit along with Commissioners Case, Dean Williams, and Steve Williams. It was inspiring to attend especially after the special legislative session. All states are recognizing that they can't keep spending money on prison, but each state is looking at approaching the problem differently. North Carolina got more aggressive with probation and parole, which helped with recidivism. The governor of Kentucky was looking aggressively at expungement. Alabama had work to do as it had twice the number of prisoners as beds. There is work to be done in Alaska, but he thinks Alaska is making progress. He provided an interesting graphic from the summit on national data on the homicide rate compared to the drug overdose rate. It was a reminder that opioids are national crisis. He has asked for similar numbers for Alaska from the Bureau of Vital Statistics.

SB 54 Recap

Ms. Dunham explained that staff had provided a comparison of SB 91 and SB 54, and she was happy to discuss any individual provisions with the Commissioners if they so wished. Deputy AG Henderson suggested revising the Practitioner's Guide in light of SB 54 as many people use it.

Ms. Dunham explained that SB 54 also gave the Commission two new tasks. First, the Commission was directed to collaborate with DPS and local law enforcement to train law enforcement officers throughout the state on SB 91 and SB 54. Commissioner Claman said that the intent behind that language was that the Commission should conduct webinars.

Ms. Dunham explained that the second task was to study the behavioral health and other risk factors of offenders in Alaska's prisons, and to include that data in the annual report. Once the Commission sunsets, the study would be continued by the Alaska Judicial Council.

Public Comment

Tara Rich from the ACLU asked what the impetus was for the MICS 2 proposal. Was it a particular case, perhaps one declined by the federal authorities? Deputy AG Henderson explained that it was not just one case but the fact that the federal authorities are just unable to take all cases. To his mind the proposal was simply a recognition of a gap in the law. Ms. Rich wondered how many cases this would cover. Deputy AG Henderson said that Law was collecting that information now; and thought it wouldn't be a huge, maybe 100 or 200 cases. Commissioner Lindemuth said it was also among the governor's priorities. It hasn't yet gone to the legislature; Law wanted to bring it to the Commission first.

Ms. Rich said she would echo Commissioner Claman's warning that once at the legislature, confined recommendations are at risk of expanding. Chair Razo said he agreed. He also noted that after AFN, he went with AFN Director Julie Kitka to speak to folks at the national FBI headquarters. There is a belief in the Alaska Native Community that trafficking enterprises take advantage of the remoteness of Alaska to take advantage of Alaska Natives. They wanted to stress to the federal authorities that Alaska Natives wanted drug trafficking enforcement to be a priority, and offered the FBI resources to overcome the hurdles of not having a law enforcement presence in all areas. That may be another part of the solution.

Chris McClane of the Fairbanks Reentry Coalition wanted to let the Commission know about the positive developments in reentry, as there is a lot of negative news about criminal justice. They had a symposium on housing yesterday, and are making strides in communication and problem solving among stakeholders. They are communicating with other coalitions. They just completed their readiness assessment, and are looking to engage the public. The Fairbanks reentry case manager has full caseload, and is now known among prisoners as the person to contact for reentry. They have had successes getting housing, clothing, household goods, and counseling for reentrants. Chair Razo encouraged him to send a written report to the Commission if he could.

Ms. Dunham explained that Jeremy Palmer, and inmate in a DOC facility, had written to the Commission asking to start a program talking to at-risk youth. Commissioner Steiner noted that similar programs in the past, such as the scared straight program, were known to actually increase recidivism. DC Cann observed this problem with a similar program in a prison in the lower 48. The

issue was the kids taken into the facility didn't think prison was that bad, and they also met a bunch of people they already knew.

Future Meeting Dates & Tasks

The following meetings had already been set:

Barriers to Reentry: December 11 at 9:30, Denali Commission Conference Room

Behavioral Health Standing Committee: December 15 at 8:30, Alaska Mental Health Trust

Sex Offenses Workgroup: January 12 at 9:30, Location TBD

Chair Razo reminded the Commissioners their task was to work on plans for each workgroup in the coming year.

The February meeting was set for February 6 in Juneau, tentatively to take place between 10:30 and 3:00.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, October 12, 2017

9:30 AM

Snowden Training Center

820 W. 4th Avenue, Anchorage

And Audio-teleconference

Commissioners Present: Greg Razo, Joel Bolger, Sean Case, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Steve Williams, Matt Claman, John Coghill

Commissioners Absent: Jahna Lindemuth (Deputy Attorney General Rob Henderson sat in for Commissioner Lindemuth), Walt Monegan (Deputy Commissioner Bill Comer sat in for Commissioner Monegan), Dean Williams (Deputy Commissioners Claire Sullivan and Karen Cann sat in for Commissioner Dean Williams)

Participants: Aliza Kazmi, Mike Mathews, Heather Parker, Amory LeLake, Tony Piper, Kaci Schoeder, Pam Kravitz, Patrick Fitzgerald, Randall Burns, Alysa Wooden, Chanta Bullock, Nancy Meade, Geri Fox, Gennifer Moreau-Johnson, Lizzie Kubitz, Doug Wooliver

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

Approval of Meeting Agenda

Chair Razo called for a motion to approve the meeting agenda. Judge Rhoades so moved and Commissioner Steve Williams seconded the motion.

Chair Razo called for any amendments to the agenda. He wondered whether the Commission should talk about adding the DHSS Commissioner to the Criminal Justice Commission. Judge Rhoades said this was a recommendation the Commission made last year and she thought it was included in the upcoming annual report. Staff Barbara Dunham confirmed that it was.

The motion to approve the agenda passed without opposition.

Approval of Last Meeting's Summary

Chair Razo called for a motion to approve the meeting agenda. Judge Rhoades so moved and Commissioner Stanfill seconded the motion.

Commissioner Steve Williams noted that on page 7 a paragraph should be edited to clarify that the speaker was Commissioner Dean Williams not Commissioner Steve Williams.

The motion to approve the meeting summary so amended passed without opposition.

Pre-Trial Update – Mission Statement and Overview

Geri Fox, Director of the Pretrial Enforcement Division (PED) at DOC, gave the Commission an update on the implementation of the pretrial reforms in SB 91. The PED was 54 working days from launch, and issues continue to come up daily. They are now in the weeds getting all the details hammered out. They need to address logistics as well as policy calls. She was confident they will be able to complete assessments and get them to parties and court, and will be able to supervise. That doesn't mean there won't be problems. Some cases may slip through the cracks; different locations have different processes for filing cases making uniformity more challenging.

The essential functions of the PED will be to assess defendants within 24 hours of booking, to submit a report with the assessment and recommendation at arraignment, to monitor low-risk offenders if appropriate, and to supervise moderate and high risk offenders if appropriate.

The mission statement of the PED is as follows:

The Alaska Department of Corrections' Pretrial Enforcement Division strives to help provide positive change in every town, village, and neighborhood in Alaska by enhancing public safety, assisting the courts with the fair administration of justice for victims and defendants, and by providing quality supervision that holds defendants accountable, while connecting them to community partners and resources that can provide an individual the tools for long-term change and success.

The vision statement of the PED is as follows:

We pledge to protect the public, provide service to the court, and assistance in the fair administration of justice to Alaska's diverse population through objective, legal and evidence based decision making and practices. We believe it is our duty to help assure the safety of Alaskans, protect the rights of victims, respect the rights of defendants, and to honor the Constitutional presumption of innocence. The Alaska Department of Corrections' Pretrial Enforcement Division strives to be leaders in the field of pretrial services by exemplifying the highest level of integrity, professionalism, accountability and devotion to excellence.

At its core, the PED is about public safety and pretrial justice. There are three pillars to an effective pretrial system: (1) maximize court appearances, (2) maximize community safety by enforcing conditions of supervision and connecting people to services if possible (because these defendants are pretrial, participation in services is not mandatory, but they are hoping to develop these possibilities where they can), and (3) maximize appropriate placements – i.e., get as many people in the right place at the right time.

The PED team has been involved in a lot of national training over the last few months, so they are now well-versed in how to approach those pillars of public safety and pretrial justice. One training opportunity was at the National Institute of Corrections (NIC), a federal training program that is the leading trainer in corrections. The NIC paid for one week of training for the whole team. One of the things they came to appreciate there is that Alaska really is unique—rural means rural—and they were able to develop a better sense of what will work in Alaska; everything about their system is Alaska-specific.

Director Fox has also been approached to join the Pretrial Executive Network, an invitation-only group of pretrial executives. Alaska will host this group in the spring.

The Crime and Justice Institute (CJI) has also been invaluable; it helped to train all the incoming pretrial officers in the philosophy of pretrial and how risk assessments work. In early October, CJI provided a “train the trainer” training to 12 employees so they can train new staff and partners. Having training partners is very important— this is a public process, and it’s important to have partners double-check implementation.

The pretrial tool is the AK-2S (Alaska 2-Scale) and is given a name because the tools will change over time, and they need a way to identify which tool has been used when.

The timeline for PED’s interaction with a given defendant is as follows:

- 1) Defendant is booked
- 2) PED completes the assessment for the defendant (with Low, Moderate, or High outcome) and sends a report with this assessment and a release recommendation to the court within 24 hours
- 3) Defendant has initial appearance/arraignment; the court makes the release decision
- 4) Defendant may be sent to diversion at this point:
 - a. Mental Health Court
 - b. Tribal Court
 - c. Substance abuse treatment
 - d. Law Enforcement Diversion
- 5) If defendant is released:
 - a. Low and some moderate-risk defendants will be monitored
 - b. Some moderate and high-risk defendants will be supervised (supervision may be standard or enhanced)

Chair Razo asked who makes the decision to book a defendant—would it be PED? Director Fox said no, and they will assess only those who have been booked. Chair Razo said he took this to mean that law enforcement would decide whether someone is booked. Judge Stephens said that law enforcement would only make this decision for people charged with misdemeanors; most people charged with felonies will need to see a judge and those charged with DV must always be held.

Judge Rhoades asked how this process will work with a summons. She understood that PED would only be doing assessments for arrestees. Director Fox said they wanted to focus on priorities; the people who are sitting in jail are the ones who need to be assessed. The statute currently uses phrase “all defendants” in reference to who should be assessed. SB54 clarifies that this will be required only for people booked. Their resources are probably best used for people who are kept in custody, but could be used for someone booked who made bail. Under SB 54, defendants who are not in custody will be assessed only if the DA asks for an assessment.

Commissioner Claman asked to clarify—if he were in jail for a few hours, and made \$500 bail and got out, an assessment will be done for him unless SB 54 passes. If SB 54 passes, if the DA thinks he bail is too low, could he get assessed? Deputy Attorney General Rob Henderson said yes,

though they would not only be looking at the bail amount but also the conditions of release as something they might want to revisit.

Director Fox said she wanted to clarify that the risk assessment does not assess a defendant's general risk; rather it specifically only looks at the defendant's risk—within the pretrial period—for 1) failure to appear or 2) new criminal arrests. The tool was based on pre-trial data, looking for those specific things.

Director Fox explained that she had been having regular meetings with her large stakeholder team, which had representatives of courts and the judiciary, prosecutors, treatment services, law enforcement, victims' rights, defendants, and researchers. The conversations at the stakeholder meetings, which could get very lengthy, were not always easy, but she valued the input of everyone who has been attending the meetings. Even if it seemed like a new issue would throw a wrench in things, slowing things down in that way only served to make the process better.

The PED will have district offices in Juneau, Anchorage, Palmer, and Fairbanks. These were chosen according to flight schedules, logistics, and practicality, but they generally align with the judicial districts. The office in Juneau will cover the first district; the offices in Anchorage and Palmer will cover the third district, and the office in Fairbanks will cover the second and fourth districts.

They have had to make special considerations for rural Alaska. Not all community jail systems use ACOMS, which is how PED captures people who are booked. They are looking at ways to get better utilization of ACOMS. They are also partnering with local jurisdictions to do pretrial work—they can't be in every town. There will be Pretrial POs in Barrow, Kotzebue, Sitka, and Dillingham. For other areas they have cooperative agreements with community jails, local police departments, and VPSOs. They are also partnering with DOC facilities for EM hookups.

Pre-Trial Update – The Risk Assessment Process

The risk assessment will be completed in 6 easy steps. PED officers will have a "hopper" full of defendants waiting for them every morning. The defendants in the hopper will be everyone booked through ACOMS as well as data from the court for assessments of out of custody defendants. Defendant assessments will be prioritized based on arraignment time. They are looking at doing about 90 assessments per day, and they will be done first thing in the morning. They can use resources from different parts of the state to do the assessments— the assessments are not interview based so they can be done in any location.

Judge Stephens asked if this meant the courts would need to do the arraignments in the afternoon. Director Fox said no, they should make all arraignment deadlines, whether arraignments are at 8:00, 9:00, 10:00, or later. Judge Stephens said that even so, the First District can be flexible if that would be helpful. Dir. Fox said that was good to know. She hadn't wanted to be a check on other peoples' operations, but they may need to ask for that in the future.

Dir. Fox explained that after selecting defendants from the hopper, her team will then perform the risk assessment. It is a static assessment based on static (non-changeable) factors found in criminal justice databases, and is not based on interviews. It is also not a needs assessment.

Gennifer Moreau-Johnson wondered, since the risk assessment doesn't look at needs, when any assessment for behavioral health needs might happen. Dir. Fox said that was tricky. If substance abuse is involved in the offense, PED will recommend conditions related to that to the judge.

Commissioner Case wondered how, in terms of maximizing appropriate placements, PED would get people into treatment if they needed it. Dir. Fox said because the defendants are pretrial, they will need the assistance of defense counsel to encourage cooperation with things like treatment—it can't be ordered. Commissioner Case asked if there might be any timeline for referral or assessment. Commissioner Claman said that will depend on when they get counsel. Dir. Fox said that most states will get people into services pretrial though diversion agreements; defendants can't be ordered into treatment without an admission of guilt. That's why they will need partnerships with defense counsel.

Commissioner Steiner added that it will depend on the diversion options— if they look like a good idea the defense lawyer will push the idea with the client. Some clients will just want services, and will also be looking at a later mitigated sentence/credit. Judge Rhoades noted that another option was the therapeutic courts. In some jurisdictions they proactively look at the arraignment list for participants.

Dir. Fox explained that factors for the risk of both failure to appear (FTA) and new criminal arrest (NCA) would determine the risk assessment level. The factors for FTA are age at first arrest, total number of prior FTA warrants, total number of prior FTA warrants in the past 3 years, whether the defendant is currently booked for an FTA, whether the defendant is currently booked on a property charge, and whether the defendant is currently booked on a non-DUI motor vehicle charge. The factors for NCA are age at first arrest, total number of prior arrests in the past 5 years, total number of prior convictions in the past 3 years, total number of sentences that included a period of probation, total number of sentences that included a period of probation in the last 5 years, and total number of sentences that included active time to serve in prison on the past 3 years.

Chair Razo asked for clarification on whether each factor on each scale is evidence-based. Dir. Fox said they were. The CJI research team looked at hundreds of different data points to see which were predictive of either FTA or NCA. The ones on the lists are the ones that are the most statistically significant. The scoring guide will be published on their website, and PED will also provide it to anyone. They are also happy to tell you what data the researchers looked at.

Dir. Fox cautioned that the scoring does not include juvenile data because they didn't have any juvenile history data available to evaluate. Prosecutors who might have information on serious juvenile history will need to alert the court. Deputy AG Henderson said that the DAs only have that data if they have a reason to believe it exists, and they have to ask DJJ for it specifically.

Dir. Fox said that the scoring also does not include out of state criminal history. The FBI data on this was not available for their data analysis. The reports to the court will flag an out of state criminal record when one is available. So it will not be factored into the risk assessment, but PED will be collecting the out of state data to possibly use in the future.

Judge Stephens asked what should be done in cases where OR release is mandatory even though the defendant has out of state or juvenile history that isn't counted in the score. Deputy AG Henderson said that if it turns out in practice that judicial officers are not able to override the release grid in this case, the Commission should revisit the grid—this could be a serious issue.

Dir. Fox noted that most Alaskans do not have out of state criminal history. Judge Stephens said he thought this would happen in a relatively small number of cases, but the way the statute is written, judges have no discretion when OR is mandatory. Chair Razo asked if the DAs would bring out of state criminal history to the attention of the court. Deputy AG Henderson said they always run out of state history on each defendant as a matter of course.

Dir. Fox next explained that PED will be requiring fidelity standards for all employees. They have built these checks into the design of the program, and it should correct errors immediately. The researchers who worked on the risk assessment tool are very pleased with the fidelity standards that PED has put in place; it is rare to have standards this exacting. Fidelity standards include:

- Quality training prior to completion of Pretrial Assessments
- Familiarity with the Pretrial Tool technical manual
- Clear policy and procedure to ensure timeliness and quality of pretrial assessments
- Predictable and universal recommendations that mitigate bias and overly-subjective recommendations
- Inner-Rate Reliability (IRR) performance measures
- Transparency & Training for PED partners

Dir. Fox said that other factors still should be considered in the release decision aside from the risk assessment tool. Assessments can't capture nuance in every case. Prosecutors and defense attorneys will play a critical role in assisting the court with relevant information.

Pre-Trial Update – Issues Encountered

The next 54 days will involve a very tight timeline. They are running later than they had hoped, in part because they have had programming challenges. They will start to run mock assessments next week in an effort to “break” the system to test for weak points. They want to make sure everything will run as it should. For example, they need to make sure failure to appear data is correctly based on bench warrants.

Chair Razo asked if PED contracted with someone for software engineering for the assessment process. Dir. Fox said yes, they have contracted with a group out of Juneau, which has been phenomenal.

[10-minute break]

Susanne DiPietro, Director of the Alaska Judicial Council and staff to the Commission, (giving Dir. Fox a break from speaking) explained that the PED team had encountered a few issues during the implementation process and wanted to alert the Commission.

The first issue was related to retroactivity. On January 1, when the pretrial provisions go into effect, roughly 1500 people will be already sitting in jail pretrial. The PED will not be able to

look at and assess all of those people right off the bat. Staff looked at the provisions on risk assessments in SB 91, which indicate they apply only to those who are arrested after January 1. It does not necessarily preclude requests from prosecution. Ms. DiPietro said that Dir. Fox and the PED wanted everyone to know about this because of the potential logistical issue.

Commissioner Steiner thought that the courts would likely be bombarded by bail requests. Nancy Meade, counsel for the court system, said she thought SB 91 was very clear that the new pretrial provisions apply only to offenses occurring on or after January 1. Commissioner Steiner said that was true, but it didn't mean defendants wouldn't ask for bail reviews.

Judge Rhoades said that in fairness, she thought many would agree that those already in custody pretrial also deserve the benefit of a risk assessment. She thought the issue should go on the Pretrial Stakeholder group agenda.

Ms. DiPietro said the next issue concerned what to do when charges change between booking and arraignment. Practices vary in different locations around the state. If a charge changes after booking—and after the PED does the risk assessment and makes a release recommendation—the defendant could be in a different release category.

Dir. Fox said that it also implicated the risk assessment score. The FTA score has two variables based on the current charge that could change after booking. PED will work with its partners to ensure quality charging practices—with fewer changes between booking and arraignment this will be less of a problem. Early analysis shows that only a handful of defendants might be affected.

Deputy AG Henderson said he anticipated this would be a bigger problem in Anchorage; outside Anchorage, law enforcement officers file all charging documents, while in Anchorage the felonies are filed by the DA.

Dir. Fox said she was working with the software developer to build a piece in the database to note whether the risk assessment is based on booked charges or filed charges.

Ms. DiPietro said the third issue had to do with SEJ and SIS. The tool was developed using pre-SEJ data; the PED will now need to decide what counts as a conviction for purposes of the risk assessment tool. The memo from staff on this issue has the definitions PED is using for handbook, included just to alert the Commission to what was happening. Commission members should let Dir. Fox know if they have any heartburn over it.

Ms. DiPietro said PED wanted to bring these issues up so that stakeholders can alert employees and coworkers. Chair Razo said that this discussion was intended to be informational, but anyone with an issue related to this in the future can ask for it to be put on the agenda.

Barriers to Reentry - Expungement Presentation

Project Attorney Barbara Dunham gave a presentation on expungement and the thoughts of the Barriers to Reentry Workgroup on this topic. The presentation was divided into three broad categories, looking at the various parameters of expungement: (1) who should be eligible, (2) what process should be used, and (3) what form of relief should be granted. The workgroup has looked

at what expungement processes exist in other states as well as model or uniform expungement statutes.

In terms of who should be eligible for expungement, one could consider the case type or the offender's post-offense history. Case types may be broken down into cases where there was or was not a conviction, felony or misdemeanor cases, cases involving declassified or reclassified crimes, cases involving or not involving violence, and cases according to offense type, such as drug crimes or theft crimes. (Cases that do not result in a conviction are now removed from CourtView, though the paper record remains public.) If eligibility is determined solely by case type, it may be possible to enact expungement automatically or through a semi-automated process not involving a full court hearing.

If eligibility is determined by looking at a specific offender's history, that may require a more resource-intensive process such as a hearing. Considerations based on the offender's history include whether the offender has paid restitution, how much time has elapsed since the offense, whether the offender has accrued any new criminal history since the offense, whether the offender's sentence was set aside, and whether there is any other evidence the offender can use to demonstrate rehabilitation such as proof of employment or successful treatment completion.

Other states have approached expungement using three different processes. One process is automatic, which can apply to a whole class of offenses or offender after a set period of time. The advantages of using an automatic process are that it is efficient, it is uniform and less subject to bias, and it can act as an incentive for rehabilitation if an offender knows that they will receive this benefit. The disadvantage of this process is that there is no room for individualized consideration, and some offenders deserving of expungement may not be eligible.

Another process is through a petition and a court hearing. The onus would be on the offender to apply to the court for expungement, and then the court would determine whether to grant relief to the offender—perhaps after consulting with the prosecutor and/or the victim and after holding an evidentiary hearing. The advantage of this process is that it gives notice to the victim and to law enforcement, and it also gives the offender the ability to demonstrate meaningful rehabilitation. The disadvantage is that this process is more resource-intensive.

A third option is to use an administrative applications process whereby an offender would submit an application and court administrative staff would verify that the offender meets certain set criteria, which may be easily verified using existing records. Applications which conform to the criteria would be granted. This appears to be the least common process used in other states. The Alaska Court System has a similar process set up for people who want certain records removed from CourtView.

The last parameter to consider is what form expungement should take—in other words, to what extent does the record of the offender's charge or conviction disappear? There are two schools of thought on this, one leaning more towards a "forgiving" model and one leaning more towards a "forgetting" model.

The forgetting model is expungement in the more traditional sense, and involves limiting access to criminal records. Studies on expungement in this model indicate that this produces a benefit in terms of reduced recidivism and reduced costs to the states. Typical forms of

expungement involve limiting access to the record; more extreme forms involve destroying the record altogether. One question when access to a conviction record is limited is whether the offender should be able to claim that the conviction never happened.

The forgiving model is a newer trend that does not seek to erase the record but rather officially “forgive” the offender to indicate that the offender has been rehabilitated. This can often take the form of a certificate which the offender can use to show employers and landlords as proof of rehabilitation. One study of this model showed that offenders with a certificate of rehabilitation were offered job interviews at the same rate as those with no convictions. Other “forgiving” forms include sentences that are set aside (Alaska has this) or felony convictions that are reduced to misdemeanors. One study of this model showed that recipients had moderately increased earnings.

In Alaska, there are two repositories of criminal justice information to which the public has access: one is the Court System and the other is the Department of Public Safety. In the Court System, the public may access records online via CourtView or they may go to the courthouse where the file is located and look at the paper file. The content of CourtView is often collected and copied by outside commercial aggregators. Currently some cases are removed from CourtView, though the public may still access the paper file. The Court System has the ability to make files either confidential or sealed.

The Department of Public Safety released information for background checks. General background checks release records of conviction only, while specialized background checks for employers of caregivers also release records of charges that don’t result (or have not yet resulted) in a conviction. Records maintained by DPS may be sealed in cases of false accusation or mistaken identity, but these cases are rare. Sealing removes a case from APSIN; expungement may require a new, alternative procedure that leaves the record in APSIN for law enforcement purposes. DPS also releases criminal history information to the FBI and does not have control of this information once it is released.

Ms. Dunham next gave some examples of expungement in other states. In Ohio, offenders may obtain certificates of qualification for employment which are obtained in a hybrid administrative/court process without a hearing. In Idaho, offenders may petition to have their felony convictions reduced to a misdemeanor after 5 years in most cases. In Georgia, certain offenses are expunged automatically, while other offenses may be expunged in limited cases if an offender submits a petition. Arkansas offers a comprehensive expungement scheme with a petition and court hearing process; timeframes vary according to offense. Offenders may say the conviction never happened if the record is expunged. In Montana, offenders have a one-time chance to permanently destroy a misdemeanor record entirely.

Justice Bolger asked whether the Arkansas statute could be modified to fit Alaska’s needs. Ms. Dunham replied yes; she had sent a survey out to the Commissioners to gauge their thoughts on expungement, and several parameters in the Arkansas law could be adjusted to reflect those responses. Justice Bolger said there were a lot of variables in expungement, and having a template would make it easier to come up with a recommendation. Chair Razo said he would be interested in looking at a modification to the Arkansas statute.

Judge Stephens said he saw two issues, the first being that expungement to some extent seeks to change history. Another was that the court's Administrative Rule 40 already provides for what can and can't be made public. Under this rule, the presiding judges have the authority to remove things from CourtView, but it is very limited. He gets requests for this pretty frequently. Dismissed charges can't be taken off. These are two separate problems and may have two separate solutions.

Deputy AG Henderson asked how the court system might revise the Administrative Rule. Justice Bolger noted that the proposed recommendation to take certain cases off CourtView was directed toward the Supreme Court, which can revise the rules. If the Court receives a recommendation, it might take action right away, or it might refer the recommendation to the rules committees or staff. They can be flexible depending on whether they have enough information.

Chair Razo said that the Commission had seen models from different states; what action did the Commission want to take? Commissioner Steiner said that the workgroup wanted to put this idea back before the Commission for some guidance. There are many different types of expungement, giving the Commission a wide range of opinions. His idea was to identify the basic structure and main issues. Others wanted to work from the Arkansas model, which he also thought was doable. But really the workgroup would like direction.

Chair Razo suggested working on the Arkansas model. Commissioner Claman asked to review that model, and the Commission took a look at it again. Chair Razo noted that it looked pretty substantial in terms of the crime being deemed not to have occurred.

Deputy AG Henderson said he thought there was general agreement in the workgroup that expungement is a good tool but the details presented a problem. He thought the Arkansas model was a good one. He also suggested adding the certificate of relief as another tool – there was no reason not to have both. In terms of revising the Arkansas statutes, he had questions about the timeframes, and perhaps excluding DV crimes from eligibility.

Chair Razo asked if the workgroup was willing to entertain looking at the Arkansas statutes as a model. Justice Bolger said the workgroup was planning to do so.

Judge Rhoades said she would like to look at more low-hanging fruit, and having an automatic process for minor offenses and things that have been reduced. She didn't think the CourtView recommendation went far enough. For SIS cases in particular, she didn't think it was fair that people were told that would disappear. She suggested a carve-out where prosecution can agree to dismiss a misdemeanor SIS; it might not need a full hearing, just a prosecutor's file review. This was one of the areas where the Commission has heard specifically that there is a problem.

Commissioner Claman said that he wasn't sure about allowing the offender to say that the conviction doesn't exist. There is an appeal to having an intermediate response, though the challenge with that is there might be reluctance to make use of the full expungement option.

Chair Razo said he didn't think Commission had to draft the law, but rather delineate the general principles. He suggested letting the workgroup spend more time on this and then the Commission would try to finish work on it by the December meeting.

Public Comment

[Note: the public comment period was scheduled for 11:30, which fell in the middle of the above discussion on expungement. The following two sections took place in the middle of that discussion. They are reproduced here rather than in strict chronological order for ease of reading.]

Chair Razo invited members of the public, whether attending in person or on the phone, to comment.

Ms. Dunham noted that Suzette Welton had submitted a written comment and accompanying article, which had been included in the meeting materials. In her comment, Ms. Welton asked the Commission to consider expanding the kinds of cases eligible for post-conviction relief, and to establish more rigorous forensic science standards at trials. Commissioner Stanfill noted that it was hard to read Ms. Welton's handwritten letter and wondered if it would be possible to reach out to her at Hiland CC to get a typewritten version. Ms. Dunham said she could try.

Commissioner Stanfill asked if the Commission is keeping track of public comment suggestions. Ms. Dunham said that information wasn't compiled but she could work on that. Ms. DiPietro added that if the Commissioners ever wanted anything raised in public comment to be put on the agenda, all they had to do was ask.

Chanta Bullock said she didn't have a comment so much as a question: why doesn't everyone qualify for discretionary parole? Ms. DiPietro explained that eligibility is determined in statute. SB 91 had expanded eligibility for discretionary parole but some offenses are still excluded as the legislature had deemed that appropriate. Chair Razo added that his impression was that the offenses excluded were the ones the legislature deemed the most serious.

Commissioner Claman explained that the parole system originally provided that an offender would be eligible for discretionary parole after serving 1/3 of their sentence or for mandatory parole after serving 2/3 of their sentence. The legislature has been adding carve-outs for certain offenses which made the system more complicated. Deputy AG Henderson echoed that it was a very complicated system—there was no easy guide to how it worked. There are some offenses that are not eligible for either- very few.

Electronic Monitoring Credit

Rep. Chuck Kopp addressed the Commission about a concern he had with electronic monitoring (EM), saying he was trying to set an example to his colleagues by going to the Commission for criminal justice issues. He said his concern was that certain offenders could get credit for time served on EM post-conviction. This past year there was a violent sex assault/kidnapping case wherein a man kidnapped his coworker and sexually assaulted her at knifepoint; she had to jump out a window to escape. The offender served time on EM before he entered his guilty plea. Judge Wolverton agreed that the offender could stay on continuous EM until his remand/sentencing date per AS 12.55.027. The assailant was therefore released. The victim has to be under full-time psychiatric care now because of the assault. He proposed an

amendment to the statute so that there would be no release between conviction and sentencing in these cases.

Ms. DiPietro asked to Rep. Kopp clarify did his proposal focus on the period between conviction and sentencing, or was he also looking at the period between sentencing and remand if the defendant has a delayed remand date? Rep. Kopp said he was focused on the time between conviction and sentencing, though he thought the principle should apply to the whole post-conviction period.

Chair Razo said the Commission had three options: it could take action now, send this issue to a workgroup, or pass on weighing in. If the Commission wanted this to go to a workgroup, it could be put back on the agenda for December.

Commissioner Stanfill suggested sending it to the Sentencing Workgroup, as it seemed to fit there. She was not comfortable moving forward immediately, and needed to understand the issue better.

Rep. Kopp said that his staffer Erick Cordero could send a memo on the matter from legal. This is an issue that needs clarification; a very experienced judge blamed this on SB 91. The Department of Law didn't appeal the decision. He didn't think anyone would want this to happen to a victim when the offender has been convicted. But he welcomed the workgroup process; he didn't want to rush into anything. He supported justice reform and fixing what needs fixing.

Chair Razo asked for any objection to referring this issue to the Sentencing Workgroup for a work-up for the December agenda. Hearing no objection, he said this would be referred to the workgroup and the Commission would keep in touch with Rep. Kopp's office. Mr. Cordero said he would send the memo to the Commission's staff.

Barriers to Reentry – Clemency Recommendation

Ms. Dunham explained that the Barriers Workgroup had been looking at the clemency process in addition to expungement. Clemency is similar to expungement but it involves an individual application and the decision is made by the governor. Alaska's clemency process has been on hold since 2009. Recently, the state ombudsman opined that keeping this process on hold was unconstitutional.

Chair Razo asked for clarification on what the recommendation would be. Ms. Dunham explained that it would be to recommend that the Governor reopen the process.

Judge Rhoades wondered if whether the offender had paid restitution would be factored into the clemency decision. Jeff Edwards, director of the parole board, said that was a factor that would be considered. A full pardon would wipe away any restitution still owed. The parole board would include a notation on restitution owed in the report provided to the governor's office.

Commissioner Stanfill asked what the current activity on clemency was. Was the parole board conducting any investigations? Mr. Edwards said that currently, anyone seeking clemency would fill out a basic application; the parole board would then do an initial review and forward the

application to the governor's office if the application is complete. The board is not doing any full investigations, as they don't proceed to that step until the governor asks for it.

Commissioner Stanfill asked how many applications were currently pending. Mr. Edwards said he believed the number was 268.

Commissioner Steiner asked if there was any reason the governor's office was not doing anything with the applications. Ms. DiPietro asked if a representative from the governor's office was on the teleconference line and would like to comment. Heather Parker said she was on the line and that the governor's office was looking into this.

Justice Bolger asked Ms. Parker if the Commission made a recommendation on clemency, how it would be received. Ms. Parker said she would defer to the Deputy AG to answer that. Justice Bolger asked whether such a recommendation would be within the Commission's purview. Deputy AG Henderson said that he recalled that Commissioner Dean Williams' concern about this, voiced at the last meeting, was that the Commission may not be able to tell the governor what to do. He echoed what Ms. Parker said: the governor's office is looking at this issue. They have the new proposal to revise the process [which was provided in the meeting materials to accompany the proposed recommendation] He said he expected the governor to consider this issue regardless of whether there is a recommendation.

Judge Stephens suggested tabling the issue. It sounded like it was under active consideration at the governor's office, and the Commission didn't need to be involved.

Chair Razo called for the will of the Commission. Commissioner Steiner said that it might be nice to know when the governor's office would come to a conclusion. Judge Rhoades suggested tabling the issue again until a certain time, or something has happened in the governor's office.

Chair Razo suggested putting this item on the agenda for a status report at the first meeting of 2018.

Commissioner Stanfill asked whether there was any aspect of the clemency process on which the Commission should weigh in. Commissioner Steiner said no, the proposed recommendation was to just restart the process.

Chair Razo noted that the Commission has the ability to make recommendations to the Governor. The Commission will wait and see what happens with this issue.

Barriers to Reentry - SIS/MCA Recommendation

Ms. Dunham explained that staff had circulated a proposed recommendation regarding removing Suspended Imposition of Sentence (SIS) and Minor Consuming Alcohol (MCA) cases from CourtView. The recommendation was directed at the Supreme Court to issue an order to that effect. The Barriers workgroup had *not* intended that this be considered an expungement proposal or a substitute for expungement. But the group felt that it was something that could offer relief to some people relatively quickly.

Ms. Dunham noted that MCA as an offense has changed several times over the years. Most recently in 2016 it was made a violation and the court system was instructed to remove any citations for MCA from CourtView. This recommendation would apply to all prior convictions for

MCA. Deputy AG Henderson clarified that this would also include convictions for repeated and habitual MCA.

Judge Rhoades said that there are other violations that are in a similar vein to MCA not included in this recommendation: Minor Operating After Consuming, Minor Refusal, and Minor Operating After an Arrest for a Title 28 offense. These are other underage case types. She was not sure whether the workgroup also considered these.

Commissioner Stanfill said the group didn't consider those other violations, but it was trying to recommend something that was doable now without a fiscal note. Nancy Meade, general counsel for the court system, confirmed that the proposed recommendation is something the court system can do with no fiscal impact.

Justice Bolger said his recollection was that there was consensus on those two items. Chair Razo said that didn't mean others couldn't be considered. The Commission could act on this now or send it back to the workgroup for consideration of the other offenses? Commissioner Stanfill said she would be open to discussing the other offenses now, as she would prefer not to send this back to the workgroup.

Judge Rhoades said that only removing records from CourtView is a problem—people will be subject to perjury if they deny the offense. The record of it is still out there.

Commissioner Steiner said he supported the idea of pushing forward on the recommendation and noted that it was not supposed to be expungement—just something that can be done quickly and simply. Justice Bolger said that removing records from CourtView doesn't solve the whole problem but it was easy to accomplish. Commissioner Steiner said that not all applications ask about convictions, and not all employers pay for background checks—some just look at CourtView.

Deputy DOC Commissioner Claire Sullivan noted that they ask for criminal history for state employment, and get the full record. Once a conviction is out there it is never gone.

Commissioner Stanfill said the workgroup felt this was the very low hanging fruit that had consensus. She agreed that it doesn't go far enough. But people receiving an SIS were told they would get relief; that still needs to be fixed. But there was no consensus for a full solution. This will help in situations where people are just checking CourtView— a way to get their foot in the door.

Chair Razo said that was the essence of it, to help people get their foot in door. It wouldn't mean you could lie to employers. It was not intended to be a complete fix, just a baby step toward a solution.

Ms. DiPietro added that another issue was that people don't know how to read CourtView and they don't know what an SIS is.

Deputy AG Henderson said he supported Commissioner Steiner's idea to move this recommendation forward with language being very clear that this was not intended to be a full expungement measure.

Commissioner Steiner asked whether the other offenses based on being a minor should also be included.

Ms. Meade noted that SB 165 also included Minor on Unlicensed Premises, so that should also be considered to be consistent. That and the other offenses Judge Rhoades mentioned are rarely filed; it won't really have an impact, but it makes sense to treat all underage cases the same. Deputy AG Henderson noted that these are not DUIs—they might include, for example, a 16-year-old who is driving at a .02.

Chair Razo asked if there was a motion to accept the recommendation with the addition of the other four underage offenses and introductory language clarifying this is not meant to be expungement. Commissioner Stanfill so moved, and Commissioner Steve Williams seconded the motion. Justice Bolger also suggested taking out the footnote on SIS cases.

Judge Rhoades asked if there were any reason to suggest a process to the Supreme Court. Justice Bolger said the Commission could do that, and the Supreme Court would take that into account. It would be unusual. They get a lot of requests to take things off CourtView that they don't consider. They would be careful about this. They might refer it to the rules committee anyway if they need more information or feedback.

Judge Rhoades asked if there were any reason not to refer this issue to the legislature. Commissioner Stanfill said the thought was the Supreme Court could look at it faster. If they don't want to act on it, the Commission could look to the legislature. Deputy AG Henderson said it seemed like something that should go to the legislature but was curious to know what Justice Bolger thought. Justice Bolger said he was fine either way. The Supreme Court could make this happen with a rule change, which possibly could be a fairly quick process.

Commissioner Claman suggested that CourtView is really a function of the court system and while the legislature likes to tell the courts what to do, it really is a court system thing. The legislature can take a long time, and he thought this was appropriate for the Court to do. The question for the legislature is whether the other underage offenses besides MCA and Minor on Unlicensed premises should be reclassified; this was something the Commission should discuss.

Chair Razo called for a vote on the motion. There was no opposition, and Judge Stephens abstained. The motion carried.

Judge Rhoades wondered if the legislature were to approach changing the status of the three underage crimes it would make a difference. She thought the Commission should look at retroactively making them violations.

Chair Razo asked if there was any opposition to referring this issue to the Barriers workgroup, and there was none.

Commissioner Stanfill asked Judge Rhoades if she saw the SIS cases as a separate issue. Judge Rhoades said she would like SIS included in the expungement discussion.

Sentencing – Vehicular Homicide

Deputy AG Henderson explained that the Dept. of Law and the Public Defenders had developed a recommendation to create three new criminal offenses: Aggravated Vehicular Homicide, Vehicular Homicide, and Negligent Vehicular Homicide. They use elements of current offenses. Aggravated Vehicular Homicide is the same as Second-Degree Murder but with a vehicle, Vehicular Homicide is manslaughter with a vehicle, and Negligent Vehicular Homicide is Criminally Negligent Homicide with a vehicle.

Sentencing would be treated differently; the recommendation would allow mandatory minimums on each count to run concurrently except for one quarter of each count. For Second-Degree Murder, the rule right now is that the mandatory minimums must be entirely consecutive. This recommendation would provide some guidance in cases with multiple victims.

Commissioner Steiner said that the increases to mandatory minimums under SB 91 exacerbated an existing problem wherein one DUI-related crash killing multiple people could create extremely long sentences. Governor's office asked them to write a separate statute. Deputy AG Henderson added that in these types of cases, the number of victims can largely be a matter of chance. Commissioner Steiner said that the criminal intent in this case is not necessarily directed at multiple people in the way it is with Second-Degree Murder.

Commissioner Steiner noted he had a slight disagreement with the way the law is worded now; he thought the sentences should be allowed to run totally concurrent.

Commissioner Stanfill asked what a sentence would look like if four people in a vehicle were killed by a drunk driver. Deputy AG Henderson replied that convicting someone of Second-Degree Murder in DUI cases is relatively rare, but in that instance, the mandatory minimum is 20 years. One crash resulting in the death of four victims would give the defendant a mandatory minimum sentence of 80 years. With the proposed provision, the mandatory minimum sentence would be 35 years.

Chair Razo asked if this would create a bar to charging a defendant with Second-Degree Murder in these cases. Deputy AG Henderson said no, the case could be charged that way if the circumstances so warranted. Chair Razo said he was thinking of a case where someone uses a vehicle as a weapon.

Commissioner Steiner moved to approve the recommendation, and Deputy AG Henderson seconded the motion.

Justice Bolger commended the departments on working together. This touched on some serious issues, and he was glad there was agreement.

Chair Razo called for a vote, and the motion carried with no opposition.

The Commission's Annual Report

Ms. Dunham explained that she had compiled a list of all of the Commission's recommendations to date. The list could be added as an appendix to the annual report or could be put on the web. Chair Razo said he thought it would be helpful to add it as an appendix. The Commission agreed.

Ms. DiPietro explained that the annual report had been expanded to include more information on implementation and oversight. For the technical assistance grants from BJA, she thought it was important to highlight the Juneau project and the new positions at DOC. She noted that a JRI coordinator had been hired by DOC, and Deputy DOC Commissioner Karen Cann said that person would start next week. Ms. DiPietro said that hiring for the diversion coordinator resulted in an unsuccessful recruitment.

Ms. DiPietro said she also thought it was important to highlight the new pretrial enforcement division as well as the changes to parole and probation supervision. This has been a huge lift for DOC in these areas but not much discussion. Staff do not yet have any data on how the changes to parole and probation are working. The good news is that DOC has done a lot of work to revamp ACOMS to record using administrative sanctions and incentives, and hopefully the Commission will be getting that data in the future.

The initial information coming back is that after implementation of the changes to supervision procedures there was a spike in PTRPs—this makes sense as the new system emphasizes immediate responses. But we don't yet know how much administrative sanctions are being used. There could be a problem with data collection for POs unused to recording such information (and unused to these processes).

Judge Stephens said that the spike in PTRPs was totally expected. In his district they used to pile up. Now you need to have one revocation before you have another one—this is encouraging swift resolution of violations.

Judge Rhoades noted that the report's data showed that fewer people were in DOC custody for supervision violations. Ms. DiPietro said that it may be that revocations are going up but the use of jail beds for revocation is going down.

Chair Razo said that using ACOMS to track incentives and sanctions really makes sense; tracking what personnel are doing is how a business would be run.

Ms. DiPietro said the Commission also doesn't yet have data about how many people are getting earned compliance credits. Judge Stephens observed that judges are imposing a lot more probation because of it—e.g., 4 years instead of 2. They need to be on probation to make them do treatment, and it takes them time to get in to treatment programs. Judge Rhoades added that they need time to get into treatment, finish treatment, and engage in follow-up to ensure compliance.

Ms. DiPietro went on to explain that the section on reinvestment was also expanded. The idea was to give detailed information on what exactly was done with the reinvestment money. The allotted funding for substance abuse treatment at DOC was not fully expended used. Judge Rhoades asked if that funding would then lapse. Deputy DOC Commissioner Claire Sullivan noted that they were not able to spend the money in part because their contract with Akeela expired and Akeela chose not to renew it. She was not sure whether the money lapsed. Deputy DOC Commissioner Karen Cann thought things were shifted around for other substance abuse treatment, but she was pretty sure the funding that wasn't spent lapsed. Ms. DiPietro said staff would be happy to add any necessary explanation to the report.

Commissioner Stanfill asked whether it would be appropriate to say DOC was back on track with substance abuse treatment. Deputy DOC Commissioner Cann said that DOC now had new contractors, but they were also still struggling. Deputy DOC Commissioner Sullivan said they were doing local contracts, and finding contracts in some locations is easier than in others; she would try to get that information to the Commission.

Ms. DiPietro said there was better news on the reinvestment funding for CDVSA. One top priority from victims' groups was increased funding for bystander intervention. This was funded through reinvestment and CDVSA spent all the allotted money. These programs are all evidence-based and all have an evaluation component, particularly the Green Dot program.

Ms. DiPietro then explained the reinvestment in DHSS reentry efforts. Gennifer Moreau-Johnson noted that in the draft report, the numbers were switched; the amount spent on programming was 64%, not 36%. Ms. DiPietro also explained that for the reentry programs, some case managers were just hired in September, so the report didn't include caseloads. Related to DHSS's efforts, though not a reinvestment component, was DHSS' work on expanding reentrant access to Medicaid. Among other things, there has been a monumental effort of getting DHSS and DOC information systems to interface—this kind of coordination is unprecedented.

Commissioner Stanfill noted that it was also important to highlight that with SB 91, internal and external POs are talking to each other, something that never happened before and has been groundbreaking.

Ms. DiPietro noted that the data show reduced numbers in custody at CRCs; DOC is finding it difficult to place people there. The Commission should keep an eye on this. A big part of SB 91 is to put money into treatment at CRCs, but DOC is saying they can't find good candidates. There is added language in the report about DOC wanting to transition to a different reentry model.

Regarding changes to the parole process, Ms. DiPietro said the upshot is there are way more discretionary parole hearings, but the grant rate remains the same. There have been only 3 inmates released on administrative parole, and none released on geriatric parole.

Ms. DiPietro said the section on SEJs needs more work— staff need to check on the numbers with the court system. It looks like there about 129. There also seem to be people serving time on SEJs; the Commission voted earlier in the year to recommend that shouldn't happen.

Deputy AG Henderson asked whether that should be happening, since the Commission's recommendation was included in SB 55, which passed earlier in the year. He supposed they could be serving time on a misdemeanor but have a felony SEJ. Ms. DiPietro said staff could look into that. Judge Rhoades suggested it might also include anyone who was not successful on their SEJ.

Judge Stephens said that there were also people who were on violations for probation while on an SEJ; these would be people who are on SEJ status and get violated but not revoked, perhaps because they are waiting to get into treatment. Chair Razo said this reflects a lack of treatment facilities.

Ms. Meade said she reported on the number of SEJs known about. The offender could have come in as something else and left on an SEJ status. Court records would show if there are other things on the case and it was just coded as an SEJ. Regarding changes to parole, she confirmed

that the increased number of revocations was to be expected. For dual status offenders, POs are no longer filing both, just the parole revocation.

Regarding data on the offender composition, Ms. DiPietro said it should be noted that the pie charts are not strictly comparable—different methodology was used for each. Commissioner Claman said that it might just confuse legislators if the report explains the methodology. Several Commissioner offered suggestions for how the data could be presented with more clarity.

Commissioner Claman suggested not putting any data on pretrial populations in the report because none of the SB 91 reforms have gone into effect in that area. Commissioner Stanfill said that it may be good to put that data in because SB 91 has been blamed for a lot of concerns about the pretrial population, and it would be good to compare in future years. Judge Stephens agreed – it would be good to show that the population was still on the same upward trajectory before implementation and he expected the population will decrease next year.

Commissioner Steiner noted that the greater percentage of felony offenders may be linked to the increase in felony caseloads; they are up by 20 to 25%. The number of cases being filed is huge, and it is happening statewide. Deputy AG Henderson noted that Law was also filing more serious felony cases relative to prior years. Judge Stephens suggested there could be a qualitative difference as to who is being held post SB 91.

Chair Razo wondered if staff had a breakdown of pretrial defendants by case type, as he believed the Commission had that data before. Commissioner Stanfill added that it would be good to have a baseline to compare to next year. Ms. DiPietro said that would be important to know whether or not it was in the report.

The Commissioners offered further suggestions on data, indicating a preference for data that can be compared to a baseline where possible, and presentation that is the least confusing.. They agreed on the importance to be clear about the data source—looking at admissions vs snapshot data, for example. Judge Rhoades said admission data was important because there was a need to highlight that the “churn” of misdemeanants through the system is still happening.

The Commissioners also indicated a preference to compare the data compiled by Pew in advance of the 2015 report to current data. Staff explained that comparisons were difficult as staff was having a hard time replicating Pew’s methodology and did not have exactly the same data to work from.

For the data on drug crimes, Deputy AG Henderson noted that drug prosecutions have plummeted. The percentage of Law’s caseload devoted to drug possession is now nominal compared to prior years. That caseload was replaced by felony-level property offenses. Commissioner Claman wondered if he would say that most of those offenders have drug problems. Deputy AG Henderson said that was probably true.

Commissioner Steiner wondered about drug misdemeanors. Commissioner Case said APD’s citations were down. Commissioner Stanfill wondered if APD and prosecutors were focusing on dealers instead. Commissioner Case said no, with reduced penalties for possession, few users are cooperating with investigations on the dealers. Deputy AG Henderson confirmed that Law was seeing this as well.

Ms. DiPietro noted that very few misdemeanor drug charges had been disposed since the passage of SB 91. This is something the Commission should think about. The intended structure created by SB 91 was based on the idea that after the third offense, the offender would go to jail. If resources don't allow law enforcement to address possession at all, there might be a need to reconsider the structure. It looks like these cases are not getting charged, making it difficult to get charged for a third offense.

Deputy AG Henderson said it would be important to compare the numbers to FY16. The state doesn't have the resources to do drug possession cases. Judge Rhoades noted that prosecuting drug cases also requires testing the substance in evidence, which is not cost effective. Judge Stephens said in his district there was also cost of flying experts in to testify.

Commissioner Steiner said he recalled that the point of the new drug crime statutory scheme was to identify offenders who were just users at a lower level and divert them before they become heavy users or dealers. If the state is ignoring these users at the lower level, it is just going to get them at felony stage.

Justice Bolger noted there was also a need some kind of leverage. Commissioner Steiner said that a misdemeanor charge is serious leverage—it can be a real Achilles heel for the less criminally inclined.

Ms. DiPietro said that there has been a significant public health response to the opioid epidemic; she wondered where the criminal justice response was.

Judge Rhoades noted that the therapeutic courts are able to do a lot of this, including using the threat of a misdemeanor as leverage – but there needs to be an immediate response. If the state is going to divert these offenders there needs to be something to divert them to.

Commissioner Stanfill said there were new resources for heroin and opioid addicts which just came on line. She has heard that the word on the street is that there is no threat of jail time for drug possession and there are no more consequences, and was concerned there was not incentive to get them into the new resources.

Deputy AG Henderson said this is a resource issue. Law will always target felonies over misdemeanors, and violent crimes over nonviolent. Right now the only incentive to get misdemeanor drug possession is dismissal. If there are no resources to prosecute them, that can't incentivize treatment.

Chair Razo suggested that the report does not highlight the lack of treatment availability enough. Deputy AG Henderson suggested moving the reinvestment section to earlier in the report to highlight the need. Commissioner Claman noted that the state would need four times as much money as is available for reinvestment to make a difference.

The Commission then discussed highlighting the recommendation to “frontload” reinvestment funding in the report and only including data which has a baseline.

DHSS Director of the Division of Behavioral Health Randall Burns reminded the Commission that treatment is a complicated subject. The legislature did appropriate money for treatment. DHSS put out RFPs, and nobody in Anchorage responded. It's not just that the state isn't willing to

put money in—there is also a need to find people to provide the service. DHSS has gotten really good federal grants. Their website lists all of the services in Anchorage. These programs are limited in capacity and limited as to who they accept. If the clients are challenging at all, they send them to API or somewhere similar. So it's not as though no services are being provided. But the number of providers is an issue and as is the number of providers willing to take on risk. More money would help but that's not all—there are infrastructure requirements. DHSS has identified key services needed through the Medicaid waiver process. But waiting for those services probably doesn't make sense. The state will need to move more quickly.

Judge Rhoades said this is why she recommended a voucher system. She would urge DHSS to consider doing business differently.

Staff noted that graphs on crime rates were included in the report. Commissioner Stanfill suggested making the show graphs bigger, to clearly show crime rates rising since 2011. Ms. DiPietro noted that Anchorage rates were included and wondered if it made sense to include Anchorage or take it out. Judge Stephens suggested including it as Anchorage is the population base. He noted that in his district crime has been plummeting. Ms. DiPietro said that was the interesting thing about the crime rates—they were doing different things in different places. SB 91 is a statewide law but things are very different in different locations. Commissioner Stanfill noted that these differences also relate to resource issues; comparing localities isn't necessarily comparing apples to apples.

Deputy AG Henderson said that last week the FBI issued the nationwide crime rates—Alaska is the most violent state per capita and Anchorage is the second most violent city. Ms. DiPietro noted that the violent crime rate is driven by aggravated assaults; Alaska has always been a relatively violent state.

Ms. DiPietro also noted that staff had added information on the opioid crisis. There was no way to actually connect this to crime picture. Judicial Council analyst Teri Carns said that staff have been looking at this in the context of shoplifting and motor vehicle theft—there is no way to actually show the connection. She can't find national data. Ms. DiPietro said prosecutors and defense attorneys report that crime is driven by addiction, so we have qualitative information and not quantitative.

Judge Rhoades wondered if there was a way to look at capturing this data prospectively. Ms. DiPietro said she would think of ways to do that. Commissioner Steve Williams said it probably couldn't be done in the next 14 days [when the report was due] but was still relevant. The Commission should think about ways to tap existing data sources to add that information next year.

Commissioner Stanfill noted that some addicts were not just doing heroin, but were combining heroin and meth; that way they are able to be more active. Sometimes it's hard to tell who's on what. This is something different than what the state has seen before.

Ms. DiPietro then went over the savings and recommendations for reinvestment portion of the annual report. Commissioners gave input on editing this section.

Ms. DiPietro noted that the legislature was hoping to have the report early, by the start of the special session. To try to accommodate this, staff will send out a new draft the next Wednesday and Commissioners should give their final comments by Friday. The report would be emailed out on Monday.

Arrest and Intoxication Workgroup

Judge Rhoades noted that the Arrest and Intoxication Workgroup had overlapping subject matter with the Behavioral Health Standing Committee. This was the reason the Standing Committee was made. She would hate to see another group looking at the same kind of issue, especially if it were the same people going to more meetings.

Deputy AG Henderson said the hope of having the ad-hoc group was to come up with a solution quickly. He also noted that the Standing Committee has a substantial agenda. Ms. DiPietro noted this was also brought up in the Criminal Justice Working Group. Deputy AG Henderson said the group would report to both bodies. Ms. DiPietro suggested letting the ad-hoc group continue on for a while to see where they end up. Chair Razo agreed.

Commissioner Steve Williams noted that the group's first meeting was primarily an Anchorage-based discussion but issues exist statewide. He agreed that the group was looking at whether something can be done right away; specifically, what to do with people who fall in the in grey area of intoxication – those who are not incapacitated but still intoxicated to a point where they might do harm to themselves or others. He was fine with letting the ad-hoc workgroup carry on for now.

Commissioner Case said he was looking at a one week snapshot at APD to see who falls in that grey area—once that is done the group will set a date for the next meeting.

Bail Schedule Comments

Judge Stephens noted that with SB 54 on the docket for the special session, he has been hearing comments on things attributed to SB 91, as well as things attributed to the bail schedule that shouldn't be. He has also heard some discussion that the bail schedule will be disappearing—it won't. The bail schedule was on the Commission's agenda earlier in the year, and the presiding judges added misdemeanor assaults to the bailable offenses because of that. If anyone has any comments on the current bail schedule he would be happy to talk to them.

Future Meeting Dates & Tasks

Barriers to Reentry: November 3 at 9:30, Denali Commission Conference Room

Sex Offenses Workgroup: November 9 at 9:30, Denali Commission Conference Room

Behavioral Health Standing Committee: TBD

December Commission meeting: December 7, time TBD, Snowden Training Center

The meeting adjourned at 4:41.

Alaska Criminal Justice Commission

Meeting Summary

Monday, October 2, 2017

9:30 AM

Snowden Training Center
820 W. 4th Avenue, Anchorage
And teleconference

Commissioners present: Greg Razo, Joel Bolger, Sean Case, Jahna Lindemuth, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams, Steve Williams, Matt Claman, John Coghill

Commissioners absent: Walt Monegan (Deputy Commissioner Bill Comer sat in for Commissioner Monegan)

Participants: Claire Sullivan, Karen Cann, Gen Moreau-Johnson, Geri Fox, Rob Henderson, Randall Burns, Lizzie Kubitz, Heather Parker, Robb Sylvan, Aliza Kazmi, John Skidmore, Kaci Schroeder, Taylor Winston, Matt Moore, Trey Watson, Cathleen McLaughlin, Don Habeger

Staff: Susanne DiPietro, Staci Corey, Susie Dosik, Barbara Dunham

Approval of Meeting Agenda

Chair Razo called for a motion to approve the meeting agenda. Commissioner Steve Williams so moved, and Commissioner Lindemuth seconded the motion. There was no opposition and the motion passed.

Approval of Last Meeting's Summary

Chair Razo called for a motion to approve the summary of the previous meeting. Commissioner Steve Williams so moved, and Commissioner Stanfill seconded the motion. There was no opposition and the motion passed.

Annual Report – Revised Reinvestment Section

Susanne DiPietro gave the Commission an overview of the revised portions of the most recent draft of the annual report. She said that staff had received feedback from some Commissioners and their staff. The report is due on November 1, so the Commission needs to approve the final draft at the October 12 meeting.

Commissioner Stanfill noted that there were parts of the report with placeholders for additional information—was staff waiting on information from anyone? Ms. DiPietro said that some of that information, including information from CDVSA, had already been received and staff was confident that the rest would be coming in soon. Commissioner Stanfill wondered whether the report could include a

quantitative measure of the people served by reinvestment money. She wanted to know how those dollars were spent.

Judge Rhoades agreed. She understood there were issues with treatment providers at DOC but thought there needed to be some accounting. The Commission frequently talks about the importance of program evaluation. For bed reductions at DOC, she would like to see the specific drivers of those reductions. The Commission had the benefit of a great drill down on this with Pew.

Barbara Dunham noted that the data section of the report was still forthcoming, and that might answer some of Judge Rhoades' questions. Chair Razo asked about the timing for when that data might be available. For the numbers about who is in DOC custody, Ms. Dunham said that staff have those data, but they need to confirm their analysis with DOC's analyst.

Ms. DiPietro said that it might be possible to compare the pie charts of the population at DOC from Pew's analysis in 2014 to now. Chair Razo said that was a good idea and hoped that process was capable of repetition.

Commissioner Claman suggested that for the data section, the report should make it as clear as possible that the data is limited. The law has only been in effect short term, and it is hard to say that anything is a trend at this point. He said he keeps hearing about the 2016 crime report on radio and wanted to make sure that limitation [on the inability of the short term data to indicate a trend] is clear.

Chair Razo said that further to that point, it was also important to say why it is difficult to correlate crime rates with SB 91—it would be more of a mathematical statement than anything.

Commissioner Stanfill also suggested noting that any current complaints about things happening pretrial don't have anything to do with SB 91. It might also be worth noting that the changes to probation have not been on board for very long. She also suggested explaining the steps that have been taken to implement pre-trial services.

Ms. Dunham noted that there was a section on pre-trial implementation in the draft, and asked whether there should be more detail. Commissioner Stanfill said that would be helpful. Geri Fox offered to provide more detail to staff.

Commissioner Case wanted to know more about what happened to people who are not in jail but would have been pre-SB 91-- what are we doing with those people? Ideally the answer would be treatment but he didn't think that was actually the case.

Chair Razo asked if there was data on arrests and citations. Ms. DiPietro explained that DPS was working on creating a new field in APSIN to track them. Deputy Commissioner Comer said he believe it has been implemented or would be quite soon. Ms. DiPietro said this meant they would be tracked going forward, but there was no historical data to compare it to. Chair Razo asked whether it could be tracked with the court system. Ms. DiPietro said probably not.

Commissioner Dean Williams said that he had just returned from a trip to tour the prison system in Norway with House Speaker Bryce Edgemon and Senate President Pete Kelley and Judge Stephens. He said it was eye-opening, and he will be talking to the Governor about implementing some of the ideas he saw there. He wanted to add a paragraph on this to the reinvestment section of the report. There is a

reason why countries like Sweden and Norway have a 30% recidivism rate. The one thing prisons here are missing is a dynamic security system, what happens inside prison.

Commissioner Dean Williams said that the people that are the highest risk of committing crime are criminals. Once someone gets in Norway's prison system, it's fundamentally different from ours. Their outcomes are very different. He would like to put a paragraph into the report on this as it's something he would like to focus on – it is a way to get another bite at the apple in terms of addressing recidivism and why people are worse coming out than in. Alaska needs to make fundamental changes about how it addresses incarceration. In Norway, the focus is on reentry from day one—and that system produces different people on reentry than we do. The participants on the trip did a lot of planning and workshopping on this. DOC has been spending a lot of money on treatment and things have been slow to change. DOC needs to retrain staff to adopt some of these principles. It needs to move away from a trauma-based experience, more toward normalizing life in terms of encouraging prisoners to focus on jobs and education. What Alaska does behind prison walls will have a big impact on recidivism.

Chair Razo said that sounded like more than a paragraph in the report, maybe a paragraph and an appendix.

National Network for Safe Communities

The Commission next heard from representatives from the National Network for Safe Communities (NNSC): Michael Friedrich, Senior Research and Policy Associate; Meaghan McDonald, Director of the Group Violence Intervention Program; and Rachel Teicher, Director of the Intimate Partner Violence Intervention Program.

Mr. Friedrich began by giving the Commission a broad sense of the organization. NNSC operates out of the John Jay College in New York. It serves as a clearinghouse for information on how to address serious violence, a connector of like-minded practitioners, and a provider of technical assistance. Its work follows from Director David Kennedy's Operation Cease Fire project in Boston, which made a dramatic difference in group-related violence there. NNSC has found that serious violence is dramatically concentrated; a very small sector of the population will drive the majority of crime. This is especially true for homicide. NNSC works in neighborhoods most affected by violent crime. All of its work is extrapolated from basic principles learned from the Boston project.

NNSC's basic principles are: to intervene in a community without additionally harming the community; to get deterrence right; to get help to people who want it, especially those who are highest risk; to build trust in law enforcement; and to be procedurally just, and give advance notice to those targeted. This is the basic approach in the abstract.

Ms. McDonald explained the group violence intervention (GVI) program. She reiterated that their experience shows that a small percentage of the population is involved in serious violence (shootings and homicides), and that this is true in small and large cities. When they dig deeper and work with law enforcement and partner agencies to target these individuals, more often than not these individuals are associated in groups. They don't use the word gang, because in their experience, the term is too constrictive, and doesn't necessarily reflect what they're seeing. People have preconceived notions about the word gang, and most group violence is not usually so organized or hierarchical. They are typically

loosely affiliated groups, and don't necessarily have a common goal. The majority of criminal activity from these groups is tied to issues of disrespect and personal conflict, in which others get involved.

NNSC's approach involves collaboration with law enforcement agencies, community moral voices (people who have standing and credibility in the eyes of those targeted), and service providers. The key approach is to give those involved in group violence prior notice of the consequences of their activities. One method for doing this is a "call-in." Call-ins bring together representatives from identified groups to hear directly from law enforcement, community members, and service providers. They give the group members personalized targeted messages that the group is on notice that the community knows who they are and that the next group to get involved in criminal activity will be fully prosecuted. The group members then hear a message from social services offering help, tailored to be responsive to their needs. Community members then try to disrupt the tenet of the group that encourage criminal thinking patterns. These speakers could be a former criminal or the mother of a crime victim. The idea of the call-in is to put all groups on notice at the same time, and to demonstrate the community's commitment to addressing this problem.

NNSC is currently working with 25 jurisdictions on GVI, and they can tailor the intervention to the needs of the jurisdiction. Mr. Friedrich added NNSC has seen a real impact on violence in cities where GVI has been in place, including reductions in homicides and shootings. Their issue brief has details on this.

Ms. Teicher explained that the Intimate Partner Violence Intervention (IPVI) has a similar approach as GVI; it is built on the same framework, bringing together law enforcement, community members, and service providers. They are specifically looking to target lethal violence between current or former intimate partners (so not all family violence). Research shows that chronic DV offenders are known to law enforcement officers for a variety of criminal activities. IPVI focuses on the offenders. There is a strong victim advocacy piece as well, but the idea is to take the burden of holding the offender accountable off the victim, and to put it on community partners. The goal is to let the offender know the community is watching, and to send a clear message that the community will not tolerate intimate partner violence. The intervention engages offenders at every step along the way, and targets all known offenders. Intervention is tailored to the level of offender, and is not a one size fits all approach.

With intimate partner violence, an added level of safety is required, and IPVI includes messaging to the victim. Typically not every incident of intimate partner violence will be reported to law enforcement, so the goal is to build trust in law enforcement so that victims report incidents and offenders face a consequence for every incident. It is important that both victims and offenders know this. Offenders often feel they can get away with intimate partner violence, and victims feel there's no point in coming forward.

Mr. Friedrich noted that the GVI program has been in play for over 20 years while IPVI is newer. However some of the oldest pilot sites for IPVI – this is also in their issue brief.

Mr. Friedrich explained that the drug market intervention program also uses the same basic approach as GVI to target the group of people responsible for drug crimes in a given community. In High Point, North Carolina, for example, they thought they had many dealers, but it turned out to be a core group of only 16 people. The drug market intervention also involves call-ins. The dealers hear from the community about what's expected of them and the potential consequences of deal. The drug market interventions have been able to rapidly shut down markets without displacement. They have applied the

model to the opioid and heroin market, and NNSC has a white paper on that that he can send to the Commission.

Chair Razo said it would be helpful to send that white paper. He asked how a community goes about inviting the NNSC to provide technical assistance. Ms. McDonald said they are usually approached by a law enforcement or prosecutor's office, often after a community has seen a spike in violence, and is looking for a response. They get a lot of word of mouth referrals. To start the process, they do a closed-door session with stakeholders, which usually takes 9 hours. They typically work with municipalities, but are now starting to work on coordinated state projects in New York and Connecticut.

Chair Razo asked if there was a cost. Ms. McDonald said yes, if there is interest they can send a proposal for a more formal TA relationship with team of experts to guide practitioners through implementation. Chair Razo asked what size community was appropriate for these interventions. He has seen group violence in the small community of Kodiak, for example. Ms. McDonald said that one of the smallest cities is 30,000 people, and size doesn't seem to matter. The effort is about the same in terms of gathering stakeholders and partners.

Justice Bolger asked if this approach has been tried in rural areas. Mr. Friedrich said mostly not, as they see group violence problems mostly concentrated in urban areas. But the drug market intervention and IPVI can be translated to more rural areas. The drug market intervention pilot took place in Rutland, Vermont, a place with many rural qualities. Ms. Teicher said they are also working with small community in upstate New York.

Commissioner Stanfill noted that the Commission's focus is on reduction in recidivism, and wondered how the IPVI program evaluates success. Ms. Teicher said there are a couple of ways to do that, though for the IPVI program only one full pilot has been fully evaluated, which started in 2009. For that pilot, the 5-year recidivism rate was below 20%. They also saw a decrease in repeat calls for service, though that is a tricky metric. There was no change in overall calls for service, but repeat calls for service went down. They heard from victims services representatives that victims were not feeling any pressure not to call. They also reported a positive change in trust in the community, and a reduction in violence. The focus is on prevention and deterrence, recognizing that a community is not going to arrest or prosecute its way out of this problem. To gauge success they want to see a reduction in new cases.

Commissioner Stanfill asked if IPVI had any group or family teaching component. Ms. Teicher said they work with direct services providers—hosting workshops and training with them. They do not promote any one batterer intervention program, but work with the jurisdiction to tap into resources, and provide linkage to ideas from other jurisdictions.

Randall Burns said he assumed it was important for the intervention team to have access to local data, and wondered if that was a challenge? Ms. McDonald said that for GVI it was important but hasn't been much of an issue; they have been given open access. They have nondisclosure agreements and don't publish about any data they receive, they just use the data to inform strategy. Ms. Teicher said that it was more challenging for IPVI, particularly because it is often difficult to identify the type of relationship within databases.

Mr. Burns also asked if NNSC does legislative advocacy. Mr. Friedrich said they didn't, though they were happy to provide information and help stakeholders with messaging if they need it.

Chair Razo asked if they had done any work on prevention in schools. Mr. Friedrich said they tend to work in places where there is already a serious violence problem. They have done call-ins in schools—providing messaging delivered to teens already involved in group violence dynamics.

[Break]

Chair Razo asked if there was any further discussion on NNSC. Commissioner Dean Williams said that Anchorage used a similar model when he worked with Mayor Begich about 15 years ago addressing youth gang violence. That effort brought in other stakeholders and community members that would not normally be involved. They got results out of that effort including less expulsion in the school district and the creation of an expulsion/suspension school. With different stakeholders involved, they rethought their approach. Anchorage mostly did this on its own, but had some support from a national organization. He saw a lot of reasons to explore this further, including costs. A lot of talk going on now [about crime] is concerning. He wanted to look to see if this could bear fruit.

Commissioner Lindemuth said first reaction was that it might be difficult to layer on top of SB 91 but that was not necessarily a reason not to do it. She suggested looking at the programs separately. Regarding the IPVI program, the Commission heard from the Results First initiative that it would be good to look at something new. She suggested referring that to CDVSA to look at feasibility. For GVI, there are efforts going on—she would refer NNSC to those groups.

Judge Rhoades agreed. She wanted to talk about process. One concern she has about the annual report is that the Commission doesn't have data on the drivers of jail bed use and recidivism. There is a need to understand who's in and who's out before looking at a strategic plan. Further to what the Attorney General said she would refer specific reinvestment strategies to specific subcommittees. The Commission needs to talk about how to get to a strategic plan.

Commissioner Case said there is a meeting this Friday meeting with stakeholders looking at approaches similar to NNSC's pulling levers approach. They are still putting pieces together. They are trying to patch together fields of expertise for long-term solutions. They may need to pull in more stakeholders, and he can get someone from that group to present to the Commission.

Chair Razo said NNSC's interventions are similar to work done with sex offenders, letting people know that there are eyes on them. He thought it seemed like it might be beneficial.

Commissioner Claman said he thought it seemed there were two conversations happening: one on reinvestment/recidivism and one on prevention. There was a need to keep finding ways to address violence but it might be outside the purview of the commission, although reinvestment within the purview.

Commissioner Stanfill said she had similar thoughts. The Commission's role might be to put forth some ideas of best practices, but this might be more of a community-driven thing. Reinvestment could be pilot programs in smaller communities but she was not sure the Commission should be driving the boat here.

Judge Stephens said he agreed that there should be a strategic plan so that reinvestment efforts complement one another, and so that someone has a grasp on the big picture, and efforts are not siloed.

Commissioner Lindemuth said a lot is happening behind the scenes. The governor put her in charge of developing a strategic action plan. She agreed that there was a need to strategize and break down silos. But ideas need to start at the Commission to be vetted.

Judge Stephens agreed the Commission has a role as to recommendations.

Commissioner Lindemuth also agree there should be a strategic plan, and maybe that was something the Commission could recommend. Looking at where dollars have gone thus far, she thought everyone could agree there was not enough going toward behavioral health treatment and that additional funding should be put there. She thought the report should flag that as a big principle/focus.

Judge Rhoades said she thought the Commission could agree on that generally. She noted that the report referred to Results First. One thing about that is that Results First is a baseline. The programs evaluated were not necessarily part of a strategic plan. They don't represent a strategic plan. For instance, nothing in the report represents treatment on demand. Some programs in Result First are at risk for the chopping block but really just need to be improved.

Commissioner Stanfill said she also wanted to mention in the report that Law is understaffed, and has been cut year after year. She would like the Commission to think about that in the reinvestment discussion— reinvestment doesn't have to be in a program necessarily.

Commissioner Dean Williams agreed, though that was not necessarily a recidivism reduction strategy. Everyone would like more functional departments, and the ability to retain staff. Half of all recidivism occurs within the first 6 months, 2/3 within the first year. That says we're doing something wrong within the prison walls. Jobs and housing are key. Successes that exist are because of efforts made by groups like Partners for Progress. Sending people out of prison without a place to live may be a big driver for the problem. It is a basic but essential problem. DOC has spent a lot of money on treatment within the department, but that has not changed recidivism rates. He knows the halfway house model has problems, and he is working to address that, but the future lies in a sensible way of letting people out. DOC lets out 11,000 people every year, and we know that three or four thousand at least will commit crime when they get out. Getting rid of that recidivism will help with property crime. He agreed with Judge Rhoades that there was no overall strategy. He wanted to focus on getting people a job and housing. It might be useful to devote a whole session of the Commission to this. He would like to get consensus on shifting gears in Alaska's approach to corrections. He felt as though Alaska has been doing same thing for years with the same results.

Public Comment/Reinvestment Discussion

Cathleen McLaughlin, Director of the Partners Reentry Center, said she wanted the Commission to know that Partners got \$250k of reinvestment funding this year, and used that enhance housing for the highest risk and highest need reentrants. Housing services used to be 30 days, but they were able to extend that based on needs. For example, one recent client was in prison for 26 years, 12 of them in solitary— someone like that can't be expected to launch successfully after 30 days. Partners now also has a full time data person. They are housing between 80-130 people per month. She wanted to let the Commission know that they are taking their status as a reinvestment recipient very seriously, and she hoped they can be used as a model. They are also doing more work pre-release, as a soft handoff is essential to successful reentry.

Judge Rhoades said it occurred to her that Partners would know what gaps in services exist—for example, the lack of adequate housing. Ms. McLaughlin said that the housing market has actually improved, and landlords are calling them for placements. Judge Rhoades said she wanted to find a way to access data to identify needs and drivers of recidivism, whether housing, jobs, or something else. Randall Burns noted that recidivism was not driven by just one thing. Judge Rhoades agreed and said data should also reflect that.

Ms. McLaughlin said she can give the Commission the data they have at any time. They had to create their own database because they didn't have a model. They haven't had a 3rd party evaluation, but they are open to have anyone look at their data. They are doing a study of their own data, and trying to create a control group.

Regarding gaps, Ms. McLaughlin said that real-time treatment and mental health services were an obvious lack. She has seen a lot of recidivism because people are not going to treatment or getting medications. Commissioner Case suggested working with the reentry coalition to identify services needed. Ms. McLaughlin said she can do that. Commissioner Case asked what she considered a success for Partners. Ms. McLaughlin said if someone with a high LSI-R score stays out of trouble for 6 months, they are much more likely to succeed after that.

[No other public comment was offered.]

Commissioner Stanfill said she felt like there are variations in services around the state, and wondered if there was any resource that could list what exists and where. Mr. Burns said DHSS has data on who are grantees. Commissioner Stanfill asked if there was data on who tries to access services, and where there were waiting lists. Mr. Burns said you would have to go to the individual program for that information. Substance Use Disorder providers are required to track waiting lists. Mental Health Providers are not required. Services are also very community specific. He was not surprised to hear there are geographic differences. Sometimes it has to do with the stability of providers. Many are struggling with billing Medicaid.

Commissioner Lindemuth asked Mr. Burns if he could furnish the Commission with a list of providers. He said he could. Chair Razo said that was a key point- you can't have programming without providers.

Commissioner Steve Williams said he thought the Commission should keep in mind that not only is preventing crime complex, but so is creating a sustainable community system to keep track of needs for services. You need to constantly ask these questions. Regarding data collection, treatment information is housed in a variety of sources, but it can be pulled together. He would also encourage everyone to think about the long haul; many ideas talked about will take years to bear fruit. But if we don't talk about early intervention and prevention, we will continue to see same results. Things that can be implemented in the near term are necessarily more reactive than proactive.

Judge Rhoades said she keeps hearing that we have data, but it is not collected. Pew had resources to collect this data. The Commission could suggest reinvestment for that. Ms. DiPietro said that anyone can send a spreadsheet and the Judicial Council can analyze it. The bottleneck is not necessarily the collection of data but in uniformity. Each agency tracks their data differently and there are only so many people at each agency can explain their data—often just one. The bottleneck is at the agency level.

Justice Bolger said he was interested in the IPVI program; it sounded like it could be effective in smaller communities. It seemed more prosecution and law enforcement-driven. It was promising if given enough resources to make the interventions called for at each level. Chair Razo said it seemed amenable to a pilot program in a smaller hub community. Justice Bolger added that the program called for discreet interventions, which could be easily measured for success.

Recommendations for Reinvestment from DHSS

Ms. DiPietro prefaced the discussion by explaining that DHSS Deputy Commissioner Karen Forrest offered to put forward ideas for reinvestment, and she accepted—the list of recommendations provided for the meeting is what DHSS suggested.

DBH Director Randall Burns suggested that these are ideas that respond to pressure points identified by the department but that may not be addressed by the upcoming 1115 waiver.

The first suggestion was for a forensic hospital feasibility study. DHSS officials toured the closed Palmer correctional facility last week to see if might meet these needs. The reasons for needing a forensic hospital are twofold: there is a great deal of pressure on API for forensic evaluations, with only 10 beds available for that purpose. (Forensic beds were purposely restricted to that many because of the demand for beds for acute admissions. There were 24 people waiting for an acute bed last Friday.) DHSS also wanted to be able to respond to court system requests more immediately and have the space to do restoration. The reason is that many seriously mentally ill prisoners are discharged from custody without enough treatment—this is a driver of recidivism. There is a need for more clinical treatment for those in custody and better preparation for discharge.

The Palmer campus has a minimum security facility that could be used for this purpose, and could also be used for residential treatment. DHSS is asking for a feasibility study for the forensic use.

DHSS's next suggestion was for withdrawal management and residential substance abuse treatment. The legislature allocated \$6 million in FY17 for substance abuse treatment. DHSS received three responses that had demonstrated an identified need: a sobering center in Fairbanks, withdrawal management in Soldotna, and residential treatment (primarily for women with children) in Mat-Su. Those programs are off the ground. But there is no withdrawal management in Mat-Su, and only 14 beds for this in Anchorage. DHSS is suggesting reinvestment in withdrawal management and residential substance abuse because it will relieve pressure on hospital emergency rooms. The public is concerned about treatment options for opioid addicts.

The next suggestion was to increase funding to behavioral health providers' capacity to serve the reentry population. The Reentry Coalitions know what does and doesn't work, and where there are gaps in each community. DHSS suggests funding expansion of services for the reentry population. Not every community has capacity, but this suggestion will help agencies that exist and are overwhelmed.

The next suggestion was for the Alaska Medicaid Coordinated Care Initiative. This initiative is already getting started in DHSS. It targets superutilizers of Medicaid, including reentrants, and will keep them connected to medical services.

The final suggestion was to fund the an Interface with Department of Corrections Electronic Health records (EHR) and State of Alaska Health Information Exchange (HIE), which was also in the works.

Mr. Burns noted that all of these suggestions would require additional dollars other than what has been allocated for recidivism already.

Commissioner Dean Williams agreed there was a need for a forensic hospital, and thought the Commissioners could all agree. He was not sure about the solution. It was not necessarily a priority for him but he recognized it might be for others. Chair Razo noted that everyone will have different priorities.

Mr. Burns said the hospital doesn't have to be an existing DOC facility; DHSS was just interested in looking at feasibility. But urgent need to free up 10 forensic beds at API

Judge Rhoades said she was not sure the Commission would be able to work through these recommendations in the remaining hour. The first recommendation is closely related to the UNLV process. Chair Razo said he didn't disagree but there was a benefit to getting the Commission's reactions.

Commissioner Lindemuth said the forensic feasibility study is a small ask, and wanted to know Commissioner Steve Williams' opinion. He said he was encouraged that people were thinking about this and looking for solutions outside the box, and looking for a use for this facility. Forensic beds pull away from API's capacity on the civil side, so there is a definite need. He was not sure if the Palmer facility was best, and it sounded like it could be used for multiple purposes. But it was worth looking into.

Mr. Burns said the forensic facility could also be used for assaultive seriously mentally ill patients. There was also a need to discuss where to put incompetent defendants who can't be tried.

Commissioner Claman said that in terms of a strategic plan, he thought a feasibility study might be putting the cart before the horse. The state might not want to spend money on looking at the feasibility if the result is not part of the plan.

Judge Rhoades said that she already knew there was a problem with competency evaluations—typically there is a 6 to 8 week wait. Jail is not the best place for those people to wait or the evaluation or to be restored, especially misdemeanants who remain there for longer than they would be sentenced. Would like to see data on how many people need to be restored. There are benefits and burdens to this proposal.

Chair Razo said it seemed like some of these suggestions were fundamentally tied to capacity building as a long-term strategic goal. He agreed there was a need to focus on strategy. There were a lot of moving parts here. He welcomed thoughts on process. Would the Commission like to establish a working group? A strategic plan will be different for different people.

Commissioner Stafill suggested that the Commission take ideas from all stakeholders and choose the priorities from those ideas.

Commissioner Lindemuth said she agreed with Judge Rhoades' idea about getting recommendations from each work group. She was not sure that the Commission's job is to develop a strategic plan, but to identify pressing issues and suggest where resources should be directed.

Chair Razo asked the Commission to boil down the discussion to what can be achieved for the next report, which is due November 1. He thought the Commission could faithfully report what has been done, what information it has. He wanted to get direction from the Commissioners regarding what needs to be done yet.

Judge Rhoades said she didn't want to abandon the idea of strategic plan. She kept coming back to the issue of needing data analysis. She thought the Commission could probably agree to devote some money to looking at what the drivers of recidivism are. She thought the workgroups might be a way to get recommendations for reinvestment but the Commission might want to look at whether the workgroups should be retooled.

Ms. DiPietro suggested that DOC will soon have a reinvestment coordinator who might be used for developing a strategic plans.

Commissioner Claman said it seemed to him there have been a lot of Commission recommendations that have gone nowhere, which might suggest mission creep. The 21 recommendations were successful. He suggested getting a chart with all of the Commission's recommendations and what happened to them.

Commissioner Stanfill noted that list is in the draft report. She didn't see anything to suggest mission creep, but enacting recommendations takes political will. She thought the Commission would welcome suggestions from Commissioners Claman and Coghill on what to do about engaging political will.

Commissioner Steve Williams said he didn't think the Commission needed to make recommendations for the purpose of making recommendations. But if the Commission wants to recommend a strategic plan, the Commission will need to agree to that plan. Any recommendations for reinvestment will need the full support of the Commission.

Commissioner Lindemuth suggested that the report could state that the need is great everywhere and that the Commission does not have enough data to make any specific recommendations. The Commission could recommend asking AJIC to get the needed data. The Commission's recommendations should be based on data.

Chair Razo thought that the Commission could just agree on a general framework, one that expands capacity for treatment programming.

Judge Rhoades said it was not just about capacity building, but capacity targeted to specific needs. The Access to Recovery program was based on a voucher system and was very successful at developing small treatment programs. She has heard that people can't afford treatment and can't get it when it's needed.

Commissioner Stanfill urged the Commission to recall that there is also the victim's role in all of this. The victim's roundtable can also make recommendations.

Justice Bolger said he was hearing a tension between recidivism reduction and reentry efforts and broader discussion of societal needs that engage the criminal justice system. He didn't have an answer to resolve that tension but agreed there was a need to focus on the mission.

Annual report - Savings

Ms. DiPietro explained that she had rewritten this section in response to feedback and the discussion at the last meeting. She walked the Commission through the revised section. She took out mention of savings from the discussion on bed reductions based on feedback on DOC's budget. Further

to this, she added a section on context explaining DOC budget cuts. She hadn't had a chance to talk to Commissioner Dean Williams about his thoughts on this.

Chair Razo asked what method for calculating prison bed usage was used by Pew. Ms. DiPietro said they used a July 1 snapshot. Chair Razo suggested mentioning that. He thought this section looked good, as it points out that there are a lot of ways to look at data.

Ms. DiPietro said she also took out a table that had tried to summarize savings. Feedback indicated it was too simplistic, and a quick reading of it could lead some to faulty conclusions.

Commissioner Lindemuth asked Commissioner Dean Williams whether he thought bed usage would continue to decrease. He responded that in the last couple of months, bed counts have started to go back up. Bed usage is a moving target. The budget is the difficult issue. DOC would need to get to certain benchmarks before getting to substantial savings. Bed reductions don't mean much until DOC can close a wing or a facility. There is no much difference between 90% capacity or 100% capacity. In this regard it is important to talk about the averted costs of not building a new prison. Since DOC already closed the Palmer facility, he didn't see closing another facility in the foreseeable future. He can be strategic about certain things, but cannot cut anything more out of institutions or staffing. DOC is in a very tenuous place. Things can go very wrong by stressing systems out and trying to cut corners; it results in dysfunction. He thought the report was good representation of where things are now.

Commissioner Dean Williams went on to say that the recidivism rate hasn't changed in a long time. This is why he's looking outside of the system, far and wide for new ideas. He wanted to keep the Commission's focus on recidivism reduction because it is the Commission's charge, and it affects public safety.

Ms. Dunham noted that she had added a section suggesting "frontloading" reinvestment. This was based on feedback from Commissioners and other members of the public that more should be done up front, and recognizing that much of the anticipated savings has already been accounted for in DOC's reduced budget. She said she put it in the report tentatively pending the Commission's approval; the Commission agreed it should stay in.

Next steps

The Commission agreed to get any additional feedback to staff by Thursday with a goal of producing a new draft by Friday. Commissioner Lindemuth suggested adding a paragraph noting that in terms of reinvestment, the needs are great, and there should be a strategic plan for reinvestment.

Alaska Criminal Justice Commission

Meeting Agenda

Wednesday August 23, 2017

9:30 AM

Snowden Training Center

820 W. 4th Avenue, Anchorage

And audio-teleconference

Commissioners Present: Greg Razo, Joel Bolger, Sean Case, Matt Claman, John Coghill, Jahna Lindemuth, Walt Monegan, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams, Steve Williams.

Participants: Kaci Schroeder, Heather Parker, Patrick Fitzgerald, Teri Tibbet, Natasha McClanahan, Amory Lelake, Don Habeger, Donald Revels, Carrie Belden, Kara Nelson, Jordan Schilling, Gregg Olsen, Tony Piper, Talia Eames, Geri Fox, Tara Rich, John Skidmore, Nancy Meade, Gennifer Moreau-Johnson, Bob Polley, Alys Wooden, Lizzie Kubitz, Jon Woodard, Rob Henderson, Mike Schawaiger

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

Approval of Meeting Agenda

Chair Razo called for a motion to approve the agenda. Judge Stephens so moved, Judge Rhoades seconded the motion, and the motion passed without opposition.

Appointments and reappointments

Chair Razo noted that his term as chair of the Commission would be expiring. He called for a motion to appoint a chair and noted that he was willing to serve again, unless there were other volunteers. There was no opposition to Chair Razo continuing for another one-year term. Chair Razo also suggested reappointing Commissioner Stanfill as the vice chair. There was no objection to Commissioner Stanfill serving in this capacity again. Judge Rhoades volunteered to be “backup” for Commissioner Stanfill.

Pretrial Assessment Tool Recommendation

Susanne DiPietro explained that Alaska now has a tool for performing pre-trial risk assessments. The technical assistance provider, the Crime and Justice Institute (CJI), has given presentations to practitioners and judges on how the tool was developed and how it would operate. As was discussed at the July 5 Commission meeting, there is a slight glitch. The statute mandates that the tool look at the defendant’s risk of failure to appear (FTA) and risk of a new criminal arrest (NCA). The data would not allow these to be calculated using one score—there must be a separate score for both FTA and NCA. They cannot mathematically or statistically be

combined into one, but the statute contemplates that judges and pretrial services officers will use just one score.

At the July 5 meeting, the Commission appointed a small ad-hoc working group to determine how to reconcile the tool with the statute. This group met four times, and consulted with CJJ and Dr. Bechtel, who developed the tool. The group went through all the available options and decided the best course was to use higher of the two scores to make release decisions and recommendations. Therefore if a defendant's NCA score was high, while the FTA score was moderate, the NCA score would guide the release decision for that defendant.

Ms. DiPietro went on to explain that the group also talked about recommending a legislative change to address this situation. Commissioner Lindemuth clarified that the Department of Law was of the opinion that there is no need for a statutory change.

Chair Razo asked Geri Fox, director of Pretrial Services for the Department of Corrections (DOC), to explain the issue further. Ms. Fox explained that she was also involved in the ad-hoc group's discussions. She added that another problem was the statute also anticipated that there would be 3 outcomes (low, moderate, high) for one scale, but the tool that was developed used 4 outcomes for one scale and 5 for the other. The group has made recommendations to clump the tool's outcomes into low, moderate and high outcomes. Her team is prepared to go forward with using the highest score, though they are concerned about getting a regulation finished by January.

Commissioner Dean Williams agreed with the Attorney General that recommending a statutory change was perilous. He was confident Ms. Fox's team would make this recommended fix work. Chair Razo asked whether full assessment (including the lower score) would be available. Ms. Fox said it would.

Commissioner Steiner said his support for this recommendation was conditioned on the knowledge that something needed to get put in place by January 1. He was concerned that this recommendation would be unfair to those with a high FTA score but a low NCA score. This was likely to be a small percentage of the pretrial population but that would still be a number of people. It wasn't necessary to go to the legislature, but he would like to continue to look at ways to use both scores in a way that is consistent with the legislative intent—perhaps weighting each score somehow.

Chair Razo said his understanding was that this will be part of the Commission's oversight duties. Commissioner Lindemuth agreed. She added that only the mandatory release decision was for those with low scores—anything with a high score is left to the judge's discretion. So the practical effect of choosing one score over the other would be limited.

Chair Razo said he was aware that these tools need to be monitored for unintended consequences. Ms. DiPietro explained that DOC is required to report out all information on pretrial outcomes.

Commissioner Claman said he broadly agreed with using the risk assessment tool, though he was worried that there was no plan for beta testing the tool in some courts before January 1. He would want to see how the tool was working before launching it statewide. He agreed it was

something the Commission should monitor carefully. He was sure fine-tuning would be necessary. Ms. DiPietro added that Dr. Bechtel had cautioned that the tool will have to be validated and evaluated on ongoing basis—she fully expected that it would not be the same tool 5 or 10 years out.

Ms. Fox explained that her team received the tool in late July. They have been working with software programmers to put the tool into software. They will be ready to launch the software system around September 18. At that point her staff will come in every morning, and all of the newly-booked defendants will be in their hopper – that will tell them who needs an assessment. They will populate reports for each defendant. In the first few weeks the team will be looking at scores and making sure everything is working correctly. The software will use the decision matrix DOC has given it-- choosing the highest score to highlight for the release decision. Once that seems to be going smoothly, they will go out to all the courts to train judges on the process. They will not have time to run a full pilot in one location. The court training will happen though December and the system should be ready to launch in January.

Commissioner Stanfill asked who would be conducting the rigorous evaluation of the tool. Ms. DiPietro said she was not sure, but it would not be CJI— it must be a third party. Ms. Fox said she has been talking with Melissa Threadgill at CJI about this. DOC will need to contract with an assessor, someone who has the expertise in this area. CJI will help identify a candidate. Commissioner Stanfill asked when the evaluation would be done. Ms. Fox said they would need to collect a full year's worth of data on pretrial release for the evaluation.

Judge Rhoades noted that the court system is keen that the pretrial assessment reports be distributed to attorneys. Ms. Fox said the reports will be available through a web portal, and both prosecutors and defense attorneys will have accounts with passwords to access the portal.

Judge Rhoades also asked if there would be funding for evaluating outcomes, to make sure tool will work the way it's supposed to. Ms. DiPietro explained that quarterly data will be coming from DOC, and staff will be doing that evaluation, possibly with the help of AJIC.

Commissioner Case asked to clarify the application of the dual scores— if a defendant scores “moderate” for FTA and “high” for NCA—the recommendation release decision will be based on the high score, and judges will have discretion on what to do with the other score? Ms. DiPietro said yes. Judge Rhoades added that was also something the defense can argue.

Commissioner Case also asked about the low, moderate and high categories. In looking at the slides from Dr. Bechtel's July presentation, he noted that in the sample data, defendants labeled “moderate-high” have a 53% of NCA—but the ad-hoc group's recommendation was to combine the moderate-high with the moderates. He asked why moderate-high was bumped down; the NCA rate seemed high to him.

Commissioner Steiner explained that there were very similar outcomes whether the moderate-highs were combined with moderates or the moderate highs were combined with the highs. But with the latter, larger numbers of people would be kept in custody pretrial. Combining the moderate-highs with the highs would generate a high incarceration rate for a very minimal

public safety gain. Ms. DiPietro said the ad-hoc group's recommendation also followed the recommendation from Dr. Bechtel; the tool works best if the larger group of people is categorized as moderate. Commissioner Steiner added that the data showed the new offenses committed when defendants are released pretrial are typically misdemeanors. Moderate and high scores also both result in discretionary release, with the distinction being whether a judge needs to make findings under a clear and convincing standard. Both come with the full range of supervision options.

Commissioner Case asked whether, in addition to bed reductions, the Commission would also be looking at the pre-trial re-offense rate. Ms. DiPietro said yes, that would be remand data, which staff have worked with in the past. Teri Carns also noted that everyone released pretrial will be subject to supervision or monitoring—pretrial will have a different landscape than it was in the past.

Ms. Fox said she would be happy to do longer presentation on pretrial implementation for the Commission. Things in her office are changing every day—she and her staff are poring over details. There will be a training on this at the judges' conference in October, and she is working with prosecutors to set up a similar training.

Ms. Fox noted that pre-trial supervision will be differentiated according to risk level. They are using the release decision grid to think about their approach. General conditions will apply to everyone: defendants will need to stay in contact with their attorney, and keep their contact information updated. There will also be offense-specific conditions; for example a DUI charge would warrant alcohol monitoring. There could also be special conditions a judge imposes as argued by counsel. Electronic monitoring (EM) would be used more as the risk level goes up—however, they don't want to overdo EM as that can have negative results.

Commissioner Stanfill asked whether the judge will see the more detailed score (e.g. moderate-high) in addition to the simplified score (e.g. moderate). Ms. Fox said they would see both. The judge will see the final scores for both NCA and FTA on page one; detailed scoring will be available on page 2. They are working on a sample report, and will share it soon. She will send it to the Commission when done, and is happy to do a presentation to walk through details. Chair Razo agreed with this idea and said Commission staff will work with DOC to set up a presentation. He added this is a dynamic process, and nothing will be perfect the first time—the Commission will evaluate and monitor this.

Chair Razo asked whether there was a motion to approve the proposal from the ad-hoc group. Commissioner Lindemuth so moved, and Judge Rhoades seconded the motion. Chair Razo called for a vote and none were opposed.

Meeting summaries

Chair Razo noted the Commission had not yet approved the summaries of the two previous meetings. He called for a motion on the June 15 meeting summary. Commissioner Stanfill moved to approve the summary and Commissioner Lindemuth seconded the motion. Chair Razo called for a vote and there were none opposed.

Chair Razo called for a motion on the July 5 meeting summary. Commissioner Lindemuth moved to approve the summary and Commissioner Steve Williams seconded the motion though he noted the summary had the wrong header. Chair Razo called for a vote to approve the summary with the header amended; none were opposed.

Intoxicated Persons Subject to OR Release

Barbara Dunham explained that Commissioner Case and Commissioner Dean Williams had expressed interest in finding a solution for the problem of persons who are arrested or cited for a misdemeanor who would be subject to release on their own recognizance (OR), but are so intoxicated that they pose a danger to themselves or others if they are released onto the street. Often law enforcement officers bring these individuals to emergency rooms, and hospitals are concerned about violent patients and overcrowding facilities. Commissioners Case, Williams, and Monegan met with a representatives from hospitals and the Alaska State Hospitals and Nursing Home Association (ASHNHA) to discuss potential solutions. One potential solution discussed was to create a more robust or secure sobering center.

Chair Razo asked Commissioner Case to elaborate. Commissioner Case explained that the previous bail schedule in Anchorage had a “hold until sober” provision, and arrestees who were intoxicated were held in DOC custody until sober. That provision was removed from the bail schedule, and the problem is that an offender who was arrested for minor conduct (e.g. disorderly conduct) might not be safe to release, but there is no ability to put them anywhere. Those people who are cited and released are then in danger of becoming a victim or victimizing others. They need a cooling off period to keep them safe and keep the public safe.

Commissioner Monegan further explained that the group was looking into a pilot project in Anchorage that would enhance the safety center model—something that was cheaper than jail, and better than cutting people loose. The idea would be that a hospital could place a PA there to assist with medical issues, and Commissioner Williams had offered a CO. It would be a half-step toward a more secure center. This is preliminary idea; the details would need to be worked out. It would likely be cheaper than any other alternatives, as cutting people loose might be more expensive—this option would be for people who are likely to harm themselves or others. The PA may also be able to do a medical clearance instead of the ER.

Judge Rhoades asked why this would not be included under Title 47? Commissioner Case explained that law enforcement is wary about diagnosing Title 47 holds. This is for those who are in a grey area. Judge Rhoades said this is what Title 47 is for. This is a behavioral health problem. Before jump off to divert people, she would want to figure out which ones are covered by existing behavioral health statutes. She understood that DOC used to babysit these folks. She thought the Commission should be careful about distinguishing the actual unintended consequences of justice reform, and statutes that are simply not being used. She though the Commission needed to articulate why this target population doesn’t need Title 47. She didn’t disagree about the motive, but wanted to collect the right data to determine the correct intervention.

Commissioner Stanfill said that she thought that disorderly conduct carried a period of incarceration. She noted that regulations in departments have changed, and there are opportunities that aren't being used. Why can't law enforcement take these people in? Commissioner Case said that to get people held they need to take them to a magistrate, per the bail schedule. This is a practical problem that compounds on itself on certain days of the week.

Judge Stephens said that he recalled discussing this all in great detail two years ago. He recalled that the solution was to call a magistrate or use Title 47. Ms. DiPietro reminded the group that the 24-hour hold was never included in SB 91.

Judge Stephens explained that the current bail schedule reflects the fact that the presiding judges could not reach consensus on whether the state could hold anyone legally just for being intoxicated [if they would otherwise be released OR]. But the presiding judges concluded that if there was legitimate bail reason to hold someone (i.e., they will go back out and cause trouble, invoking the appearance and performance provisions of the statute) the officer could call a magistrate. They are trying to inform the magistrates that they can hold them.

Judge Rhoades said the magistrates are aware of this in Anchorage, but they are not getting calls. She added that she understands that the hospitals are overwhelmed—but that is where people to go to detox.

Chair Razo said that in the interest of moving on, he will appoint a work group to deal with this specific issue. The Commissioners on this workgroup will be Commissioner Monegan, Commissioner Steiner, Justice Bolger, Judge Rhoades, Commissioner Steve Williams, Commissioner Dean Williams, and a representative from the Department of Law. Commissioner Case will chair the workgroup.

Review of Savings from SB 91 (to be included in the annual report)

Staff had circulated a draft report which included a summary of savings and reinvestment recommendations.

Ms. Dunham began by explaining that there were different methods of calculating bed reductions at DOC; the four methods were all included in the report. Commissioner Stanfill asked whether the Commission needed to pick one. Ms. Dunham said she didn't think that was necessary. Ms. DiPietro concurred and also noted that methods 1 and 3 come out with almost exactly the same number, which indicates there is not a lot of fluctuation in the various methods. Commissioner Stanfill noted that four methods every year might be a bit much.

Commissioner Dean Williams said he was less concerned about methodology than the assumptions behind the bed reductions. Right now DOC is \$20 million in the hole—that was starting this July. Practically, he is not able to close another prison. He thought there needed to be someone who is in charge of the "bucket of money." No one is in charge of reinvestment spending. His main concern was the assumption that there are savings to be had from 2017.

Judge Rhoades asked why bed reductions were label savings if there weren't any savings. Ms. DiPietro said that was the tricky part. She tried to articulate Commissioner Williams' concerns by explaining in next section that legislature already took these savings from DOC. She thought it might be prudent to change the terms and just talk about bed reductions rather than savings.

Commissioner Dean Williams said it was also important to distinguish between the sentenced and pretrial populations. There has been no reduction in the pretrial population, and in fact DOC is meeting or exceeding capacity for all pretrial beds. They just had a riot in the Fairbanks Correctional Center, where they are substantially over capacity. A lot of the focus on cost savings for him is waiting for the pre-trial services unit to open. He just doesn't want to tell the legislature that DOC will see cost savings for FY18—he is not seeing it. He is seeing some reductions in the sentenced population, but if SB 54 passes, that will reverse.

Commissioner Stanfill asked if the new sober center in Fairbanks will help. Commissioner Williams said that Fairbanks has the highest number of Title 47 holds, and those go into the pretrial population. When it is open, it may affect his numbers some.

Commissioner Lindemuth said she thought it was important to capture this reality in the report. The report to capture bed reduction because that was expected, but it needs to be clear about the reality of DOC budgets.

Commissioner Dean Williams added that one assumption previously made in the fiscal note was that pretrial would start to accrue savings this year—but DOC won't begin to see any effect from that until after the program begins operation in January.

Judge Stephens asked if there were any bed reductions stemming from geriatric parole. Commissioner Dean Williams said that many lifers are not eligible for geriatric parole, so there is very little impact from that provision. Judge Rhoades asked if there was any cost savings from Medicaid expansion. Commissioner Williams said that Medicaid was only an option for those in halfway houses, not custody. But any savings there has also already been accounted for by the reductions in DOC's budget. He would like a redraft of this section of the report that more accurately reflects this reality.

Commissioner Claman said that in terms of methods of counting bed reductions, method four was way too complicated. But he did think should the report should distinguish between sentenced beds and pretrial beds.

Commissioner Stanfill thought there should be a way to reflect that DOC's budget was cut in anticipation of savings. Commissioner Williams noted that political considerations make the budget, but actual costs are a product of how many people are in prison. Ms. DiPietro noted that the anticipated bed reduction at the marginal rate was nowhere near the cuts to DOC's budget.

Chair Razo noted that this was still a draft. He encouraged Commissioner Dean Williams to work with staff, and maybe Commissioner Claman, on how to explain these details in the report. Commissioner Williams said he would like his budget director to be involved in those conversations.

Judge Rhoades asked whether it would be fruitful to see if other justice reinvestment states have had a lag time between implementation and when savings are realized.

Commissioner Monegan said he thought it was important to include other context too—such as the opioid epidemic. He noted that opioids were not only fueling minor crimes such as petty theft but also major crimes such as homicides.

Commissioner Lindemuth noted that she needed to leave the meeting at that point but proposed that Commissioners submit written comments and edits to the report and then continue this discussion. She designated Rob Henderson as her proxy for the remainder of the meeting.

Ms. Dunham noted that there was a table in the draft report that summarized ostensible savings—she asked whether that should be removed. The Commission agreed that it should.

Recommendations for Reinvestment (to be included in the annual report)

Ms. DiPietro explained that the reinvestment portion of the report expanded on the mid-year report from staff that the Commission discussed in Juneau in February. This summarizes the reinvestment made so far, but she would like to flesh this out in more detail. As for future reinvestment, she started with the assumption that we don't want to wait around for additional savings—as Judge Rhoades alluded to earlier, justice reinvestment states do not often realize savings immediately; the more successful states frontload reinvestment.

Ms. DiPietro explained that rather than recommend specific programs, the report outlines six recommended principles for reinvestment, incorporating the discussion of the Results First analysis discussed at the June 15 meeting. These principles are:

- 1. Most reinvestment should be directed towards programs in the evidence base.**
- 2. Reinvestment should be directed towards evidence-based programs that have been shown to reduce repeat offending, thereby decreasing future crime.**
- 3. Whenever possible, reinvestment should be directed towards programs that generate tangible monetary benefits and positive return on investment.**
- 4. Prioritize funding for programs that target high risk (and medium risk) offender groups.**
- 5. Reinvestment should be targeted at all areas of the state, including rural Alaska.**
- 6. Maintain and expand funding for victim's services and violence prevention.**

Ms. DiPietro explained that for principle 3, the idea was not to discourage successful programs that aren't breaking even, nor to discourage innovation. Both may be necessary, especially in underserved areas of the state. For principle 4, Teri Carns noted that high risk offenders are not necessarily the offenders that commit the most serious crimes; rather they are the offenders with the highest risk of recidivism. For principle 6, Ms. DiPietro noted that the CDVSA recently issued a victims' roundtable report, and she will incorporate those suggestions.

Chair Razo commented that he liked the list of principles. He agreed that programs in rural Alaska will be expensive, but that was no reason not to fund them.

Commissioner Dean Williams said that this is a difficult conversation in some ways for department heads. It puts DOC and DHSS on the spot. The current reinvestment scheme puts money for the reentry coalitions in DHSS's budget. That can unintentionally work at cross purposes with DOC; for example in Nome, there is a reentry coalition but the halfway house there is closing. He said he disagreed with reentry coalitions as priority, and thought other things might work better, such as smaller reentry facilities that reimagine the halfway house model—things like Freedom House in Soldotna, and Haven House in Juneau. He noted there is a promising program out of the Kenai facility—a work release fish processing program. The employer there is even looking at building housing. So there are opportunities that are opening up. He would like a different model, with the capacity to be nimble enough to support smaller peer-based reentry programs that have been developing more organically. He didn't think reentry coalitions were doing this kind of work, though he recognized that not all reentry coalitions the same. He would like a whole-cloth review of how the state is spending its reinvestment money.

Judge Rhoades said that over the last few months she has felt there has been no strategic plan for deploying reinvestment money. Alaska has yet to realize savings. Reinvestment thus far has not achieved these principles. There is not enough treatment on the ground; Medicaid expansion won't help with building capacity, and Medicaid might be cut. She agreed there should be a wholesale review of reinvestment, a strategic approach that can be nimble. She wanted to know how much of the reinvestment money that had been allocated has been spent.

Ms. DiPietro said that of the programs reinvested so far, reentry coalitions are not necessarily evidence-based (though the programming the coalitions offer may be).

Commissioner Claman said that regarding the challenge identified by Commissioner Dean Williams, it was a hard sell to ask legislators to trust an agency with unrestricted funding. When people come to legislature with their budgets, legislature wants to know what specific programs to fund. Commissioner Williams was talking about a paradigm shift in the flexibility of funding.

Commissioner Dean Williams said that part of the problem was also bureaucracy—there needed to be a way to open the door to allow this funding. He understood that state agencies should still be accountable for their spending, but he thought there was nothing to lose here. Alaska has a terrible recidivism rate, which is higher for Alaska natives. It's about housing—having a place for reentrants to go and having a job when they get there. He saw a need for nimbleness to streamline the procurement rules—maybe a strategic subcommittee.

Chair Razo noted that the Commission had spent a lot of time talking about mechanics of reform, but not the details of reinvestment. He added that this report is the Commission's opportunity to recommend a comprehensive scheme- maybe a committee to direct it.

Commissioner Stanfill noted that on the victims' services side, they have been struggling with a lack of infrastructure to reentry work—there are for-profits competing with non-profits, which has been challenging. There was a need to ensure that the right people are doing the work.

The Commission agreed to plan a meeting devoted to the reinvestment section of the report to take place before the October 12 meeting. Commissioners will have three weeks to get

their comments to staff—they will be due September 13. Ms. DiPietro said that in the meantime she was happy to meet with Commissioners individually or take written comments.

Commissioner Stanfill asked if the Commission could agree there are no real savings to spend, and there should be a comprehensive plan for reinvestment. Judge Rhoades thought the focus should be on bed reductions, not savings. Reinvestment needed to be put in the context of the entire state being in the hole. There should be a substantial discussion on reinvestment.

Public Comment

John Woodard explained that he was incarcerated for a long time, and now worked as a training coordinator for the ironworkers union. Regarding reinvestment, the evidence is that vocational and college training for prisoners reduces recidivism. DOC hasn't done much to make college available to prisoners. He put himself through college while serving his sentence and it really helped with his reentry. Vocational programs coupled with release programs could be really helpful. Regarding rethinking halfway houses, he noted that there is an apprentice with the ironworkers union who is currently at a halfway house. It is difficult to cut through the red tape for travel and monitoring to get him to various work sites. Each employer has to deal with the red tape separately.

Don Habeger, director of the Juneau reentry coalition, offered a counterpoint to the contention that the reentry coalition work was not evidence-based. The coalitions partner with DOC, DHSS, and the Mental Health Trust to ensure that reentrants receive evidence-based reentry services. Several coalitions are still in draft formation period, but the whole basis of the coalitions is to provide evidence-based case management to reentering citizens. Case managers are using the LSI-R to address criminogenic needs, and help find housing and jobs. He said the pieces are still being put together, and some parts were not fully implemented which he recognized may be frustrating.

Mike Albertson from Fairbanks explained that he has a relative in custody at the Fairbanks Correctional Center. He noted that DOC's policy against visitors bringing items in to facilities worked against Alaska businesses. Relatives have to order things online because someone smuggled drugs in a book once. But drugs are coming in other ways. He would be happy to have officers search any gifts such as books. He also said the seats in the FCC are metal and uncomfortable, and not arranged well for privacy during visitation. Some privacy would lend to the inmates' dignity. Regarding visiting the women are basically locked down, and relatives can only visit at certain times—they are not allowed in if they don't arrive precisely on the nose. He noted the female prisoners are not allowed to work in the prison. His relative is an excellent cook and could improve food service. He also noted that the police never stop at the stop sign on the lane used for FCC transports into prison. He has called the governor's office about this.

Kara Nelson, director of Haven House in Juneau thanked Mr. Albertson for speaking and said it was important for inmates to have family supports. Regarding the Juneau reentry coalition, she wanted the Commission to know it has been doing good work. She understood wanting to have flexibility in running facilities and reentry homes, and supporting peer support programs. Her heart is in the reentry coalitions—they work. They have a very dedicated stakeholder group in Juneau, and she would really like to show the community and the state the work they're doing—

they are making real changes in people's lives. She would encourage the Commission to very intentionally take a look at this. She agreed with the need to be more flexible, but she fully supported the coalitions too.

Chair Razo commented that this was a public process—it is the Commission's job to take the input it gets from the public and to listen and take account of it. The Commission definitely wants to hear ideas from the public.

Talia Eames, director of the Second Chance reentry program in Juneau, addressed the Commission. She explained that the pilot program to address low-level theft offenders was just about to begin, and she thanked the Commission for advocating for the funds for that program. The posting for the caseworker position was set to close that day. They hope is that the caseworker will start to take referrals to the program in the first week of October. Regarding Commissioner Williams' comments, she said she supported idea of smaller transitional housing. She challenged the Commission to work with the tribes more closely for transitional housing for Alaska natives.

Annual Report- Rough draft

Ms. Dunham explained that aside from the reinvestment and savings sections, the rest of the rough draft of the annual report was fairly straightforward. Some content will depend on whether the Commission approves any additional recommendations. There will also be some preliminary data. One section staff needs guidance on is the "plans and priorities" section. Ms. Dunham encouraged Commissioners to forward her their thoughts on this. She also noted that new Commissioners would need to provide short bios for the appendix.

Chair Razo set the same deadline of September 13 for Commissioners to follow up with any comments on the report. He reminded the Commission that the report is due on November 1.

Sex Offenses

Ms. Dunham summarized the workgroup's activities so far. The group has been looking into revising the sex trafficking statutes, and compiling research for the report due to the legislature. The hope is to get the report in before the 2019 legislative session, although there is no deadline. The group has heard about sex offender management programming from DOC and from offenders in a reentry group. The group would like to expand its membership to include more rural and Alaska Native representatives. Chair Razo noted that the Wellness Warriors program from the SouthCentral Foundation may be interested in joining.

Sentencing- Three-judge panel

Chair Razo asked Commissioner Steiner to update the Commission on the Sentencing Workgroup. Commissioner Steiner deferred to Assistant Public Defender and Supervising Trial Attorney Mike Schwaiger, who worked with Judge Stephens and the Department of Law on a proposal to modify the three-judge panel statutes. (A draft proposal had been circulated.)

Mr. Schwaiger explained that the proposal addresses issues that have been raised by the three-judge panel. It enacts two non-statutory mitigators that the Court of Appeals has already

recognized: extraordinary potential for rehabilitation and exemplary post-offense behavior. Cases where these mitigators apply would no longer need to go to the three-judge panel, so this would expedite the process. The consensus was that these mitigators are used often enough that they should be statutory. The proposal also widens the scope of the panel's ability to take up a case, adding provisions for mandatory consecutive sentencing and discretionary parole eligibility.

Mr. Schwaiger further explained that another provision addressed the situation where the panel rejects a case. Currently, if the panel determines it should not sentence the defendant according to the three-judge panel statutes (because the criteria are not met), the panel must remand the case to the original sentencing judge for sentencing in accordance with the normal procedures. This proposal would allow the panel to impose sentence as a sentencing court, rather than remanding it to the original sentencing judge; this will help with the delay caused by a remand.

Finally, Mr. Schwaiger explained that the proposal clarifies that victims do not testify before the panel, rather they address the panel (and do not need to be sworn in or subject to cross-examination).

Justice Bolger asked whether the proposal repealed the limitation on the sentence that can be given for extraordinary potential for rehabilitation. Mr. Schwaiger confirmed that it did.

Commissioner Stanfill asked when the parties would agree to "regular" sentencing by the panel if the panel rejects the case. Mr. Schwaiger explained it would happen once the panel rejects the case. Judge Stephens clarified that both parties would have to agree to sentencing; there are situations where either party would want to refuse this measure and go back to the original sentencing judge. But there are significant delays in relaying a case back to the original sentencing judge, sometimes a matter of months. In practice he has referred three or four cases to the panel, and in those cases he has offered to attend the panel hearing and then sentence the defendant right there if the panel rejects the case.

Justice Bolger asked if Judge Stephens supported this measure. Judge Stephens said yes. The panel has a transcript of the trial, the pre-sentence report, the sentencing memoranda, and sometimes hears evidence. There is no reason the panel cannot sentence the defendant as a normal sentencing court would.

Judge Rhoades wondered if people wound up being over time served while waiting for sentencing by the panel or waiting for a remand. Judge Stephens said that was typically not the case; the cases that are sent to the panel tend to carry long sentences, such as SAM or sex assault cases.

Chair Razo said that he appreciated the work that went into this proposal and asked for a motion. Commissioner Steiner moved to adopt the proposal as a Commission recommendation. Judge Stephens seconded the motion. Chair Razo called for a vote and there was no opposition, so the motion passed.

Sentencing- Vehicular homicide

Ms. Dunham explained that the Sentencing workgroup was also looking into creating a separate vehicular homicide statute to address some disparities in sentencing. Law had circulated

a proposal to the workgroup. Commissioner Steiner said that he had reviewed the proposal and it seemed to achieve what the group intended. He did notice one minor confusing point and would discuss it with Law.

Chair Razo asked that this proposal be put on the agenda for the next meeting.

Barriers to Reentry – Ban the Box

Ms. Dunham explained that the Barriers to Reentry Workgroup had forwarded a proposal to enact a pilot “Ban the Box” program in one state agency. (A draft had been circulated.) The idea is that the agency selected by the Department of Administration would amend its hiring policies to delay inquiry into an applicant’s criminal record until after the applicant has been interviewed.

Rob Henderson noted that he had just read a new article from Pew that said that Ban the Box policies may have an adverse effect on minority groups. Staff explained that the workgroup had looked into this and found that the referenced studies were preliminary and tended to be inconclusive. The problem seemed to be that employers tended to associate some names with different racial groups and used the names on applications as a proxy for criminal history. The workgroup had discussed this and concluded that there was no reason to believe the same effect would happen in Alaska, which has different demographics. The pilot would also be conducted within a state agency which would have rigorous anti-discrimination policies, and would be less likely to use names as a proxy.

Mr. Henderson asked if staff knew whether there would be a more rigorous study in the future, and whether it made sense to wait until evidence was available? Judge Rhoades said the beauty of doing a pilot is that it only operates in one place and can be evaluated. As long as it has an evaluation component it would be worth doing. Hiring is already discriminatory, and she would want to know if it gets worse for anyone.

Commissioner Monegan noted the proposal may increase costs in terms of background checks.

Commissioner Claman said he thought this proposal was a waste of time. In his life as a private lawyer he often gets calls to evaluate job applications, and the questions are about arrests and whether charges were filed. The state can’t control private industry on this issue, and the pilot program would barely scratch the surface of people affected. It is an interesting idea with little effect. He would rather have the money go to other places.

Ms. DiPietro said she didn’t necessarily disagree with this, though the reason the workgroup started talking about this idea was that members of the public kept asking about how to mitigate the effects of old convictions. This has been a consistent comment—though perhaps expungement would address these concerns.

Judge Rhoades explained that she was part of a hiring committee to hire a PO for the ASAP program. Hiring in state employment has been a challenge—they are competing with the private sector. One candidate was thought to be a great candidate, but was never forwarded by HR because the candidate had a record, which turned out to be a successfully set aside SIS. She was concerned that good candidates for public service were being passed over. She didn’t disagree

with Commissioner Claman's general point. But there should be way to address the draconian collateral consequences of having a criminal record.

Commissioner Claman agreed and suggested the way to deal with the consequences was expungement.

Commissioner Steiner said that even if there were expungement laws in place, there are larger sets of cases than expungement would reach. This isn't about hiding a record, it's about getting an interview. He was concerned about bias but reluctant to kill an idea based on ambiguous research.

Justice Bolger wondered if the recommendation could deal with the bias problem by bringing it up in the introduction to the recommendation so the agency will be aware of it and factor it in.

Commissioner Dean Williams said that as he thought about his priorities, he was more interested in expungement.

Chair Razo asked if there was a motion on the proposal with additional language as suggested by Justice Bolger. Judge Rhoades suggested discussing expungement first. Chair Razo agreed to postpone consideration of this recommendation.

Barriers to Reentry – Clemency

Ms. Dunham explained that Alaska's clemency program had been dormant pending revisions to the process. The Parole Board Administrator has submitted suggested revisions to the Governor's office. The Barriers Workgroup forwarded a proposal that the Governor's office and the Parole Board resume accepting clemency applications using the revised procedure.

Judge Rhoades asked why the clemency process had been put on hold. Jeff Edwards, director of the parole board, explained that the process has been dormant since 2009. The last governor to use the clemency power was Governor Murkowski, and there was some political fallout from that—other governors may have wanted to avoid the same.

Judge Rhoades recalled that in that case a pardon was granted but outstanding restitution was never collected. She was concerned about restitution but she assumed the parole board knew what it was doing.

Commissioner Stanfill moved to adopt the proposal as a recommendation and Justice Bolger seconded the motion. Chair Razo called for discussion.

Commissioner Dean Williams said this was a tough one for the executive branch. Pardoning is a hot potato that puts a lot of pressure on the governor. He thought it should be more of an administrative process, and would rather focus on expungement.

Commissioner Steiner said there were reasons to make this recommendation—for one thing, the work has already been done. It was appropriate for the governor's office to have the ability to grant relief in cases that don't fit expungement. This is a practice that is consistent with other states.

Judge Stephens noted that the Commission would not be asking the governor to grant clemency; the recommendation was just to restart the process. But he hadn't seen the proposed revisions from the Parole Board Administrator. Ms. Dunham explained that she had a copy of the revisions and could forward them to the group- she had intended to do so but did not. Chair Razo tabled discussion on this recommendation so that the Commissioners could review the revisions.

Barriers to Reentry – Sealing

Ms. Dunham explained that the Barriers Workgroup had been asked to consider revising the sealing statute, which applies to charges that are based on mistaken identity or false accusation. The problem was that seal requests must be signed by a law enforcement officer who will state that a charge was based on mistaken identity or false accusation beyond a reasonable doubt, and law enforcement officers are reluctant to do so. The Workgroup wanted to know whether this was a widespread issue.

Kathy Monfreda, Chief of the Criminal Records & Identification Bureau at the Department of Public Safety, said that DPS gets several requests per year. They are often declined because the arresting agency and prosecution did not sign off. If DPS sealed one record in a year, that would be a lot. Sealed records are available to the person to whom the record pertains and to law enforcement for employment purposes. The record is taken off of APSIN and she keeps a paper file on the record.

Commissioner Monegan recalled that when he worked for the city he had two requests to seal information, one for a young adult who wanted to go to the military academy. But he reasoned that the military has reasons for wanting to know that information. He didn't grant either request.

Barriers to Reentry – Expungement

The Barriers Workgroup has also forwarded a recommendation to enact expungement for a few low-level offenses. Mr. Henderson explained that the definition of expungement for the purposes of the recommendation is that an expunged case would be made confidential for the court system, would be taken off of CourtView, and would be sealed but still available to law enforcement for law enforcement purposes. He asked Ms. Monfreda if that was something DPS could do.

Ms. Monfreda explained that for DPS purposes, the record can be excluded from the "any criminal history" category of information that would be provided in a background check. But the record would still be available nationally for FBI checks. Also DHSS does a lot of background checks and they are a criminal justice agency for statute purposes, so any proposal would need to account for that.

Commissioner Stanfill explained that the idea behind the proposal was to make a small recommendation; the workgroup wanted something achievable. She was not sure how the FBI part would tie in. She thought this was something the Commission could talk about to work out the details.

Nancy Meade, general counsel for the court system, said she had no position on policy calls but there were some things that the court system can't do. They can change suffix for some offenses [one of the proposals was to change the suffix for crimes that have been reduced to violations], but they can't do Driving With License Suspended (DWLS) retroactively—there are around 16,000 DWLS cases, and in some cases the court can't distinguish the reason the defendant's license was suspended. [DWLS was reduced to a violation except for where the license suspension was based on a DUI or Refusal conviction.] The court system can change the suffix for the other four crimes that were reduced to violation, but that was a total of 11 cases.

Ms. Meade went on to explain that they can take cases off CourtView, but it would be more work to make the cases confidential. It would mean pulling files off shelves for the paper files, and then there are cases that are imaged. It would require staff time and hence would be expensive.

For simple possession of marijuana, Ms. Meade explained that expunging cases will be complex because there are many different subsections of the former statutes, and it would require going through files by hand. For Minor Consuming Alcohol (MCA) it would be easier, if the MCA charge was the only charge in the case. Making the file confidential would go further than what the legislature did with SB 165 last year.

For cases that result in a successful Suspended Imposition of Sentence (SIS) where the case is "set aside," Ms. Meade said the court system can make those cases confidential prospectively, though retroactively it would be difficult for the same reasons previously mentioned. First-time DUI and Refusal cases would be similarly difficult to expunge. These would not be automated processes. Ms. Monfreda added that it would also be difficult to find out whether the offender had an intervening conviction in another state after the Alaska conviction.

Ms. Meade also explained that the court system has an internal CourtView which is not visible to the public, a public CourtView. Confidential cases are not put on CourtView and not available to the public. There are also "not published" cases which are not on CourtView but are available to the public on kiosks in the courthouses—they are not confidential.

Judge Rhoades noted municipal crimes are not addressed in this proposal, and there are many of those.

Commissioner Stanfill said that this Workgroup had worked very hard over the last three years to get to the nuts and bolts of an expungement proposal. She noted that the Commission put off discussing Ban the Box to talk about this. She knew that some of the proposals would cost money, but this is an issue that is holding some people back from getting jobs and housing. For SIS cases in particular, people were told from the bench that the record would disappear. There is a cost, but it is the right thing to do. She asked the Commission to step out of the box even if there was a cost associated.

Judge Rhoades said that it was not that she didn't recognize there was a problem. She suggested that perhaps the subcommittee had been too broad. She knew that other states do this and didn't think they do offer expungement by making the case confidential. Folks will still be on the hook for answering the question about criminal history in job applications. What they really want is a way to answer no to that question. She did think CourtView hurts people. She wanted to

know what the mechanics of expungement in other states are. If there is money involved in implementing expungement, that may be an appropriate recommendation for reinvestment.

Mr. Henderson said that this same issue came up in the workgroup. The true removal or destruction of a record would warrant a court hearing, which would be very expensive. Judge Rhoades thought this would be expensive too. She thought there might be a need for a fiscal analysis to find out which is more expensive.

Commissioner Steiner said he agreed with Commissioner Stanfill. He thought the idea was a good one and a lot of people support it one way or another. There will not be a fiscal analysis without a recommendation—that is the legislature's role. He didn't think the Commission should hold back from making a recommendation. His only concern was that it was not broad enough. He thought there should be opportunities for people to make their case that they have been rehabilitated. He thought this should go forward in some form.

Commissioner Dean Williams said that he sent out a link to an organization that compares expungement in all 50 states. He would like something to go forward, and thought the process needed to start somewhere. He gets approached on this issue a lot. Unless the Commission is in fundamental disagreement that there is no value to this proposal, it should go forward. It recognizes there are people who made a mistake.

Commissioner Claman said that he broadly agreed with the last few comments, and was not sure where this recommendation would end up in legislature. But you can't get legislation without a recommendation. He suggested forwarding one or two things. Just restricting what is viewable on CourtView might get halfway to what the Commission is trying to accomplish.

Commissioner Monegan wasn't part of the Workgroup but what was logical to him was to have the individual bring their case forward—the onus would be on individual to invest in their future.

Judge Stephens said he did not support the proposals to reclassify the minor offenses or to expunge old MCA and possession of marijuana cases. The former did not seem feasible. He was much more in favor of expungements for set aside SIS cases philosophically. He was not sure the DUI/Refusal proposal was ready for primetime—the Commission needed to figure out whether to count intervening crimes. He agreed with looking at what other states were doing. He also agreed with the definition proposed—he didn't want the record gone entirely. He agreed it should come off CourtView. He also thought that if a long-term DV order was denied, the DV case with the short-term order should come off CourtView. He gets requests about that a lot. For the SIS proposal, he had no preference on whether it should be automatic or by administrative request. There is an administrative rule wherein a presiding judge can order a record taken off of CourtView.

Commissioner Dean Williams asked what the argument was against MCA. MCA serves no safety purpose, but the record is a restriction that affects a lot of people. Judge Stephens said it was because the offender couldn't honestly answer question no when asked if they had a conviction. Commissioner Stanfill noted that in other states, the statute provides that the offender may deny the conviction if it is expunged. Commissioner Dean Williams said he got his juvenile record expunged in Ohio from when he was 14 and he was legally able to deny the record.

Judge Rhoades agreed that the SIS cases were the most sympathetic—people who were offered SIS before the appellate decision were told the conviction would go away were misled. The problem is that taking the offense off CourtView is not what people need. The individual offense statutes themselves should be amended to allow a defendant to deny a conviction.

Commissioner Claman said it sounded like there might not be a consensus on this. Ms. DiPietro asked if anyone was uncomfortable with a statute allowing people to say they have been not convicted if certain criteria are met. Justice Bolger said he was. Mr. Henderson said he was unsure of Law's position.

Judge Stephens suggested finding points of consensus. He was sympathetic the workgroup and the thought of doing the work to craft the proposal and getting shot down.

Commissioner Stanfill said that she noticed that the Commission keeps looking for things that are free. She thought of these proposals as more like housekeeping; she wanted to go back and look at exactly what other states do and propose something that looks like expungement. Mr. Henderson said that, money aside, there might be more support for that. Chair Razo said he preferred expungement in individualized cases.

Judge Rhoades noted that in SIS cases, the defendant can move to withdraw the plea and the prosecution would dismiss the case, leaving no record of conviction. Process is important. Expunging felony activity might cause more heartburn.

Judge Stephens said he saw two issues. First, whether the merits of the case warrant expungement, and second, what things are made public for hiring, housing, etc. This may require two approaches.

Commissioner Claman said that he was hearing that people don't want automatic expungement. There could be a simple application process to make things less accessible to the public. Individuals with convictions listed on the proposal could fill out a form. Judge Stephens said that was something he can theoretically do already, it just has to be in a rule. Nancy Meade said that such a process would not be quite that easy. The court system gets administrative requests every week to take things off CourtView, though the statute only applies to dismissed cases. The applications are mostly pro se, and badly filled out. 90% are wrong. Expanding this category would warrant a more substantial fiscal note—the court system would need to hire someone. Automatic dismissal is just a few hours of staff time.

Justice Bolger said he agreed that there are minor offenses that should maybe come off CourtView. Other kinds of cases should require individual determination. He thought there was a uniform expungement act.

Commissioner Stanfill said the Commission has heard a lot of testimony from people with felony SIS cases that were set aside. They can't get jobs, or into law school. This is an issue that goes to more than just accessibility on CourtView. People have to be able to answer that they were not convicted. Mr. Henderson said he thought it was more important to get findings from judge if the person would be allowed to say they were not convicted. Commissioner Stanfill did not disagree but thought that for SIS cases it should be automatic—there has already been a finding by a judge.

Ms. Meade asked Ms. Monfreda about removing cases from APSIN. Ms. Monfreda said that you can have a record on APSIN or not. If a record is in APSIN, there is a way to keep it off of background checks but there is no absolute guarantee. Ms. Meade said the court system data showed there were about 15,000 SIS cases that resulted in set asides. Ms. Monfreda said she wasn't sure about what her data said about SIS cases though she knew there were many that were not marked as set aside.

Chair Razo asked whether staff should work up alternate proposals that would include an application process, or if the issue should be sent back to the workgroup. Commissioner Stanfill said she saw the provisions regarding minor offenses, MCA, marijuana, and SIS were all just matters of housekeeping, but she thought the workgroup should address the bigger picture of expungement with an application process for those who have meaningfully changed their lives.

Commissioner Claman said that the uniform laws are a good way of finding points of national consensus—Alaska shouldn't necessarily be the first to adopt a practice, but nor should it be the last.

Judicial Council Staff Attorney Susie Dosik reminded the Commission that the composition of the Commission has changed over time. The workgroup has gone over extensive research on uniform acts, and what has been done in other states. In the past, there was a feeling that Alaska wasn't ready. She said she would be happy to go through that research with a comprehensive presentation for the Commissioners again if the Commission thought the time was now ripe. She noted the uniform law was fairly broad.

Chair Razo said the issue would be sent back to the workgroup to rework the proposal, and it would go back on the agenda of the next full Commission meeting.

Commissioner Stanfill asked if there was any agreement on the proposal on the table. Judge Rhoades said she thought that changing CourtView is insufficient to meet the goal, and that people needed to be able to deny the conviction.

Ms. DiPietro asked how the Commission felt about background checks. Depending on the level of background check, some inquiries only return convictions, while others return all criminal justice information—even in cases where the defendant withdraws a plea and the prosecution dismisses the case. Judge Rhoades said that there should be a statutory change within the offense statutes that should be both retroactive and prospective.

Behavioral Health- Update from DHSS

DHSS Deputy Commissioner Karen Forrest introduced members of the behavioral health team at the meeting with her: Gennifer Moreau- Johnson, Behavioral Health Policy Advisor; Alysa Wooden, program coordinator for community reentry; Ron Hill, new CEO of API; and Lauree Morton, legislative contact, was on the phone from Juneau. She also noted Commissioner Steve Williams from the Mental Health Trust was there.

Ms. Forrest relayed that Commissioner Davidson appreciated the opportunity for DHSS input at this meeting; she was in the middle of negotiation with Alaska's tribes to provide child

welfare services. It is an exciting opportunity for Alaska Native children to be served in their home communities.

Ms. Forrest provided the Commission with a fiscal update from DHSS as well as an update on the progress of Medicaid reform efforts. She noted that since 2015, DHSS's budget has been reduced by \$210 million, nearly 17% of the budget. Behavioral Health has been reduced by 25%. They are working hard to reform Medicaid and save Unrestricted General Fund (UGF) money through Medicaid reimbursement. Tribal entities now can claim 100% federal reimbursement; the legislature has reduced the DHSS budget accordingly.

There are 188,000 Alaskans enrolled in Medicaid (or one quarter of Alaskans), half of them children. Eight out of ten recipients are from working households. Since Medicaid expansion, they have enrolled over 35,000 people, with \$548 million brought into the state. They have noted substantial numbers of new enrollments from the non-expansion population in the last couple of years; they believe this may be due to the recession. More and more people need services even as budgets are being cut.

Federal discussions over "Repeal and Replace" do affect the state. They have analyzed both the ACA and BRCA, which go beyond repeal and replace— both contemplate really significant changes to Medicaid. There has been talk about a per capita cap on Medicaid, which would be very detrimental to Alaska. Enticements that have been proposed would not salvage it. They are attempting to provide input and analysis to contractors.

DHSS is continuing with Medicaid reform efforts. One area of SB 74 focused on telehealth, and DHSS has a workgroup devoted to this topic which will have a report out soon. DHSS' annual report of Medicaid reform will be coming out on November 15. SB 74 had sixteen key focus areas working to reform the behavioral health system, including trying to expand the continuum of care and increasing access to health care for people on the front end of things so they don't need costlier care later. One example of this is that there is a need for mental health crisis stabilization services, whether 23-hour or 10-day services.

One approach to reform is through the Medicaid 1115 demonstration waiver. These have been around for a very long time and seem to be safe in proposed federal legislation. The waiver will allow Alaska to cover services that have not been covered before. Other states have been doing this for years.

Ms. Moreau-Johnson explained more about the demonstration waiver. The projected cost savings in SB 74 come from the waiver. It means Alaska can waive traditional Medicaid rules, and can get creative with funding. DHSS is looking to target acute care populations in children and adults. One such target population includes those with criminal justice-related Adverse Childhood Experiences (ACES) which can lead to high rates of incarceration later in life. The draft waiver creates a continuum of care for at-risk children and families to change that trajectory. Indicators tied to ACES have been linked to diagnostic codes for services. Another target population is adults aged 18 to 64 with diagnosed mental health disorders, or a co-occurring or separate diagnosis of substance use disorder.

The list of services proposed includes prevention and engagement services, outpatient including Vivitrol, home-based treatment, partial mental health hospitalization, crisis stabilization, and mobile crisis response. All are designed to diagnose needs before they become acute or more acute.

Ms. Forrest added that with the waiver, agencies do not need to be grantees in order to be Medicaid providers, so more substance abuse providers will be able to access Medicaid billing. It also allows them to expand substance use disorder services to remove the limitation on 16 or more beds per facility; this waiver will allow Medicaid coverage to go to larger agencies.

Chair Razo asked what the timeline was for the waiver. Ms. Forrest said they were working as fast as they can, and are involving contactor teams, as well as 90 people in the community. They hope to have it submitted by January and rolled out by September. They are already in discussion with their federal counterparts. They will also need to demonstrate budget neutrality.

Judge Rhoades said that she had been hearing that non-grantee qualification is an arduous process. Ms. Forrest said that would depend on the provider, whether it was an agency or an individual; qualifying an agency is easier. That is something they are looking at with the waiver, but are still analyzing.

Judge Rhoades asked about crisis stabilization, noting that the Commission had just had a discussion on intoxication—would this service cover that? Would it be a way to keep some people out of DOC? Ms. Moreau-Johnson said that was complicated because it would be tied to a person's eligibility for Medicaid. Judge Rhoades suggested a partnership to serve everyone, involving Medicaid and reinvestment money. The SB 91 fallout is the nuisance offender who has no place to go, and she encouraged DHSS to connect those dots. The Commission can make recommendations about reinvestment along those lines. Ms. Forrest noted that of the \$6 million appropriated for substance use disorder services, some of that money went to a new sobering center in Fairbanks.

Regarding SB91/SB74 integration, Ms. Forrest noted that stakeholders attend the liaison workgroup, and all of the Commissioners were welcome to attend. They are currently getting into the weeds of technical interfacing and eligibility for Medicaid – if an inmate is in the hospital for over 24 hours, they can bill Medicaid, and DOC doesn't have to foot the bill. This has already applied to a lot of people. They have set up a workaround for offenders living in CRCs; they can now access full Medicaid coverage. They are looking at tapping into Medicaid coordinated care initiative for justice-involved individuals.

Chair Razo asked how they were enrolling prisoners. Ms. Moreau-Johnson said that prisoners have to use paper applications, which puts them on the slow track for processing. It is also very difficult to get the offender's date of release. Ms. Forrest said they have been doing a lot of work with the reentry coalitions to identify people and get them covered. Ms. Moreau-Johnson added that DPA was looking at a backlog of 23,000 applications. Any ambiguity in your application gets you in the backlog. They are also looking at way to bypass appeal process.

Ms. Forrest said they are getting more resources for this coordination efforts through the recidivism reduction fund. The Trust also came forward with \$1 million for one-time finding for eligibility workers at DPA—but at exactly the same time, the legislature reduced the DPA budget

by 1.3 million. Since they are running at a deficit, they have fewer workers able to take on a greater volume of applications.

Behavioral Health - UNLV report

DHSS had prepared a section-by-section analysis of the recommendations contained in the report on Alaska's mental health statutes prepared by the University of Las Vegas, Nevada (the UNLV report). DHSS's analysis offered the department's position on each recommendation with comments where applicable.

Karen Forrest called the Commission's attention to the recommendation on page 2 for forensic examiners. DHSS would like to move forward with the recommendation that only one forensic examiner be required as opposed to two. Commissioner Steve Williams added that this section was also looking at the qualification for forensic examiners. Currently, the bar is set too high, and accordingly no one in the state qualifies as a forensic examiner.

Commissioner Steve Williams explained that the Behavioral Health Standing Committee went through parts of the UNLV report in June, and the forensic examiner part jumped out as a point of agreement. On other recommendations, the workgroup got into the weeds—possibly the product of too much turnover in the committee, as not everyone had been part of the previous UNLV discussion. He was looking at getting everyone back up to speed, and updating the report post-SB 91. To get the forensic examiner piece ready, that plan was that the Standing Committee would meet again before the next full Commission meeting.

Judge Rhoades noted that she had been part of the discussions on the UNLV report from the beginning; she opined that this has been raked over repeatedly. The UNLV report was a comprehensive review of the mental health statutes. She suggested making a commitment at the highest levels of each agency to working to adapt the report, or discarding it entirely. She was not interested in just one change. The point of creating the Behavioral Health Standing Committee was so that the same people at the policy level could go to every meeting.

Commissioner Steve Williams said that the study also looked at national best practices—for example, recommending forensic evaluations be performed by a neutral evaluator. This would be limited by Alaska's small workforce devoted to forensic examination. These recommendations were more observational, and left it up to the state to try to get to those standards. He has also lived this report intimately for several years, and he agreed that there should be some serious thought about what the Commission would want to do about it. He did think there could be some elements done in isolation, and the forensic examiner piece is one of those. Enacting this recommendation would not be a sea change, but it would help people going through the various systems.

Chair Razo agreed this deserved some serious thought, more than just half an hour in a full Commission meeting. He thought there could be a larger focus on just this topic in a future meeting.

Commissioner Steve Williams noted that there could be larger chunks of the UNLV report to break off—for example the recommendations for amending the juvenile statutes. That would address some "upstream" issues for the criminal justice system. He asked whether the

Commission would prefer to do the forensic examiner piece first, or look at the full set of recommendations. The Standing Committee needed some direction.

Chair Razo suggested starting with the sections that have green arrows in DHSS's analysis [i.e. points where DHSS supports the recommendation]. Judge Rhoades suggested reviewing the arrows to see if any large chunks might be broken off. Justice Bolger agreed with the idea of moving forward with the recommendations in areas of consensus. It sounded to him like the forensic examiners piece and the juvenile justice piece were uncontroversial, and he thought the Commission should go forward on those.

Commissioner Claman wondered whether, if DHSS thought some of the recommendations would work, a recommendation was still necessary—could DHSS just go forward with them? Ms. Forrest replied that the department could do so, but a recommendation from the Commission would be very helpful.

Judge Stephens said he agreed with moving forward on the points of agreement. Regarding the forensic evaluator piece, it is a real problem that the statute requires two evaluators. If that recommendation has consensus, that can address an immediate problem right now. If is scientifically valid to use only one evaluator, the Commission might as well move forward on that.

Judge Rhoades thought there needed to be more context for these proposals.

Chair Razo asked for the will of the Commission. Should the Commission go through the DHSS analysis section by section now? Commissioner Stanfill said this was the reason the Commission has workgroups. She wanted the Behavioral Health Standing Committee to come together with a full recommendation. Chair Razo agreed and asked the Standing Committee to continue to work on this.

Commissioner Stanfill asked for a clarification—is juvenile justice within the Commission's purview? Ms. DiPietro noted that the enabling statute was silent on the matter—there could be arguments made either way. Commissioner Steiner noted that the juvenile system affects adult system- juvenile offenders often become adult offenders. Chair Razo said he thought the Commission could review the juvenile statutes.

Justice Bolger asked whether the Commission intended to address the civil commitment recommendations. Judge Rhoades noted that structure was also interrelated with criminal justice; for example, people who are not competent and not restorable are referred to the civil system but they still pose public safety risks, and have been involved in the criminal justice system. Justice Bolger explained that this was something the Supreme Court was looking at. The Commission encouraged the Supreme Court to look into civil commitment if they are interested.

Commission Process

Ms. DiPietro asked the Commission to think about process, as it seemed like the current model wasn't working for the group. Could there be a better model? Perhaps one proposal or agenda item per workgroup per meeting? Each item could be accompanied by a deep dive presentation from staff or workgroup representatives explaining the proposal in detail so everyone can be on same page. It seemed to her like the full commission needed more time

devoted to gain more expertise on the subjects within a given meeting rather than relying on Commissioners studying up before meetings.

Judge Rhoades said she would like experts to present and be available for a given proposal.

Mr. Skidmore said focusing makes a lot more sense. The Department of Law has extensive meetings on all submitted proposals, and goes through everything thoroughly.

Ms. DiPietro suggested setting a hard deadline of one week before each meeting for staff to send materials to the Commissioners.

Ms. Stanfill noted that many of the same people at the Commission meetings sit in on the workgroups. Sometimes a proposal passes through the workgroup and not at the Commission level. Mr. Skidmore noted that not everyone at each workgroup is able to comment for their department at the time of the meeting.

Judge Rhoades noted that in the past, staff would ask commissioners for their thoughts on any lightening rod issues coming up in the meetings. Ms. DiPietro said staff does that occasionally and can do more.

Commissioner Claman said that justice reform is a multi-year process. He was thinking of a two-step process for proposals. At the first Commission meeting, the workgroup can give a presentation to the Commission which can then give direction to the workgroup; then the workgroup could hash out a recommendation and then bring it back to the next full Commission meeting. He said not to worry too much about the November deadline – obviously the legislature has not jumped on all of the previous recommendations already submitted. A two-step process may be slower but may be more efficient.

Future Meeting Dates & Tasks

Sept 13: comments on annual report and reinvestment.

Early October: Staff will send out a Doodle poll to schedule a discussion on reinvestment.

Next Commission meeting: October 12

Sex Offenses Workgroup: November 9

December Commission Meeting: Staff will send out a Doodle poll.

The meeting adjourned at 3:54.

Alaska Criminal Justice Commission

Meeting Agenda

Wednesday July 5, 2017

4:30 PM

Audio-teleconference

Commissioners: Sean Case, Matt Claman, Jahna Lindemuth, Walt Monegan, Greg Razo, Quinlan Steiner, Trevor Stephens, Dean Williams, Steve Williams

Participants: Dunnington Babb, Geri Fox, Rob Henderson, Amory Lelake, Natasha McClanahan, Melissa Threadgill, John Skidmore, Jordan Shilling, Erin Shine

Staff: Susanne DiPietro, Barbara Dunham

Introductions

Chair Razo indicated he was on the road and designated Susanne DiPietro to lead the meeting.

Approval of Meeting Agenda

Commissioner Lindemuth moved to approve the agenda, Judge Stephens seconded the motion, and the motion passed with no opposition.

Process for Reconciling the Pretrial Assessment Tool with the Statutes

Ms. DiPietro summarized the problem before the Commission. Researchers from Alaska's technical assistance provider, the Crime and Justice Institute (CJI), gave a presentation the previous week to explain the pretrial risk assessment tool that they had developed for Alaska. There were two takeaways from this presentation. First, the tool is very solid—the predictive value of the tool is quite strong meaning the correlations on the risk factors are good, and the factors work well across demographic groups. Compared to other tools Ms. DiPietro has seen, this tool is excellent. Second (and reason for this meeting), the factors that predict failure to appear are not the same as those that predict new criminal arrests. In many tools, they are used in the same scale, but the math wouldn't allow them to be used in one scale using Alaska's data.

Ms. DiPietro explained that it might actually be better to have two scales, because it allows for a more nuanced view of the defendant, but the problem is that the applicable statute is written differently. The statute, which directs the Department of Corrections (DOC) to design and implement the tool, envisions a single-scale tool. Not only does Alaska's new tool have two scales, but there are more than three outcome categories for each. The statute is written for one scale, with three outcome categories (low, moderate, high).

The Commission's task now is to reconcile using the tool with the legal framework— to figure out the best way to align the two. This meeting was called to find process that everyone can

agree on. The proposal from staff is to form a small rapid response committee that can come up with a solution and present it to the Commission later.

Commissioner Lindemuth said she thought the working group idea was a good one. The initial take on this issue at the Department of Law is that the statute is flexible enough to work through this problem with a regulation; the statute (section 117 of SB 91) directs DOC to work in conjunction with Law and the public defenders to implement this tool. Judge Stephens agreed.

Commissioner Claman agreed. Regulations can be troublesome; sometimes they do work, but there isn't always the necessary flexibility in statute; he thought the group should be sure to figure that out.

Chair Razo said he agreed with the workgroup idea, and said that it should be a small group to come up with a solution quickly. He recommended a 4-person group, with representatives from Law, DOC, and the public defender. He moved to create this group. Commissioner Monegan seconded the motion.

Ms. DiPietro asked whether there should be a court system representative. Judge Stephens noted that section 117 called for DOC to consult with the court system and victims' services representatives.

Commissioner Monegan said he would like input from the arresting officers to be included in the tool. Ms. DiPietro said that one thing that hasn't been decided yet is what will be in the report from pretrial services to the court. The thought is that it might also include other information aside from the risk assessment. Geri Fox, director of pretrial services, said she was not sure a police report will be available to her team, but the prosecutor should have that information available at arraignment.

Ms. DiPietro asked to clarify the motion—would the group be comprised of the three people named plus another? Chair Razo said yes, another volunteer; the group would also have to consult with the representatives named in statute. Chair Razo volunteered Judge Stephens to join the group. Judge Stephens said that would be fine if no one else was opposed. Commissioner Steve Williams said he thought that was a great idea.

Ms. DiPietro called for a vote on the motion; there were none opposed.

Ms. Fox noted that the group would have a tight timeline; she would like her unit to have at least a sense of the direction to head in within a month, though they don't need every detail. They are programming the database right now.

Public Comment

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

Future Meeting Dates & Tasks

The next meeting was set for August 23; the meeting will be held at the Snowden Training Center.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, June 15, 2017

8:30 AM

Snowden Training Center, 820 W. 4th Avenue, Anchorage
And Audio-teleconference

Commissioners present: Alex Bryner, Sean Case, Matt Claman, John Coghill, Jahna Lindemuth, Walt Monegan, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens

Commissioners absent: Greg Razo, Quinlan Steiner (Deputy Public Defender Dunnington Babb sat as Commissioner Steiner's designee); Dean Williams (Deputy DOC Commissioners Karen Cann and Clare Sullivan sat as Commissioner Dean Williams' designees); Steve Williams (Trust Senior Program Officer Katie Baldwin-Johnson sat as Commissioner Steve Williams' designee).

Participants: Randall Burns, John Skidmore, Araceli Valle, Brad Myrstol, Emlyn Struthers, Nancy Meade, Ashley Holland, Pam Cravaz, Jeff Jessee, Michelle Bartley, Morgan Jaco, Laura Brooks, Amber Nickerson, Tara Rich, Alysa Wooden, Jon Woodard, Mara Rabinowitz, Gennifer Moreau-Johnson, Diane Casto, Doug Wooliver, Don Habeger, Melissa Threadgill, Andre Rosay, Tony Piper, Rocket Parish, Michelle Dewitt, Doreen Schenckenberger, Cathleen McLaughlin, Cindy Strout, Courtney Pruitt

Staff: Susanne DiPietro, Brian Brossmer, Barbara Dunham

Introductions, Agenda and Announcements

Vice-Chair Stanfill called the meeting to order at 8:36.

Vice-Chair Stanfill welcomed Captain Sean Case of the Anchorage Police Department to the Commission as the municipal law enforcement designee.

Vice-Chair Stanfill asked if there was any interest in getting updates from the workgroups and adding that to the agenda. There was not; Vice-Chair Stanfill asked for a motion to approve the agenda. Commissioner Lindemuth so moved, Judge Rhoades seconded the motion, and it passed without opposition.

Vice-Chair Stanfill asked for a motion to approve the summary of the previous meeting. Commissioner Lindemuth so moved, Judge Rhoades seconded the motion, and it passed without opposition.

Staff had several announcements. First, the Department of Corrections (DOC) pretrial services unit would be unveiling the new pretrial risk assessment tool on June 27, in two sessions. Second, the applications for the Bureau of Justice Assistance (BJA)-funded grants were proceeding smoothly. Melissa Threadgill, who had submitted the applications, said that there was no official movement on the applications yet, but the word from BJA was positive. The applications were still in the paperwork phase,

and Melissa didn't anticipate any problems. Finally, Matt Menendez, a scholar with the Brennan Center for Justice with expertise in criminal justice reform, will be coming to Alaska and would be available to meet with Commissioners on August 14. Vice-Chair Stanfill asked if the Commission wanted to schedule an official meeting with Mr. Menendez. Commissioner Lindemuth suggested scheduling a meeting for Commissioners to attend if they are available.

Results First - Introductions

Jeff Jessee, the newly-appointed Dean of the College of Health and Vice Provost of Health Programs at the University of Alaska, Anchorage, introduced the Results First program within the Alaska Justice Information Center (AJIC). Part of Mr. Jessee's role is to work with AJIC and Justice Center at UAA. Given the current fiscal climate, he saw these programs not as a luxury the state can no longer afford, but vital tool to help the state operate more efficiently. He supports evidence-based practices, and AJIC will be key to helping Alaska expand its evidence-based practices. He encouraged everyone to come forward with needs that AJIC may be able to address so that AJIC can better serve Alaska.

Emlyn Struthers with the Pew-MacArthur Foundation introduced the Results First Initiative. The purpose of Results First is to help states build capacity through evidence-based policy making. For those familiar with the Public Safety Performance Project, Results First is a bit different. It focuses on capacity-building and provides technical assistance, and works in a variety of policy areas, not just criminal justice. Results First is like "Moneyball" for government—it helps state and local governments make strategic budget choices. The Results First process follows three steps: (1) inventory current government investments, (2) consider whether benefits of those investments justify the costs, and (3) use the findings to target resources more effectively.

Ms. Struthers informed the Commission that Results First was operating in 25 states and 9 counties across the US, serving jurisdictions with a variety of demographic profiles. For example in Iowa, the Results First model showed that the state's Domestic Violence (DV) program was ineffective. It developed a new DV program in conjunction with the University which had better results. Massachusetts used its results to expand enrollment for effective but underused programs.

Dr. Brad Myrstol, associate professor of justice at UAA and director of AJIC, introduced AJIC researcher Dr. Araceli Valle and acknowledged her hard work as she has labored over the Results First project over the last few years. He also acknowledged expressed appreciation for the feedback from many contributors at DOC, the court system, the Department of Public Safety (DPS), and the Department of Health and Social Services (DHSS), as well as the individual program providers who gave AJIC detailed program information. He also thanked the AJIC Steering Committee, and the Pew-MacArthur Foundation.

Dr. Myrstol began by saying he bore good tidings—90% of Alaska's investment in criminal justice programs are evidence-based, and many produced positive returns. He reminded the Commission that Alaska sought out this partnership; the Alaska Legislature, the Office of the Governor, and the Alaska Court System invited the Results First program in 2015. (AJIC was formed at the same time.)

Results First Process Explained

The Results First process begins with an inventory of criminal justice programs; the next step is to match those programs to the evidence base using national databases which compile existing evaluations

of criminal justice programs. The last step is to use the Pew-MacArthur benefit-cost model to estimate the benefit-cost ratios for those programs that have been rigorously researched and evaluated.

For the program inventory, AJIC identified over 300 criminal justice programs operating in Alaska, and out of those, wound up with 54 unique programs. Out of 54 programs, 36 were funded wholly or in part by the State of Alaska (18 did not receive state funds).

In order to match the 36 state-funded programs to the evidence base, AJIC matched the features of Alaska's programs to the features of programs found in a national database of programs that have been rigorously evaluated. The matching process revealed that 26 programs funded by state are based on evidence—and these 26 programs comprise 90% of the state's investment in adult criminal justice programming.

The next step was to populate the Results First Benefit-Cost model. AJIC estimated per-participant program costs, and per-person criminal justice resource use. They also established a baseline recidivism rate using nine different cohorts of offenders released in 2007. They tracked these cohorts out to 8 years post-release. (At this point, Judicial Council executive director Susanne DiPietro noted that Alaska has never before had 8-year recidivism data.)

Next, AJIC calculated the benefit-cost ratio for Alaska's programs. Not all of the evidence-based programs were put in the model: some were not focused on recidivism, and some were not adequately studied. The total number of programs modeled were 19. These 19 programs represented 82% of the state's investment in criminal justice programming (\$21 million total).

In calculating the benefit-cost ratio, the benefits include avoided criminal justice costs (as calculated in the step above) as well as avoided victimization costs. The Pew-MacArthur model monetizes both the tangible and intangible costs to victims. In this model, the benefits arise from the reduction in recidivism as a result of participants passing through a given program. (In other words, the benefits are the costs that would be incurred if ex-offenders commit new crimes, but have been avoided because a given program reduces the likelihood that ex-offenders will commit new crimes.)

The benefit-cost ratio can be improved by increasing benefits and reducing costs. If the ratio is greater than 1, that means the benefits exceed the cost. For example, if a ratio is 3.07, it means for every dollar the state invests, the state receives \$3.07 in benefits. If a ratio is 1, it means the state "breaks even" on its investment. If the ratio is greater than 0 but less than 1, that means that the program produces benefits, but the program costs more than the benefits. If the ratio is less than 0 (i.e., negative) then the program costs the state money. For example, if the ratio is -0.96, it means that for every dollar the state invests, the state loses that dollar and incurs an additional cost of \$0.96.

Results First- Findings and Discussion

Dr. Myrستol next presented a series of graphs which explained the benefit-cost ratio of each program run through the Results First model. The first arranged the evaluated programs according to the benefit-cost ratio, grouped into program type. Each program was represented by a "bubble," the size of which indicated the comparative size of the ratio. Some programs were modeled more than once- hybrid courts were separately modeled as DUI and drug courts; the accurate ratio for hybrid courts will be between the modeled ratios. Some programs changed models, so both the old and the new were modeled separately. Each ratio was simulated 10,000 times, leading to high confidence in results.

The next graph provided a better way of seeing the relationship of benefits to costs, with a “break even” line running diagonally up the middle. Programs under the line could get over the line by either reducing costs, increasing benefits, or a combination. For example, the hybrid and felony DUI courts, which were below the line, produce good benefits—to break even, the program could reduce the costs. Electronic monitoring, which was above the line, produces modest recidivism reduction benefits, but the cost is quite low. If electronic monitoring became more expensive, the state might want to reconsider its use. (The calculated costs did not include the fees paid by defendants.)

Dr. Myrstol noted that the avoided costs in reduced recidivism incorporated Alaska data on the offender profile for Alaska – meaning that the calculation looked at the recidivist offenses committed by the release cohort, and accounted for the fact that the benefits for reducing recidivism for “worse” offenders are greater than the benefits of reducing recidivism for more benign offenders.

Vice-Chair Stanfill noted that the Batterer Intervention Program (BIP) had a negative ratio, and judging by the graph presented, it looked like there was no way to reduce costs to produce positive results—it would be mathematically impossible using this formula. But the program could be brought up to the break even line by increasing the program benefits.

Vice-Chair Stanfill also noted that many of the programs that have lower ratios are working with misdemeanants who were not on active probation, so the data could be skewed that way. She was concerned that singling out BIP would lead people to jump to conclusions about Alaska’s programs. But Results First used the national Duluth model—Alaska programs don’t necessarily follow the Duluth model, and the program may work better in Alaska than elsewhere.

Dr. Myrstol said that one of the assumptions the Results First calculation makes is that the programs perform to the national average. The local program could actually perform better or worse. The alternative is to not match the program at all. AJIC worked with CDVSA and BIP service providers during the program inventory phase—their recommendation was to match to the Duluth model.

Judge Rhoades was worried they may have compared apples to oranges. Dr. Myrstol said none of these decisions were made in a vacuum. AJIC attempted to reach out to program providers as much as possible. If, on second thought, Alaska’s BIPs don’t match, they can take it out—but the program will not be evidence based. Dr. Valle said that the only DV program that was included in the analysis was community BIP; programs like in-custody BIP and the Wellness Warrior program were not included because they didn’t match to the evidence base.

Commissioner Monegan noted that the study had tracked recidivism for an 8-year period, and asked whether the recidivism rate was still at 66%, as had been calculated before. Dr. Valle said that was true on average, but different offender profiles have different rates. For example, DV offenders have highest rates, close to 80%. They are also the most likely to commit offense-specific recidivist crime.

Vice-Chair Stanfill also noted that the risk of imprisonment was greater for sex offenders than DV offenders. She would like to reexamine whether the Alaska BIP model matches the Duluth model. People running BIP in Alaska report good outcomes. The Results First model does not account for the non-evidence-based programs working in concert with BIP.

The next graph showed the recidivism reduction component of the benefit side of each program (based on national metadata on these programs). Dr. Myrstol pointed out the relatively large reduction

in recidivism achieved by many of the programs and said that showed that Alaska was generally on the right track for recidivism reduction.

Judge Rhoades cautioned that it was necessary to be careful about how you react to these graphs—the purpose behind them is not to just sweep away the programs at the bottom. Legislators especially will be tempted to do so. Judge Rhoades said that Commission’s job is to make recommendations for reinvestment; the Results First data will help with that task.

Susanne DiPietro agreed and said this has always been a danger—a quick glance at graphs like this can be really misleading. It was important not to let this get skewed. She also agreed with Judge Rhoades that this data will be helpful to guide recommendations and help the legislature understand the results. The technical assistance team can help with this as well.

Dr. Myrstol concluded his presentation with several key takeaways. First, 90% of the state’s investment in adult criminal justice was in programs found in the evidence base. Second, 18 out of 19 assessed programs yield positive returns, and in 14 programs, the benefits exceeded costs. Even for those programs whose benefits did not exceed costs, the results weren’t fixed; they could be improved by increasing benefits and/or reducing costs.

Dr. Myrstol explained that the Results First analysis was intended to inform future discussion, not dictate any particular course of action— it was a “decision-making tool, not a decision-making rule.” Policymakers would do well to think first about what the expectations are with regard to the return on state investment in criminal justice programming.

Dr. Myrstol said that AJIC had a great deal of confidence in the estimates made. That said, they could be improved by improved program data collection—specifically, data collected with research and evaluation in mind. It is important to establish a statewide culture of program evaluation and process improvement.

Finally, Dr. Myrstol added that AJIC will issue a comprehensive final report including explicit detailing of methodology, which they are hoping to have done by the end of summer. AJIC has a broader mission and will also be looking at applying Results First to other areas.

Judge Stephens asked whether it would be possible to evaluate programs not using state money. Dr. Myrstol said it would, but not with the Results First process. Judge Stephens also asked if there were ways to see what other states were doing for criminal justice programming. Dr. Myrstol said there was, the Results First Clearinghouse has an inventory of all evidence-based programs used nationwide. But regarding BIP, the Duluth model has dominated the field for many years, so there is not much in the way of an evidence-based alternative. Dr. Myrstol said that if there was not a program in a given area that didn’t match to the evidence base, it was okay to use a non-evidence-based program—programs have to start somewhere, but they should be rigorously evaluated. The bottom line: don’t be afraid to innovate so long as you evaluate.

Commissioner Claman asked which programs, of those that are working well, would be suitable for increased participation. Dr. Myrstol said that AJIC could model possibilities to see which would be best. Ms. Struthers added that they could model other programs found in the Results First Database to see if they would be cost-effective if implemented in Alaska.

John Skidmore asked whether all the cost-benefit analyses were focused on recidivism. Ms. Struthers replied that the broader Results First program uses other lenses (addressing addiction/overdose or child welfare, for example) but for criminal justice analyses recidivism is the primary lens.

Diane Casto said that CDVSA has been working closely with AJIC on this; they had preview of these results earlier and have been discussing their implications. CDVSA has committed itself to taking a serious look at the BIP program, funding, outcomes, and then making changes or going in a different direction. They will be working with providers and community partners.

Vice-Chair Stanfill asked if there was a way to map the programs that were analyzed to see which areas of Alaska they served. Dr. Mrystol said AJIC can do that.

Commissioner Monegan commended the researchers and said their work was much appreciated—policymakers have been operating on anecdotal information until now.

Reinvestment

Vice-Chair Stanfill turned to the next agenda item: how to approach recommendations for justice reinvestment per SB 91. Susanne DiPietro noted that the Commission was required to make annual recommendations on reinvestment. The components of the recommendation are to calculate any savings from the justice reform process, then recommend how to reinvest those savings. She noted that the Results First analysis will inform this discussion.

Vice-Chair Stanfill asked whether this was intended to look at savings beyond what was originally calculated in SB 91. Barbara Dunham explained that when SB 91 was passed, the fiscal note had calculated a certain amount of expected savings and those were already accounted for in the reinvestment money that would be disbursed over the next few years (for DOC treatment services, pretrial services, reentry services, and prevention grants, among other things). This new task was to calculate any additional savings and recommend how to reinvest that. Vice-Chair Stanfill asked when this recommendation was needed. Ms. Dunham said it would be helpful to have the Commission's decision made at the August meeting so that it could be included in the draft of the annual report.

Vice-Chair Stanfill asked if the Commission were interested in forming a separate workgroup about this. Judge Rhoades noted that the Behavioral Health Subcommittee was talking about a lot of this. Vice-Chair Stanfill added that the Barriers group was as well.

Commissioner Lindemuth said she feared a misuse of the Results First data, and thought that the Commission could use its report to explain the results and redirect the legislature if necessary. It would be a good opportunity to talk about the successes revealed by the data, and reinvestment recommendations could include expanding successful programs into other locations. She suggested staff could dig into the Results First data and come up with a proposal for discussion.

Ms. DiPietro said staff would also want guidance on populations to focus on and whether there were offenders with unmet needs. For example general programs can reach a large number of low risk offenders, while smaller programs are better for high-risk, high-needs offenders— there are judgment calls that need to be made. Also there may well be gaps in services that haven't been studied by the Results First team. Staff would like some guidance on the Commission's thinking.

Commissioner Monegan said that he would like reinvestment focused on prevention and early education, and would also like to look at partnerships with other entities, similar to the diversion program with the tribal courts. He would like to address ways to get in front of crime and have at least some portion of the reinvestment look to prevention rather than playing whack-a-mole.

Vice-Chair Stanfill asked what money there was to work with, and whether there was a data-driven process to calculate the savings. Ms. DiPietro said that one way to measure savings is through recidivism reduction, but that data isn't available yet – it may be available in three years. Another way is to look at prison beds. This can be compared to the pre-reform baseline, and the projected baseline. Utah has done this.

Judge Rhoades suggested also looking at savings from putting people on electronic monitoring. It might be helpful to distinguish hard beds from halfway houses and electronic monitoring. Deputy DOC Commissioner Clare Sullivan said that DOC was looking at ways to reduce the legal barriers to furlough offenders to halfway houses and electronic monitoring—they are trying to make it more discretionary.

Judge Rhoades suggested there might also be savings gleaned from earned compliance credits for probation and parole. Susanne noted that those savings might be offset by increased intensity of supervision.

Judge Stephens suggested that because cost savings would include recidivism reduction, he was not sure the Commission could make any solid recommendations by November. He agreed that it was important to make sure that the legislature understands the Results First data. He also agreed with Commissioner Monegan on recommending directing reinvestment towards preventative efforts; he would also add reentry to the list.

Randall Burns asked whether the projections for savings were included in SB 91's fiscal notes. He wanted to be sure the state would continue to fund the programs started because of reinvestment and wanted to make sure they're working with adequate support. He also wanted to look at programs that were underutilized. Barbara Dunham said that staff could get this information for the August meeting.

Judge Rhoades said that none of the initial reinvestment went to direct treatment beds in the community. She would like an update on where money went programmatically. She agreed that the Commission needed to back up Results First. Agencies and providers will need to develop talking points.

[Note: at this point the Commission took a break from this discussion to take public comment at the posted time; public comment is summarized just below this section for the sake of continuity.]

Commissioner Lindemuth said the Commission needed to look at where the greatest need still existed and suggested cataloging the demand for substance abuse treatment. Barbara Dunham noted that staff had been looking into this but the task was not easy—she welcomed assistance from any of the agencies in collecting this data. Vice-Chair Stanfill asked Diane Casto if she had assessments that had been conducted before. Ms. Casto said that these assessments were being used and she could help with this endeavor. Judge Rhoades said that case managers were also collecting this data, and the therapeutic courts were keeping track of waitlists.

It was decided that staff would come up with a proposal for reinvestment to present at the next meeting.

Public Comment

Edward Parks (who had also submitted a written comment) told the Commission that Alaska was the only state in the union that lacks false imprisonment laws. He said that in looking at Alaska's statutes, he found that there is a gap between custodial interference and human trafficking. False imprisonment was supposed to be place between these two offenses. False imprisonment is very distinct from kidnapping; for one thing, it is a misdemeanor. In Alaska people are being charged with kidnapping (a felony) for conduct that would be false imprisonment elsewhere. When someone commits acts amounting to false imprisonment, prosecutors have a choice of charging that person with an unclassified felony or giving them a free pass—Mr. Parks said this was an absurd result. He noted that in the draft of the revision of the criminal code 1977, the Senate commentary suggests including unlawful imprisonment.

Becky Hultberg, (who had also submitted a written comment) president and CEO of the Alaska State Hospital and Nursing Home Association (ASHNHA) said that ASHNHA had been working to improve healthcare in Alaska for over 60 years. She had come to the Commission meeting to talk about workplace violence in hospitals and other health care facilities. She said that hospitals depend on compassionate, skilled, trained, and dedicated men and women to support and carry out their core mission of caring for people. As a result, they view the safety and well-being of employees as a top priority.

Unfortunately, in Alaska and across the country health care workers are disproportionately exposed to violence in the workplace. In recent months, ASHNHA has been hearing about increases in aggressive behavior, including physical or verbal assaults occurring in the hospital setting. Ms. Hultberg related that on a recent visit to a hospital staff informed her that they had had eight "code greys" (assaults on staff) that day.

ASHNHA is developing comprehensive initiative to combat this problem, and is working on collecting data to quantify it. They are also looking at legislative remedies, such as increasing penalties for assaulting hospital staff—Ms. Hultberg said that other states have increased the offense level to a felony. She said that ASHNHA fully supported the intent behind criminal justice reform, specifically its focus on treatment and recovery. But they have seen an increase in the use of the ER for people who have committed crimes and are also psychotic and unstable. Hospitals are experiencing increases in aggressive behavior. Acute care hospitals aren't structured or equipped to deal with mental health crises.

Ms. Hultberg went on to say that she knew that correlation is not causation, but she thought this was an unintended consequence of SB 91. ASHNHA wanted the Commission's support to explore options to address this, whether legislative remedies or other system-level changes. Ms. Hultberg asked that this be put on the agenda for future Commission meetings. She was happy to support a more in-depth discussion.

Commissioner Monegan suggested a meeting with Ms. Hultberg and Commissioner Case. Ms. Hultberg said she would be happy to do so.

Judge Rhoades said she would encourage data collection from ASHNHA. She was not sure felony solution was appropriate if a person's conduct arises out of psychosis. She was very interested in looking at who folks are that are causing these problems. She was not sure if one could associate this problem with SB 91. Susanne DiPietro asked why individuals experiencing mental health crises were coming in to

Alaska in the first place. Commissioner Monegan said that title 47 holds provided that when someone was experiencing a crisis, officers were supposed to take them home, or other place of safety—jails are supposed to be the last resort.

Ms. Hultberg speculated that the increase in violence could be the result of many factors; it's not just happening in Alaska, so she was not sure if it was SB 91. Some people in her association are. Facilities are feeling their staff is at a breaking point.

Vice-Chair Stanfill told Ms. Hultberg the Commission would be in touch with her about future steps.

Courtney Pruitt with Leap Alternatives to Violence in Fairbanks said that for her DV BIP program, the rate of re-offense was quite low- she thought this was because of additional programming that Leap offers like vocational rehab. She encouraged the Commission to go to the organization's website which explains their programs. She was hearing positive feedback on BIP from providers all over the state.

Next Meeting

The Commission was not able to address the proposals from the Barriers to Reentry workgroup as had been planned on the agenda. Staff would arrange another workgroup meeting before the next full Commission meeting to flesh out these proposals more fully.

Staff also informed Commissioners they should plan for a full-day meeting on August 23.

Alaska Criminal Justice Commission

Meeting Summary

Friday April 28, 2017

1:30 PM

CIRI

725 E Fireweed Ln #800

Anchorage, AK

And Audio-teleconference

Commissioners present: Alex Bryner, Matt Claman, John Coghill, Jahna Lindemuth, Walt Monegan, Greg Razo, Stephanie Rhoades, Quinlan Steiner, Brenda Stanfill, Steve Williams.

Commissioners absent: Trevor Stephens, Dean Williams (Deputy DOC Commissioner Karen Cann had Commissioner Williams' proxy.)

Participants: Val Davidson, John Skidmore, Rob Henderson, Renee McFarland, Morgen Jaco, Doreen Schenkenburger, Terra Burns, Alysa Wooden, Fred Dyson, Donald Revels, Crystal Godby, Amber Nickerson, Sean Case, Jon Woodard, Taylor Winston, Tony Piper, Karen Forrest, Gretchen Staff, Don Habeger, Amory Lelake, Kaci Schroeder, Jordan Shilling, Lizzie Kubitz, Janet McCabe

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

Introductions and Approval of Meeting Agenda

Chair Razo called the meeting to order at 1:35, and asked the Commissioners and members of the public present to introduce themselves. He then asked for a motion to approve the agenda. Commissioner Stanfill so moved, and Commissioner Monegan seconded the motion. Chair Razo asked if there were any objections or additions to the agenda. There were none and the agenda was approved.

Approval of Summary from Last Meeting

Chair Razo asked for a motion to approve the summary from the last meeting. Commissioner Stanfill so moved, and Commissioner Monegan seconded the motion. Chair Razo asked if there were any objections to the summary, and there were none. The summary was approved.

Suspended Entry of Judgment /Suspended Imposition of Sentence

ACJC Project attorney Barbara Dunham explained that she had circulated a memo on Suspended Entry of Judgment/Suspended Imposition of Sentence (SEJ/SIS) issues that Commissioners had asked for at the last meeting. Dunham briefly summarized the memo,

explaining that the workgroup that had initially proposed the SEJ in 2015 did intend that it would supplant SIS, and that it also appeared they had intended the same exclusions to apply. Changing the statute so that an SEJ could be imposed over the objection of a prosecutor might raise some constitutional questions, but they would seem to be answered by an Alaska Court of Appeals case, *State v. Nelles*, 713 P.2d 806 (Alaska App. 1986). That case stated that a court could dismiss a criminal case without the consent of a prosecutor if the legislature had specifically delegated that authority to the courts. Finally, Dunham found that there were a number of practical impediments to requiring a risk assessment before sentencing a defendant to complete shock incarceration as a condition of an SIS.

Commissioner Lindemuth asked whether there were any steps to take next. Chair Razo asked whether the Commission wanted to make a recommendation. His recollection was that the SEJ was intended to supplant SIS, and he was surprised when after SB 91, there were two different provisions, SIS and SEJ. He said the Commission could recommend moving to the SEJ only. Commissioner Lindemuth said that she recalled the discussion at the last meeting was that prosecutors and judges saw a benefit to having both.

Commissioner Rhoades said she was not seeing any SEJs offered in Anchorage for misdemeanors and that something was needed to change the culture to get SEJs offered. She recalled the Commission heard compelling testimony from a woman who had successfully completed an SIS but her life had been ruined nevertheless. She also knew of an applicant to a job with the court system who had been screened out before they even got to the interview selection stage because they had an SIS. She thought there should be a considered discussion about the reasons for having both the SEJ and SIS.

Commissioner Steiner said he thought there were reasons to have both. There is a benefit to having a judge be able to impose an SIS over a prosecutor's objection. Though the record stays on Courtview the defendant can at least discuss with potential employers what an SIS is. The distinct difference between the two merits having both. Commissioner Monegan agreed that both were useful tools. Commissioner Bryner pointed out that as a practical matter, discarding SIS would be difficult. Commissioner Claman thought there was an important distinction between the two and that it was important to keep them both. He recognized it was an imperfect process but thought there needed to be a way to balance the need to have a clear record with other interests.

Commissioner Stanfill asked if the SEJ was not being used because practitioners considered the SIS to be the default, and wondered how the choice between the two was decided. John Skidmore with the Department of Law replied it was a matter of prosecutorial discretion. He added that he had handled pretrial conferences in Sitka a few days ago and two cases had not been resolved; he offered an SEJ and those two cases were resolved that way.

Mr. Skidmore asked, in regard to Ms. Dunham's memo, if she had a copy of the memo from Doug Gardner, referenced in her memo. She replied that she did not find it in the materials left by her predecessor, Mary Geddes, but that Mary had referred to the memo in other work she had done.

Commissioner Rhoades said that regardless of whether a defendant is charged with a felony or misdemeanor, the consequences for a conviction are the same—the defendant can't get housing. She was concerned that the SIS was not being used as had originally been intended.

Commissioner Steiner said that he had polled his staff in January, and found that SEJ was not being used in a number of jurisdictions, as he had relayed to the Commission at the last meeting— though he hadn't checked recently to see whether this was still the case. Mr. Skidmore said that there had been no policy from Law directing DAs not to use SEJs. He was, however, hearing concerns from some DAs that with the new earned compliance credit system, they were not comfortable offering an SEJ if one year of probation would actually be 6 months. Commissioner Lindemuth added that after Commissioner Steiner had mentioned in February that DAs in certain jurisdictions were not using SEJs, she circled back and encouraged the DAs to use them.

Susanne DiPietro noted that the Commission is collecting disposition data quarterly, and the data has shown there are many deferred prosecutions being offered. She was not sure why this would be different from or preferable to the SEJ. Mr. Skidmore reflected that the Municipality of Anchorage often offered deferred prosecutions, and Seneca Theno (Municipal Attorney) might be able to explain why. It could be a way of getting around the earned compliance problem but still achieve the same outcome.

Commissioner Rhoades asked whether there was any data on how often an SIS came with shock incarceration. Ms. DiPietro said that staff had looked into that and found that it was hard to estimate that figure because DOC has not been reliably tracking that data. With the quarterly data now coming in from DPS under SB 91, the Commission might be able to get that data going forward.

Commissioner Stanfill wondered whether the Commission should come back to this issue in the fall, as it is probably too late to suggest anything that might pass this session anyway, and it would be nice to see if things just need time to get working.

Chair Razo said he thought it seemed prudent to defer this discussion to later in the year, when there will be more information to go on. There was no objection to moving on.

Sex Trafficking Statute

Ms. Dunham explained a memo she had circulated regarding the sex trafficking statute. Members of CUSP (Community United for Safety and Protection) had expressed opposition to the Commission's January recommendation regarding the sex trafficking statute at the previous meeting, and Judge Stephens had asked for this item to be put on the agenda.

Ms. Dunham's memo explained the statutory evolution of Alaska's sex trafficking laws. SB 91 had made some changes to the third- and fourth-degree sex trafficking statutes, so that they would not apply to someone who was engaging in prostitution in the location being investigated. In January, the Commission voted to rescind these provisions from SB 91 and also voted to create a definition of the word "compensation" as it pertains to the sex trafficking statute.

Chair Razo asked whether the Commission should defer discussion of this item to a later date when Commissioner Stephens could participate. Commissioner Stanfill asked whether this

recommendation was found in SB 54, the SB 91 “cleanup” bill now before the legislature. Mr. Skidmore replied that it was. He said that the purpose of the recommendation was to try to balance the concerns of CUSP with the concerns of prosecutors.

Commissioner Steiner said that the narrow concern the Commission was addressing with the January recommendation was only one of housing, i.e. not criminalizing sharing rooms and the like. It was not intended to address all activities that could potentially also have a harm reduction function. He hoped that this wider discussion could take place in the Sex Offender Workgroup.

Commissioner Claman said that he had heard from various groups on this issue, including CUSP and the prosecutors. He understood that the issue was how to deal legally with the scenario of two people involved in sex work, neither one controlling the other, sharing living quarters to reduce danger. CUSP’s concern is those two people will be charged with sex trafficking each other. The two groups take very different views on this and there does not appear to be much agreement.

Chair Razo called for any motions on this topic and none were made.

Crime Rate Memorandum

Ms. DiPietro explained that there had been many theories about the crime rates since the passage of SB 91, and this memo was an attempt to document the crime rates and serve as a reference. ACJC staff member Staci Corey compiled the 100+ page report and a summary, and Ms. DiPietro wrote an analysis of some of the things the report revealed. These documents had been circulated to the Commissioners and staff was happy to take any comments.

Ms. DiPietro explained that the bottom line was that crime rates were on a downward trend over the last 30 years, with an uptick in the last few years. Property crime rates (property crime accounts for the lion’s share of all crime), hit its lowest point in 2011. There was not a similar downward trend in the rate of violent crime (which accounts for a much smaller share of all crimes).

Commissioner Stanfill said it would be good to update the report yearly. Ms. DiPietro said that that was the plan. The data contained in the report is pretty strong, and can be relied upon. Staff member Teri Carns pointed out that because the report was based on Uniform Crime Reporting (UCR) data, it could also be compared to other jurisdictions.

Commissioner Monegan wondered whether the opioid epidemic was a complicating factor in crime rates and whether this could be quantified. Ms. DiPietro said it would be great to quantify but difficult. Ms. Carns pointed out that there have been other drug epidemics in the past and researchers have not been able to track these epidemics with the crime rates.

New Vice-Chair

Chair Razo noted that with the departure of Commissioner Jessee, the Commission needed to elect a new vice-chair. Commissioner Steiner nominated Commissioner Stanfill for the position.

Commissioner Rhoades seconded the motion. There was no opposition, and Commissioner Stanfill accepted the position of vice-chair.

[At this point, Commissioner Monegan had to leave the meeting.]

Whether the Commission's Sentencing Workgroup Should Review and Make Recommendations Regarding Juvenile Waiver

Commissioner Steiner explained that there was a growing body of research about the development of the human brain that he thought should prompt a discussion about taking some offenses out of the juvenile auto-waiver category.

DHSS Commissioner Val Davidson said she was interested in having this conversation, having seen the impact auto-waiver policies have on some youth. She thought it might also be an opportunity to look at dual sentencing. It does, however, raise another question of resources, and how to provide the necessary services for any juveniles that would now be in DHSS/DJJ (rather than DOC) custody. DJJ has taken significant cuts recently—they have closed their Ketchikan facility and are evaluating closing another. They could absorb no more than 5 additional youth into the system. More than that would require opening a new wing at the McLaughlin Youth Center.

Commissioner Davidson agreed that there was a need to look at the impact of the auto-waiver. Kids are kids, and not all of them have a good start in life which would help them make good choices. The auto-waiver doesn't consider the challenges that an individual youth might have faced in his or her upbringing.

Chair Razo said that the Commission's enabling statute, SB 64, was broad but didn't mention juvenile justice. However, the auto-waiver intersects the juvenile and adult criminal worlds so taking this topic up would be within the Commission's purview. Mr. Skidmore noted that the auto-waiver provision shifts the juvenile justice case, governed by title 47, into title 12, making it an adult case—so in that respect it would be appropriate to look at auto-waiver.

Commissioner Rhoades wondered how many auto-waiver cases there were per year. Ms. Carns gave an estimate of around six murders or rapes per year. Most auto-waiver cases concerned armed robbery, and there were between 10 and 20 of those per year. Commissioner Steiner agreed that it was a relatively small number. Commissioner Davidson said there were around 70 juveniles in DOC custody between 2001 and 2008.

Karen Cann, deputy DOC Commissioner sitting as DOC Commissioner Dean Williams' designee, said this was something DOC would also like to look at. Kids should not be in an adult facility; even if they are receiving services. The services are directed towards adults and not juvenile needs. There are other services they could be receiving.

Chair Razo asked if there were any objections to having the Sentencing Workgroup take up this issue. There were none.

Public Comment

Janet McCabe from Partners for Progress said she was interested in the crime report and thought it would be fascinating to look at economic statistics for a comparable period. Staff research analyst Brian Brossmer cautioned against drawing any conclusions from such data as to causation. Ms. DiPietro said that Ms. Corey could look into economic statistics.

No other public comment was offered.

Update on Reentry

As there was time left in the public comment period and DBH Reentry Coordinator Alysa Wooden was present, Commissioner Stanfill suggested getting an update on reentry. Ms. Wooden informed the Commission that the four planned case managers had all been hired, have just completed their training and have started working with their caseloads. Ms. Wooden thanked Karen Cann and Morgen Jaco from DOC for their help in hiring and training the case managers. All of the case managers are using AKAIMS for data tracking and DHSS and DOC are working on coordinating that data with ACOMS data. Ketchikan and Dillingham are the newest reentry coalitions to receive reinvestment reentry grants.

Ms. Jaco added that they had needed to do some work on managing expectations. Many of the reentry coalitions are working on building capacity right now and there were expectations in some quarters for immediate outcomes.

Ms. DiPietro asked whether the coalitions were tracking capacity for treatment and services. Ms. Wooden explained that they were doing that, and also identifying barriers to accessing services and ways to get around those barriers. Commissioner Rhoades said she would like to funnel the issue of capacity to the Commission's Behavioral Health Standing Committee. With the greater number of reentrants seeking services, there could be a bottleneck of resources. The treatment needs of reentrants have to be balanced with the needs of those on the front end of the criminal justice system. Ms. Wooden agreed and said that there was additional funding coming for FY18 that would be devoted to looking at resource and capacity issues.

Janet McCabe and Doreen Schenkenberger said that Partners for Progress was taking some Therapeutic Court clients into their job lab program. There is a statewide grant for therapeutic court clients to receive these services but the same funding has been granted yearly despite an increase in therapeutic courts. The program could use greater funding; they are particularly concerned about the availability of services in Ketchikan.

Announcement re: CDVSA

Commissioner Stanfill informed the Commission that Diane Casto has been appointed to head the Council on Domestic Violence and Sexual Assault. This appointment is exciting given Ms. Casto's strong expertise and background with prevention programs.

Break- 10 min

Proposal to Respond to Recently Published Op-ed and to Clarify the Position of the Commission

Commissioner Steiner asked the Commission to write an op-ed on the concerns behind the SB 54 recommendations and to clarify some of the statements in the op-ed from Commissioners Lindemuth and Monegan that was recently published in several Alaskan newspapers. Commissioner Steiner took issue with the fact that the op-ed suggested that there would never be any jail time for Theft 4 offenders and that SB 91 had compromised public safety. He thought that the record should be corrected with an op-ed stating that there can be jail time for Theft 4 if a third-time offender's probation is revoked, and that there is no evidence to support the suggestion that SB 91 had compromised public safety.

Chair Razo asked for a response from Commissioner Lindemuth. Commissioner Lindemuth said the Governor, the Department of Public Safety, and the Department of Law would all like to see SB 54 passed this year, and she wrote the op-ed in question to encourage its passage. She stood by her statements regarding Theft 4, as the intended audience for the op-ed was the general public, and the language was crafted to be understood by the general public. She worked on drafting this op-ed herself and sought input from Commissioner Monegan and her staff.

Commissioner Steiner said he appreciated Commissioner Lindemuth's point but still thought that the op-ed was misleading by suggesting that SB 91 caused certain offenders to commit five to seven Theft 4 offenses in a row and had affected public safety.

Chair Razo asked if any of the other Commissioners had a comment. Commissioner Steve Williams, participating by phone, said that it was difficult to hear the conversation so he could not offer his input. Commissioner Claman said he would not weigh in because the op-ed had been in part directed at him in his capacity as a legislator.

Commissioner Stanfill reflected that each Commissioner has to juggle wearing more than one hat. This was a tricky topic because SB 91 got such a bad rap. She thought that if the Commission were to write an op-ed, it could support SB 54 but clarify that there was no known impact to public safety from SB 91. It could also note that SB 54 went beyond what the Commission recommended and address the fiscal note. There might be a way to tag on to the original op-ed in a positive way.

Commissioner Steiner said that he didn't have any position on the tone of the response, he was simply concerned that the op-ed from two Commissioners alone undermined the authority of the Commission. He thought it was important to clarify that there is no evidence that SB 91 impacted public safety because SB 91 continues to be blamed for resource issues.

Commissioner Lindemuth said she was careful in writing the op-ed to support SB 91 as a whole. If the Commission wanted to get the word out there, she was all for it, but she did not see a need to write a response to the op-ed.

Chair Razo said that when the Commission takes an action, it is appropriate for Commissioners to explain the action's basis and express its support. That said, all Commissioners wear other hats and have their own opinion on things, and not every Commission action is by

unanimous vote. The op-ed was obviously an opinion. If the Commission wanted to respond to the op-ed he would be happy to sign it. He asked whether there was a motion.

Commissioner Steiner moved to publish an op-ed explaining the Commission's rationale behind its recent recommendations [and to clarify the public safety statement?]. Commissioner Stanfill seconded the motion, and Chair Razo called for discussion.

Commissioner Rhoades asked whether the Commission would do this otherwise if there were no op-ed to respond to, and whether there was an independent reason to do this. If not, she would rather leave sleeping dogs lie.

Ms. DiPietro said that staff get a lot of requests to explain the Commission's work and SB 91 and there is a fair amount of misinformation floating around. The public might appreciate some clarification. Commissioner Stanfill agreed that it might be good timing from that perspective. She appreciated Chair Razo's opinion on this. But SB 54 wasn't moving forward and it might not be a bad idea to keep these issues in the public mind.

Chair Razo agreed about the misinformation in the public discourse. SB 91 appears in online comments every day. But he thought that the Commission's role was limited to making its recommendations and not to comment on pending legislation. He also worried about unintended consequences if a response were published—there are those who think that SB 54 does not go far enough. He was planning to vote no on the motion.

The motion was decided by a roll call vote. Yes votes: Alex Bryner, Brenda Stanfill, Quinlan Steiner. No votes: Jahna Lindemuth, Stephanie Rhoades, Greg Razo, and Karen Cann voting with Dean Williams' proxy. Commissioner Steve Williams was unable to hear the discussion and did not vote. The motion did not pass.

Update on the Administration's Response to the Opioid Epidemic

Dr. Jay Butler, Chief Medical Officer and Director of the Division of Public Health, gave an overview of the steps the administration has taken to combat the opioid epidemic. Governor Walker's February disaster declaration not only created an opportunity to get funding for more naloxone kits, but also created an opportunity to amplify the conversation on opioid abuse. Over 90 Alaskans died of an opioid overdose last year, more than at the peak of the AIDS epidemic. The opioid epidemic has particularly affected younger people. It has also had a great impact on crime.

The disaster declaration allowed the state to move to an incident command structure which enables the various state agencies to collaborate more easily and facilitates communication. Dr. Butler, as the incident commander, has a direct line to the Governor. He also heads up a multi-agency coordinating group with subgroups devoted to operations, logistics, financing, and planning. They are also planning long-term and looking at systems development; their focus is broader and more far-ranging than would be the response to a natural disaster such as a fire.

This year's SB 91 (not to be confused with last year's justice reinvestment bill) gave the authority for a standing order (effective until 2021) to distribute naloxone kits and to train people to train others on how to use them. Incident command is already hearing reports of lives saved because of this.

In addition to these life-saving measures, incident command is also taking a look at primary prevention, treatment issues (particularly the gaps in availability of long-term treatment), and reducing access to opioids. Dr. Butler commended DOC for beginning opioid treatment programs within DOC and creating warm hand-offs for reentering citizens so they can continue to receive services once released from prison.

April 29 was drug takeback day. Additionally, because many Alaskans in rural communities can't always make it to a drug takeback drop-off site, over 14,000 drug disposal bags, donated by pharmaceutical companies, had been distributed around Alaska.

Dr. Butler was working with the Controlled Substances Advisory Committee (CSAC), which is working to put the drug U4770 and tramadol on the drug schedules. There is a bill for this in the legislature right now.

There is also an omnibus opioid bill in the works which requires pharmacists to update the Prescription Drug Monitoring Program (PDMP) database daily. Currently all providers must register with the database and pharmacists must update it weekly. Commissioner Davidson noted that the bill also empowers individuals to reject opioids or reject part of an opioid prescription, and makes the default prescription 7 days' worth of opioids.

The disaster declaration has also enabled Alaska to apply for federal grants. The Naloxone kits were distributed with the help of a five-year federal grant plus state and volunteer efforts. The CDC grant will provide for public health surveillance and analysis of the PDMP data. The STR (Strategic Targeted Response) grant, just announced, has \$2 million available for Alaska- three quarters will go to access for treatment, the rest will go to filling gaps in prevention and perhaps naloxone kits for teens.

They have distributed naloxone to law enforcement in spray form as well, which involves a very quick (2-3 minute) training process. They are tracking EMT use of naloxone but it is hard to track the use of the kits that have been distributed to the community. They are also collecting anecdotal data.

Commissioner Davidson added that they are also looking at wider addiction issues in conjunction with this effort, trying to answer questions about why people are self-medicating. The 1115 Medicaid waiver will allow DHSS to redesign behavioral health in Alaska. Among many changes, it will allow residential treatment facilities to have more than 16 beds, and will allow non-DBH grantees to receive Medicaid dollars.

Commissioner Davidson added that she recently went to a western states public health conference and participants were discussing why opioid use was becoming such a problem now. Her response was that this issue is being discussed more now because it is affecting white people. Epidemics like these happen when issues that seem to only affect socially disadvantaged communities are ignored over the years.

Dr. Butler said that the new systems being developed for the opioid crisis will also help "non-molecule-specific" problems, meaning other abused substances will also be addressed. Meth is still an issue, and some people are combining meth and heroin use. They are looking at how to

improve access to treatment for justice-involved individuals, including looking at what other states are doing. Three quarters of post-prison deaths are opioid-related.

Commissioner Lindemuth commended Dr. Butler for the work he has been doing as incident commander. The incident command team has been racking up weekly accomplishments. Before the incident command structure was formed, Alaska was lagging in its response to the opioid crisis; now, Alaska is in the vanguard. Commissioner Davidson echoed this sentiment and noted that Dr. Butler was also the president of a national organization of chief medical officers and was working to bring greater attention to substance use nationwide.

Chair Razo asked whether anyone had questions or comments for Dr. Butler. Commissioner Stanfill said that she had had reports of detox centers struggling to address the needs of patients with co-occurring addiction disorders. She suggested this was something the incident command team could look into.

Commissioner Rhoades asked about alcohol abuse and whether that would also be addressed. Dr. Butler said that while alcohol abuse affected a greater number of people, a greater percentage of overdose deaths were from opioids. Of the 125 overdose deaths in Alaska last year, three quarters were opioid overdoses. Opioid deaths were increasing, while alcohol deaths were remaining steady. Finally medically-assisted treatment is available for opioid addiction but not for alcohol addiction. He hoped there would be more understanding about alcoholism as a disease in the future.

Ms. DiPietro noted that last year's SB 91 had made some changes to the drug crimes statutes, and wondered whether any other criminal response to the opioid crisis was necessary. Dr. Butler agreed that the opioid crisis was both a public health and a criminal issue. The biggest criminal issue is going after those who take advantage of those with the health issue. He is working closely with the Department of Law. Deputy Attorney General Rob Henderson noted that the CSAC also helps bridge the gap between the two areas.

The meeting was adjourned at 4:28 p.m.

Future Meeting Dates & Tasks

Next Commission meeting:

- June 15 at 9:30 a.m., Snowden Training Center

Upcoming Workgroup meetings:

- Sentencing – May 12, 2:00 p.m., Denali Commission
- Behavioral Health Standing Committee – May 18, 9:00 a.m., Alaska Mental Health Trust
- Barriers to Re-entry – May 22, 1:30 p.m., Denali Commission

Alaska Criminal Justice Commission

Meeting Summary

Thursday, April 6, 2017

4:30 PM

Teleconference

Meeting Participants

Commissioners present: Greg Razo, Matt Claman, Jeff Jessee, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Dean Williams

Commissioners absent: Alex Bryner, John Coghill, Jahna Lindemuth

Participants: John Skidmore (Mr. Skidmore served as proxy for Commissioner Lindemuth), Karen Cann, Natasha McLanahan, Melissa Threadgill, Steve Williams, Amy Mead, Aesha Pallesen

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

The meeting was called to order at 4:33 pm.

Agenda

Judge Rhoades moved to approve the agenda, and Commissioner Jessee seconded the motion. He also proposed an amendment to the agenda to add an item after the public comment period for an announcement regarding representation of the Alaska Mental Health Trust on the Commission. There was no objection to the agenda as amended and it was so approved.

Approval of Summary from Last Meeting

Commissioner Jessee moved to approve the summary from the last meeting. Judge Rhoades seconded the motion. Chair Razo opened the floor for any modifications or objections to the summary. Hearing none, the summary was approved.

Consideration of Proposals for the Remaining BJA Grant Money

Chair Razo began by refreshing the Commission's recollection on this grant funding source. After implementing SB 91, Alaska was qualified to receive up to \$400,000 in implementation funds from the Bureau of Justice Assistance (BJA). The technical provider managing the grant is the Crime and Justice Institute (CJI), represented by Melissa Threadgill. These funds must be used to implement SB 91, and may not be used for a broader purpose. The Commission has already authorized spending \$191,685 of the available funds for training parole and probation officers, and for the Department of Corrections (DOC) to hire a Justice Reinvestment Coordinator. The remaining funds must be spent by July 31, 2018. A number of proposals have come to the Commission.

Committee Recommendations

Last June, the Commission established a committee comprised of Commissioners Razo, Stanfill, and Jessee to review any proposals and forward recommendation to the Commission. That Committee has reviewed the proposals now before the Commission and is prepared to make recommendations today.

Chair Razo gave an overview of the three proposals on the table. The committee considered them all to be worthy projects and if the Commission had the money to fully fund the projects at the rate requested, the committee would so recommend. But taken together, the three proposals come up about \$70,000 short. Given that, the committee proposed decreasing the requested budgets.

DOC submitted a proposal for a pretrial diversion developer, and asked for \$175,000 to fund this project. DOC proposed allocating \$117,400 to employ the developer, and \$57,600 for training, database development, and coordinating with stakeholders. Chair Razo explained that the committee proposed decreasing the latter figure dramatically as these funds may only be used through July 2018 and the developer will likely not have enough time to do everything set forth in the proposal. The committee suggested funding this program at approximately \$123,800.

The City and Borough of Juneau (CBJ) asked for \$100,000 to fund a pilot project to avert chronic shoplifting. \$85,000 of this is for a case management contractor. Other similar programs fund their case managers at a slightly lower salary. The budget also lists \$5,000-\$10,000 for CBT services. However, Medicaid pays for these services. The committee suggested funding this program at approximately \$80,000.

Finally, the Alaska Court System requested funds for training judges at the next judges' conference. The amount requested was \$2,540 and the committee recommended funding this as proposed.

Chair Razo also noted that Alaska will have other opportunities to apply for grants in the future. In particular, BJA also funds "Maximizing Justice Reinvestment" grants, for which Alaska will be eligible next year, after justice reinvestment is fully implemented. These grants are larger than the Phase II Seed Funding grants and may be used for broader purposes.

The Committee also recommended that if DOC and CBJ find they cannot reduce the budgets for their programs as suggested, the Commission vote on which projects are priorities so that the Commission does not have to reconvene.

Pretrial Diversion Developer Discussion

Commissioner Williams spoke about DOC's proposal. Per DOC's memo, diversion was clearly identified in SB 91, and by the Commission, as a priority. It is both timely and important to address this now. Commissioner Williams spoke to Attorney General Lindemuth as well as her deputy Rob Henderson, and they are on the same page about moving forward with this. Because DOC is setting up its pretrial unit right now, this is a great opportunity to develop a real plan for diversion—a truly meaningful diversion plan, not just for low-level offenders. Since DOC will already be doing risk assessments the time is ripe to develop a diversion program alongside that.

Commissioner Williams said he knew this had been a priority of the Commission, and for Judge Rhoades and others, for some time. The problem there are many different ideas of diversion. DOC's plan is to look

at how diversion is being done around the country, and really do research to see what will work in Alaska to create a really meaningful diversion program.

Commissioner Williams said he was amenable to the proposed reductions. Chair Razo asked if DOC could figure out how to move forward given the new recommended budget. Commissioner Williams said that was possible, just so long as this program gets up and running. It was a high priority for him, especially with the opioid crisis. DOC would make it work with reduced funding if they had to.

Chair Razo asked if anyone had questions for Commissioner Williams.

Judge Rhoades had a question about the second part of the request, regarding the database expansion. She thought it would be hard to plan jail diversion programs without data from DOC. She wondered if there currently was any way to get accurate data on how many people are booked into DOC custody with opiate or mental health issues. She had been talking to the Results First researchers about finding this cohort—they told her there was no way to get the information. DOC should find out what resources are needed to get that data.

Commissioner Williams said he would take half loaf of bread rather than no loaf. He thought there may be tools in ACOMS that could be adjusted to get that data. That's why database upgrades were put into the proposal—any data tool revamp always costs time and money. But the overall program was so important that he would make anything work even without the second part of the request funded at the level asked for.

Juneau Pilot Program Discussion

Amy Mead, Municipal Attorney for CBJ, explained that this proposal arose out of conversations she had with Judicial Council Executive Director Susanne DiPietro after attending the Commission meetings earlier this year. Juneau, like other places in Alaska, was experiencing a problem with repeat low-level theft offenders who were getting less or no jail time than they had been before SB 91. Cognitive Behavioral Therapy (CBT) has been shown to be very effective with this target population. In Juneau, there are about 40 repeat offenders in this population—some have 10 or 12 open theft cases at one time. Ms. Mead spoke to members of community about what to do about this, and wound up putting together this proposal with the Second Chance program run by Tlingit-Haida. (Though the tribe would be involved in running the program it would be open to anyone). Those in the identified population charged with a theft or theft-related trespassing crime would enter into a deferred sentencing agreement. The participant would have to complete the Something for Nothing program, plus whatever has been identified for that offender to work on in a motivational interview.

Chair Razo asked Ms. Mead if she could live with \$80,000. Ms. Mead said she could. She realized this was a new idea, but she felt this is what Alaska was being asked to do [with justice reinvestment]. She said they have done a lot of thinking about how to do things differently at the CBJ office.

Chair Razo called for questions for Ms. Mead. Commissioner Jessee asked if she had discussed this program with the Juneau Reentry Coalition, which might be working on a similar project. He was aware that DHSS was also funding a case manager for NCAD [?]. Ms. Mead said yes, she had spoken to Don Habeger at the Reentry Coalition, who said they were hoping not to have to address this now, though they had identified this population as needing attention. She also spoke to Kara Nelson at Haven House

who was also not really set up to take this on. Both were very encouraging of CBJ's proposal. The NCAD program would be similar, but for high risk offenders.

Judge Rhoades asked how this was intended to support SB 91. This population was "decriminalized" in a sense by SB 91—they aren't taking up jail time. Ms. Mead replied that this program would be for repeat offenders—not those with one or two offenses. Also, SB 54 puts jail time back in for this category of offender. This is a way of avoiding sending them back to jail. This is more than just a nuisance—Juneau is experiencing a significant increase in theft crime.

Chair Razo asked Melissa Threadgill from CJI whether this proposal fell within the parameters of BJA's funding requirements. She replied that this was more outside the box than past proposals, but she did see a connection to justice reinvestment in that the program related to the impact of the changes made by SB 91. To her, this seemed closely enough related to the reduction of jail time in SB 91. We will have to see what they say. She thought the pilot aspect of the program would be fine; BJA is very interested in innovation, which might make them look at this favorably.

Judge Rhoades said she identified another problem with the program: it seems to reprogram everyone in the same way. She was also not clear whether the CBT was an MRT (Moral Reconation Therapy) or not—she was not sure this is evidence-based approach. She noted that there was no LSI-R (risk assessment) for these offenders. Low-risk offenders are often not appropriate for CBT, especially when mixed with medium- and high-risk offenders. She recalled that a while ago there was a program in Anchorage that dealt with chronic shoplifters, but it ended up just making them better shoplifters.

Ms. Mead responded that the CBT component was indeed an MRT program, and there is evidence to show that using that approach is good for this population. There is an assessment through the JAMHI (Juneau Alliance for Mental Health, Inc.) program. This program's case manager will do a lot of hand holding and take participants to the assessment.

Judge Rhoades explained that she was not talking about a substance abuse or mental health assessment, but a risk level assessment. CBT is designed to address criminal thinking—the evidence is that you can't mix those with different risk levels in CBT programs. She was concerned this program will mix risk levels.

Ms. Mead said this was not her area of expertise, but when she was crafting the proposal, she conferred with JAMHI, and they identified the CBT program as very effective for this population. It is something even Walmart has endorsed. This is not a new idea. Ms. DiPietro said that because this was a pilot program, the Judicial Council would assist with evaluation. By definition, a pilot program is something that needs to be assessed to see if it works.

Pretrial Training for Judges Discussion

Aesha Pallesen, the [?] for the Alaska Court System, explained that the Court System was asking for a relatively small but significant (for the Court System) amount of money to bring in speakers for the annual statewide judges' conference in October. They would speak specifically to the pretrial program. DOC will have representatives to talk nuts and bolts. The presenters from outside would talk more about the philosophy behind pretrial programs and how they have worked in other jurisdictions. There were no questions for Ms. Pallesen.

Chair Razo explained that the committee's recommendation, outlined earlier, constituted a motion, so he placed that motion on the table.

Commissioner Jessee said he thought the approach—to try to fit all these projects into the available funding—was a good one. He asked if, in the event DOC and CBJ could not make their programs work with decreased funding, whether one should be given priority. If so should the motion be amended? Chair Razo said that he had heard both requesters say they could make the proposed reductions work. Commissioner Jesse said that in that case an amendment was not necessary; he seconded the motion.

Chair Razo opened the motion for discussion.

Judge Rhoades repeated her concern that the CBJ program was too local, was not evidence based, and that it would be mixing risk levels. Ms. DiPietro, explained that she had been working with Ms. Mead on the proposal and that perhaps the proposal should be clarified, because the intent was always that an LSI-R would be done for the participants.

John Skidmore, director of the Criminal Division at the Department of Law, noted that page three of the proposal did in fact mention a risk assessment. With that tool in place, the CBJ program made sense to him as part of justice reinvestment. The point of justice reinvestment is to get to where Alaska can avoid sending people to jail – but to do that we need to get them to stop offending first. This would address that. The Department of Law was supportive of diversion, and he thought that having a coordinator to develop a diversion program would approach diversion in an organized way. He was glad to hear that both programs may work.

Commissioner Claman said that appreciated discussion at this meeting and he was glad to see that it was possible to make the best use of the money available.

Chair Razo noted that the CBJ program's partnership with Tlingit-Haida would also open the door up to other funding. If a participant needs referrals and treatment, the tribe could provide that, especially if the participant was Alaska Native. There is a lot of leveraging that can be done with trial organizations. He was also supportive of pretrial diversion. He agreed there was a need to define exactly what diversion means and to identify the right way to do it and make sure it was evidence-based.

Chair Razo called for a vote on seeking BJA funding for the proposals with the budgets reduced as recommended by the committee. The motion passed unanimously.

Public Comment

Chair Razo asked for any public comment. There was none.

Trust Representation on the Commission

Commissioner Jessee explained that he had accepted a position as Dean of the College of Health and vice provost of health education. He will assume that position on May 2. He was excited about the opportunity; the health sector is one of the few remaining growth areas of employment in Alaska. He also noted that both the Alaska Justice Center and the Alaska Justice Information Center were part of the College of Health so he would likely still be involved with the Commission in some fashion. He expressed his appreciation and admiration for Commission, and said it was remarkable how far the Commission has come since its inception. The Trust's interim CEO Greg Jones has decided to appoint Steve Williams as the Trust's

designee for the Commission. Commissioner Jessee said he was confident he was leaving the role in good hands.

Chair Razo thanked Commissioner Jessee for his service and said Commissioner Jessee played an important part on the Commission. He wished him the best of luck in his new career.

Deadline for budgets

Commissioner Williams said he knew that DOC was still working on the detailed budget for the JRI coordinator. He thought they could hurry the pretrial developer budget through and have it done in one or two weeks.

Ms. Mead said she would be meeting with Second Chance and JAMHI on April 18th and proposed sending the final budget that day. Ms. Threadgill offered to connect with Ms. Mead to provide her with assistance beforehand.

Future meetings

The next two meetings would be at 1pm on April 28 at CIRI and at 8:30am on June 15 at the Snowden Training Center. Commissioners should email Barbara with any suggested agenda items.

The meeting adjourned at 5:26.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, February 23, 2017

8:15 AM – 12:00 PM

Elizabeth Peratrovich Hall,
320 W. Willoughby Ave, Suite 300
Juneau, AK 99801
And teleconference

Meeting Participants

Commissioners: Stephanie Rhoades, Quinlan Steiner, Trevor Stephens, Jeff Jessee, Brenda Stanfill, Matt Claman, Jahna Lindemuth, John Coghill, Dean Williams, Alex Bryner

Participants: Amory Lelake, Seneca Theno, Kathy Hansen, Geri Fox, Morgen Jaco, Alysa Wooden, Gretchen [last name not clear], Donald Revels, Kathleen McLaughlin, John Skidmore, Steve Williams, Nancy Meade, Jordan Schilling, Bill Comer, Carrie Belden, Nicole Borromeo, Jayne Andreen, Diane Casto, Terra Burns

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

1. Agenda

Commissioner Jessee called for approval of the agenda. Commissioner Lindemuth so moved. Judge Stephens seconded the motion. Commissioner Jessee asked if there was any discussion on the agenda. He proposed moving discussion of the meeting dates to before public comment, in case any Commissioner had to duck out right at noon. There was no objection to this.

Commissioner Stanfill asked to add a discussion of how to respond to any requests for comments on or endorsements of pending legislation that did not originate from the Commission. For example, she had been approached about HB112. The Commission agreed to add this as an agenda item, just before public comment.

2. Approval of Summary from Last Meeting

Commissioner Jessee called for approval of the summary from the last meeting. Commissioner Lindemuth so moved and Commissioner Stanfill seconded the motion. There was no objection to approving the summary.

3. Suspended Entry of Judgment/Suspended Imposition of Sentence

Commissioner Jessee asked project attorney Barbara Dunham to review the previous discussion around Suspended Imposition of Sentence (SIS) and Suspended Entry of Judgment (SEJ). Ms. Dunham explained there were several issues that had been raised as part of the proposed fixes or changes to SB 91, the subject of the previous two meetings. First, whether the Commission had intended SEJ to

entirely supplant SIS; second, whether shock incarceration was available for either SIS or SEJ; and third, whether the SIS and SEJ should be aligned in terms of excluded offenses—there are some statutes which provide that SIS is unavailable for that offense, but the statute is silent on whether SEJ is available. This discussion had been postponed to this meeting so that Judge Rhoades, who had raised some of these issues, could participate in the discussion.

a. SEJ replacing SIS

As to the first issue, Judge Rhoades said that she had been on the committee that proposed SEJ originally. Her recollection was that the committee had discussed the importance of not entering a conviction at all. The testimony to the Commission regarding SIS was that people were still harmed by having that conviction on their record while the SIS period was pending – they had to answer yes on an application if asked whether they had a conviction, and the conviction was on CourtView. Defendants couldn't avoid the collateral consequences of conviction with SIS, which had been the point of SIS. Her thinking was that SEJ would be everything that an SIS was—it would entirely align with SIS, with the same exclusions, and with shock incarceration available.

Judge Rhoades said that at the district court, she hasn't seen SEJ being used- she has seen just one so far. Prosecutors are skeptical of SEJ. She thought SEJ should be used most often in misdemeanor cases and hasn't seen it being used in those cases. If the Commission moves to supplant SIS with SEJ, it would protect defendants from the collateral consequences of conviction and give court a chance to actually use SEJ. She didn't think it was supposed to be part of a continuum of diversion and deferred sentencing along with pretrial diversion and SIS.

Commissioner Steiner said that his recollection of the discussion about the SEJ recommendation was different, and disagreed that it was intended to entirely supplant SIS. He thought having a continuum of options was a benefit. SEJ has to be agreed upon by both parties; eliminating SIS would mean eliminating something that can be done over a prosecutor's objection. SIS still has a benefit for defendants in this regard, and it still doesn't serve as prior for enhancement purposes. Eliminating SIS would be a detriment for the system.

Commissioner Steiner also did not agree that the intent was to allow shock incarceration for SEJ. The whole point of SEJ and SIS was to avoid incarceration because it increases recidivism for the type of offender typically eligible for either SIS or SEJ. He thought all possibility of shock incarceration should be removed.

Commissioner Claman said he thought the goal with both SIS and SEJ has always been to avoid the collateral consequences of conviction and that they are typically used for youthful first offender. For example, a youthful shoplifter who would be convicted of crime of dishonesty, and could never get a financial job because of that, even if they had completely turned their life around. He also noted that employers and landlords now ask not whether the applicant has been convicted of a crime but whether they have admitted to or have been charged with a crime. As an attorney, he received calls from clients unsure how to answer such questions. There should be a way for youthful offenders to avoid that. He recalled that the Municipality of Anchorage does deferred prosecution- those offenders never went in front of the court. SIS serves a purpose but there should be some chance for youthful offenders to have a clear record.

Commissioner Stanfill asked the Commission to explain why SIS and SEJ operated differently in terms of the parties agreeing. Judge Stephens explained that the statutes provide that as a judge, he can override the prosecutors if they aren't in agreement with an SIS, but that is not the case with an SEJ—both parties must be in agreement. Commissioner Stanfill asked why that was the case and Judge Stephens said his understanding was that it was a legal question regarding separation of powers—there was a question of whether a court can force the state not to prosecute someone.

Judge Rhoades said she thought that was a problem that can be worked around. Other states do this—defendants will still enter a plea. She wanted to caution the Commission because often the Commission really focuses on felons. But many misdemeanants have a lot of the collateral consequences of crime- disproportional for misdemeanants not to get the benefit of these reforms.

Commissioner Stanfill said she was concerned if SIS was going to stay on the books because there were people who testified about SEJ with the understanding that SIS was going away. Is there clarification of consequences for defendants who choose SIS? John Skidmore with the Department of Law said that defense attorneys advise their clients.

Mr. Skidmore said he agreed with Public Defender that having both SIS and SEJ provides more tools. He shared Judge Stephens' concern about the separation of powers. He was also concerned about having a jury trial with a conviction and then setting that jury's determination of guilt aside. Some defendants need time to prove themselves. In other states this kind of issue is resolved with the expungement process, but Alaska does not have an expungement process. The question is what to do with those people who have proven themselves *after* a period of time. SIS does have some advantages in this regard. He didn't necessarily want to shoehorn this all into one area.

Commissioner Steiner explained that the usage and consequences of SIS had changed over the years with evolving case law. Many PDs misunderstood the consequences of SIS because they had not kept up with this evolution.

[At this point Justice Bryner joined the meeting, as did Department of Public Safety Deputy Commissioner Bill Comer, who was acting as Commissioner Monegan's proxy.]

Judge Rhoades said that the volume of cases in Anchorage was so high that defendants were not getting a full understanding of what the collateral consequences of either SIS or SEJ were. Recently she was involved with hiring a coordinator for ASAP, and learned that an applicant who had successfully completed a term of probation on SIS had been excluded from applying. She moved to table this discussion and come back to it at the next meeting after staff had time to prepare some research on the subject.

Judge Stephens noted that practices are different around the state. He conducted an informal poll of First District Judges, all of whom said they were imposing SEJs. None of these judges had imposed an SIS since SB 91 was passed, but some of them said they liked the idea of keeping SIS just in case.

Commissioner Steiner said it made sense to look into the legal foundation of this, and also to look into expungement. He also polled his offices and they reported that SEJ was being used in Ketchikan, Juneau, and Bethel, but not other areas of the state. Some OSPA cases have also resulted in SEJs. The practice seems to vary DA to DA.

Commissioner Jessee asked Judge Rhoades to elaborate on her motion. Judge Rhoades stated that her motion was to table discussion of SEJ and SIS pending staff research on (1) the legal impediments to a judge imposing an SEJ over the objection of a party, and (2) whether SEJ could be made unavailable for jury trials. Commissioner Lindemuth seconded the motion. There was no objection, and the motion carried.

b. Shock incarceration

The Commission next discussed shock incarceration, which in the past had been imposed as a condition of probation for suspended sentences. The statutes were not clear now- one reference had been deleted in SB 91, so it was unclear whether shock incarceration was available for an SIS, and the statutes were silent as to whether it could be imposed with an SEJ.

John Skidmore explained that the Department of Law took no position on the matter, and just wanted clarification as to whether it was available. Commissioner Steiner recalled that when the Commission was debating the recommendation to create the SEJ statute, shock incarceration had not been envisioned. He moved to get rid of shock incarceration for both SIS and SEJ. The people eligible for either are the people most likely to be debilitated by a jail term, however brief.

[At this point Commissioner Coghill left the meeting.]

Commissioner Steiner moved to make a recommendation clarifying that shock incarceration does not apply to SIS or SEJ. Commissioner Stanfill seconded the motion.

Judge Rhoades asked how different SIS and SEJ were in the long run. John Skidmore stated that the difference was that SEJs are imposed before conviction. A person cannot be deprived of their liberty without a conviction. He saw the two as very distinct.

Commissioner Steiner moved to modify his original motion by splitting it into two: first to affirm that shock incarceration was not available for SEJ, and second to clarify that shock incarceration is not available for SIS. The modification was acceptable to Commissioner Stanfill. The first motion (to affirm that shock incarceration is not available for SEJ) passed without objection.

The Commission debated the second motion. Judge Rhoades expressed her concern that in the past, imposing shock incarceration with an SIS had not been driven by use of an evidence-based tool. She thought that if shock incarceration were to be a possibility for SIS, its use should be predicated on use of an LSIR or similar tool to determine the risk level for each individual.

Commissioner Claman said that in his experience there are times when the ability to impose shock incarceration might be the only reason a judge would be willing to impose an SIS. He was uncomfortable taking that tool away from the judiciary and he stressed the importance of an independent judiciary.

Judge Stephens asked to clarify whether the Commission was talking about imposing shock incarceration in cases where incarceration is not available. John Skidmore said no, the court can't impose jail time for an offense where jail time not possible. Commissioner Steiner agreed, saying the

Commission was only debating whether it can be used in suspending a sentence where jail time is a possibility.

The motion was restated: Commissioner Steiner's motion was to have the Commission state that it does not support shock incarceration for SIS. Commissioner Jessee called for a roll call vote. Commissioner Steiner voted yes. Commissioners Rhoades, Stephens, Jessee, Stanfill, Bryner, Lindemuth, and Deputy Comer all voted no, and the motion failed.

Judge Rhoades moved to recommend that shock incarceration be imposed in an SIS only where an evidence-based tool has recommended incarceration. Judge Stephens seconded the motion and asked whether the proposal was to use the pretrial risk assessment or something more substantial. Judge Rhoades said it would be more substantial, like a PSR.

Susanne DiPietro asked whether the motion might be tabled so staff could do some research on the issue. Commissioner Stanfill suggested that staff also look into whether the Pretrial Services Unit could take this task on. Judge Rhoades said she would like something more like an LSIR. Ms. DiPietro suggested that staff can take a look at this to work out the logistical concerns. Commissioner Claman said that he would appreciate research into available resources and how such a tool might impact plea negotiations.

[At this point Commissioner Williams joined the meeting.]

c. Whether SEJ and SIS should be aligned

Nancy Meade, General Counsel to the court system, explained to the Commission that the SIS statute has a list of excluded offenses for which an SIS may not be imposed. The SEJ statute has a similar list which mirrors the list in the SIS statute. But there are other exclusions found in the statutes for the offenses themselves (e.g. DUI/Refusal, commercial DUI/Refusal). These exclusions bar the use of SIS for the given offense, but are silent on SEJ. She thought the statutes should be clarified; the judges had been asking how to interpret this.

Commissioner Steiner said that his recollection of the discussion regarding the SEJ recommendation was that the Commission had decided to leave the question of exclusions up to the legislature. He didn't want to take action without looking into what was discussed. Judge Rhoades said she remembered it completely differently—her understanding was that the two would be exactly the same.

The Commission agreed to get more information on what the original intent was.

4. Reinvestment Update

a. CDVSA- Violence Prevention and Victims' Services

Jayne Andreen from the Council on Domestic Violence and Sexual Assault (CDVSA) spoke to the Commission about the Violence Prevention and Victims' Services grants.

She began with an overview of domestic violence and sexual assault prevention efforts in Alaska. Over the last 10 years, Alaska, like most other states, has adopted a public health framework to approach these problems. Their programs work on three levels. The primary level aims to prevent violence, the secondary level intervenes when violence occurs, and the tertiary finds long-term responses to the lasting consequences of violence. Historically CDVSA's focus has been on the secondary and tertiary level. Since 2009, they have been looking more at the primary level—this is where the recidivism reduction funds were focused. A big part of the effort has been to engage local coalitions.

The bulk of the reinvestment money has gone toward primary prevention. Programs include:

- The COMPASS project - promoting male and youth leadership and mentorship;
- Stand Up Speak Up - a program for kids to talk about healthy relationships;
- Talk Now Talk Often – similar to Stand Up Speak Up but geared towards adults;
- Coaching Boys to Men;
- The Green Dot, a nationally recognized bystander intervention program;
- Prevention summits, held every two years – they will hold one next week where participants can learn about coalition building and then apply for mini-grants;
- Community Based Primary Prevention Grants (CBPPP)- funding for a full time staff person in the community, as well as funding to prepare for CBPPP.

The Council also relies on research and evaluation projects, which are critical to know whether things are working. UAA has conducted a victimization surveys every year since 2010. In 2010 and 2015, the surveys were statewide; the intervening surveys were regional. Between 2010 and 2015, victimization rates decreased by 31%. Ms. Andreen reminded the group that CDVSA's primary prevention efforts started in 2009. It was hard to say for certain whether there was any causative effect, but she thought some of the decrease could be attributed to CDVSA's efforts.

Next year's reinvestment funding was slated to be \$2 million in the original SB 91 fiscal note. That money is now in the Governor's budget. CDVSA will use the funds to expand existing programs and continue to support The Alaska Safe Children Act.

Ms. Andreen concluded by saying that she was not sure that any other state was doing as much comprehensive programming and getting these results in the area of violence prevention.

Commissioner Jessee opened the floor up for questions. Ms. DiPietro noted that the initially the funds for the UAA victimization survey must have come from another source besides reinvestment before SB 91 was implemented. Would CDVSA be using reinvestment money to continue doing the surveys? Ms. Andreen explained that the funds that had previously been used for the surveys were no longer available-- they came from the Choose Respect program. That program was in danger of being cut along with other primary prevention programs, but SB 91 saved them.

Commissioner Jessee said his understanding was that through CDVSA's efforts, incidents of victimization are being reported at higher rates (because victims are more comfortable coming

forward), meaning the reduction in victimization was likely even more significant- did the CDVSA have any data on that? Ms. Andreen was not aware of any study comparing the victimization survey with Uniform Crime Reports. She said it was also important to note the low conviction rate for crimes of domestic violence and sex assault.

b. DHSS- Reentry Coalition Grants

Alysa Wooden from DHSS next addressed the Commission regarding the development, implementation, and assessment of programming funded by grants to the reentry coalitions, also part of the SB 91 reinvestment package.

Ms. Wooden said that DHSS has been working with institutional and community POs to streamline pre- and post-release practices. The reentry grants have enabled existing coalitions to hire case managers, and enabled the expansion of coalitions in Kenai and Nome.

Ms. Wooden explained that the new reentry case managers will have about 30-40 clients who are reentering citizens. The case managers will frontload short term services, focusing first on connecting the client to services and support systems and then on helping the client achieve self-sufficiency. The case manager will start to work with the client prerelease.

Ms. Wooden further explained that the target population for case management services would be offenders who have served over 30 days and are within 90 days of release from a correctional facility. Priority will be given to medium to high-risk felony offenders and high risk misdemeanants. Case managers will also use the risk-needs-responsivity principle and will collect and monitor program data.

Judge Stephens asked whether other communities aside from the grantees had been considered for the reentry grants. Ms. Wooden explained that the grants were targeted at a wider range of communities; those awarded grants were those that responded to the RFP. Nome is newest community to start building a reentry coalition. Judge Stephens asked whether communities come to DHSS or DHSS comes to them? Ms. Wooden replied that the RFPs were sent out via public notice and DHSS also did some outreach to communities that would be suitable. They are still working with DOC to get the word out to those communities. Ms. DiPietro added that the grants were out there specifically for certain communities and some communities didn't apply.

Judge Stephens asked who would respond to the RFPs. Ms. Wooden replied that typically community providers who do reentry work respond. Judge Stephens noted that Lemon Creek is the DOC hub for Southeast Alaska, but returning offenders might return to other communities, are those communities part of the program? Ms. Wooden stated the coalition in Juneau is reaching out to other communities in the area. Morgen Jaco, Reentry Coordinator at DOC, added that DOC is also working to identify single points of contact in each institution to coordinate reentry to dispersed communities. This is something they will keep working on.

Commissioner Williams asked for clarification: there were some communities who didn't respond to the RFP? Ms. Wooden replied that there were RFPs targeted at Ketchikan, Bethel, and Dillingham, but those communities didn't respond. Ms. Jaco said there was interest in Bethel and Dillingham but they didn't have capacity to apply in time. Commissioner Williams asked why that was. Ms. DiPietro responded that there has to be an agency willing to apply— Commissioner Stanfill was able to find someone in Fairbanks. Commissioner Stanfill said that it was a lot of work to find someone to step up

and take this on. Communities have been struggling with organization— without key people to step in, it's hard to get something like this going, and the RFP had a short time frame.

Commissioner Williams wondered if anything can be inferred anything from a community not applying. Maybe the RFP was not the right model for these communities? He was speaking to people from AFN about this the other day. There may be a lesson in there for dealing with communities that operate on a smaller scale, with fewer resources.

Judge Stephens was worried that no one took a look at the RFP in Ketchikan. He will contact likely candidates to find out.

Ms. Wooden said that Commissioner Williams made a good point—this was definitely something they were looking at. Looking at the successful RFP in Nome might be instructive— they are also a small community, and they will look at what's successful there to replicate it in other communities.

Steve Williams from the Mental Health Trust said he agreed with flexibility in the granting process and noted that flexibility has been frustrating for coalitions that are currently operating—it works for local organizations, but the institutions have set parameters that are perceived as barriers. Ms. Jaco is looking at ways DOC can be more flexible. They are also getting feedback from coordinators. This work is new to Alaska and there is no roadmap. He would like to talk with Commissioner Williams about the AFN feedback. In terms of certain communities not applying, he agreed with what Commissioner Stanfill said, that it was an issue of capacity and having the right people ready at the right time. Some communities were just not ready. He also agreed that the process required a short turn-around. He will work along with Ms. Wood and Ms. Jaco to ensure that these conversations continue to happen. They are trying to meet each community where they are at.

Commissioner Stanfill noted one issue with the grant that they particularly struggled with in Fairbanks was that there was a 25% match requirement. This poses a risk for the grantees, and she was not sure where that requirement came from. This was a significant hurdle in Fairbanks— her board was reluctant to move forward with the grant for that reason. Ms. Wooden explained that the match requirement was something DHSS does for every grant. Commissioner Williams said that was a road block, and something that needs to be addressed. There is growing discontent from AFN and smaller communities about this process. Ms. DiPietro asked whether there was some role the Commission could play in terms of encouraging communication between people who are structuring grants and these communities. Steve Williams said he was not sure what that would be, but it was important to hear from the communities.

Diane Casto from DHSS explained that statutes constrict how DHSS can offer grants; the requirement for a match is in statute. For prevention grants, they have gotten a waiver to get the match down to 10%. She believed the reasons for having that was the legislature thought with some contribution from the communities they will have more buy-in. The match doesn't have to be a cash match; it can be federal grants or in kind, including staff time. This has always been an issue with smaller communities. There are ways DHSS can work within the statute to work with communities. Other projects have worked in very small communities; it's a matter of developing relationships. Timing and readiness are always concerns. The intent with the reentry grants is to get a reentry coalition in every community where there is a correctional facility. Reentering citizens leaving prison in a hub and returning to smaller communities is also an issue.

Ms. DiPietro mentioned that she had been talking to community members in Dillingham, and they had the same issue of not being ready and already having too much on their plate. Perhaps there could be a different approach for secondary reentry communities? Dillingham might create a model for a secondary reentry coalition. Ms. Casto agreed. They know where people are going back to when they leave prison—these are ideas that can be developed. There are also DHSS prevention grants in these smaller communities—there could be an add-on to those grantees. Commissioner Stanfill noted that those grants still require a 10% match.

Ms. Jaco discussed the efforts being made at DOC to meet the SB 91 mandates on reentry planning. Reentry services are voluntary. They have been making a big push internally to start working with outside community partners, which is a big ideological shift for DOC employees. The system ideally will work as follows: an inmate's internal PO will identify a single point of contact for reentry, and refer the inmate to that person. The point of contact for reentry will send the inmate's case management plan to the reentry case manager. That person will do inreach with the inmate 30-45 days prior to release. The long-term goal is to have both the field probation officer and the case manager talk to the offender pre-release. They want to make that connection early—it helps with offender anxiety and eases the transition. They will meet again post-release, when the field PO will be in communication with the case manager and vice versa.

Ms. Wooden commended DOC staff for all their hard work during this transition.

Ms. Jaco said they were still working on how to have inreach in communities where there are no case managers—this is a work in progress, but it is the goal. There are service providers out there.

Steve Williams reminded the Commission that the case manager funded by the reentry grant is not going to be providing case management services to the whole population. The demand for case management services will be greater than capacity. But he thought it was a good idea to start small and work out the tweaks.

Commissioner Stanfill noted that the funds for the reentry grants are supposed to double in the coming fiscal year, would the services be expanding? Ms. Casto said that was correct. DHSS's hope is to expand services.

c. DHSS- Treatment Grants

Ms. Casto next discussed the Substance Abuse Treatment Expansion grants. She noted that the funding for these grants was technically not part of SB 91 reinvestment. The money was result of a hearing in House Finance where Rep. Neuman found extra money in the budget. In the end the fund was \$6 million, to be distributed over 3 years for expansion of substance abuse treatment facilities. DHSS made three awards in late January. The RFP was for 3 categories: sobering centers (which do not provide treatment, but a way to sober up overnight), withdrawal management (i.e. detox, which ideally is the first step toward treatment), and residential treatment. DHSS made an award for each category. In Fairbanks, The Tanana Chiefs Conference will operate a 12-bed sobering center. In Kenai/Soldotna, the Central Peninsula General Hospital will operate a detox center. In the Mat-Su, Set Free will have a 16-bed residential treatment center, prioritizing women who are pregnant or with children. Services will begin by June 30 of this year. Funding will continue for the next two years.

Commissioner Stanfill asked whether the sobering center was only for people sobering up from alcohol use? Ms. Casto replied that sobering centers are traditionally for alcohol sobering; she was not sure about this grant but thought it was broader. The scope of each program depends on the grantee and community dialogue. Ms. DiPietro asked whether the detox facility would also be available for people withdrawing from drug use? Ms. Casto said yes in theory, but the form of withdrawal requires specific expertise in staffing, and she was not sure what decisions have been made in that regard.

Judge Rhoades asked whether the detox facility or sobering center would link users to treatment for continuity of care. Ms. Casto noted that that issue is probably part of the reason Alaska has so few detox centers. Treatment on demand is rare and hard to come by. DHSS is working to alleviate this problem. Going into treatment is a part of detox—patients are required to move into treatment as soon as possible. With sobering centers, moving into treatment is ideal, but not required. Judge Rhoades confirmed with Ms. Casto that Set Free would only serve Mat-Su.

Commissioner Stanfill asked whether DHSS has information on treatment centers currently operating in Alaska. Ms. Casto said that DHSS has a lot of information and maps on this; she will get that information to the Commission.

Ms. Casto pointed out, on a related note, that \$6 million doesn't go that far. There are other programs in the works to expand capacity. The Governor's recent declaration of an opioid disaster noted that there were only two facilities in the state for opioid treatment. Alaska has more work to do here. DHSS recently received two federal opioid grants. One is for Medicaid assisted treatment with Vivitrol. DBH and DPH also have a Naloxone distribution grant- these are to distribute kits that will prevent death from overdose. DHSS also just applied for another opioid treatment grant to expand treatment services— grants are going to every state, so Alaska is likely to get one. DBH is also working with DOC to make sure there is a warm handoff from prison to reentry (i.e. direct transfer of responsibility for the reentering citizen from the institutional P.O. to the field P.O.).

DHSS has also been doing a lot of work to implement SB 74, the Medicaid reform bill, which is aimed filling in gaps in behavioral health systems in Alaska. They are going to apply for an 11-15 Medicaid health waiver, which is a federal waiver for certain Medicaid requirements that will broaden eligibility for services. There is a 5-year demonstration period associated with this. DHSS employees are working with their federal counterparts on this application which will be submitted on July 31. Justice-involved individuals are a priority population for this waiver and DHSS is using SB 91 to demonstrate Alaska's efforts and needs to the federal government.

She also wanted to highlight that people leaving prison now are able to get services because of the Medicaid expansion. If that expansion is repealed, DHSS will need to find other options. Medicaid expansion is critical.

Ms. DiPietro reminded the Commission that its task is to calculate any savings from SB 91 and recommend reinvestment. She thought the Commission would like to know from DBH and DHSS: if there is money available, what they would recommend the focus be. Ms. Casto said she was not prepared to answer the question then, but it touched on discussions that they are having a lot at DHSS. Part of it will also depend on what happens to Medicaid.

Judge Rhoades thought this was a big piece of the picture- behavioral health and Medicaid expansion is the place where reinvestment should focus. In the therapeutic courts they are having a hard time to

get providers into DOC to provide an assessment for substance abuse treatment. There needs to be certain continuity for the prison population. There also a need for psychiatric providers to go in as well before a prisoner is released. She urged DBH to prioritize services for people most likely to go back to jail.

d. DOC- Substance Abuse Treatment Program and CRCs

Commissioner Williams said that Judge Rhoades' comment made a good segue—she was exactly right, and he couldn't agree more. In terms of the reinvestment money for DOC facility treatment and CRCs, he has a plan in the works for the halfway houses (CRCs); DOC is on track to spend that money.

Treatment is trickier. He has been looking at the Governor's declaration. Prison usage has been driven by opioids—he has been thinking about how to intervene. There are two approaches to medically assisted treatment. One is the maintenance—using methadone or suboxone—he understood that those treatments work, but there's no real end game. The other approach is abstinence—using Vivitrol. He has been convinced by other states' approaches regarding the latter and has landed firmly in this camp. He is going to start using the Vivitrol shot inside the prison in the next couple of weeks. DOC has to be smart about using money. He is switching all gears to start offering Vivitrol (and detox) as well as case management behind the prison walls.

The other problem with methadone and suboxone is that they also create a criminal enterprise within correctional facilities—these drugs are being smuggled into prison. (It is also likely a criminal enterprise on the outside.) This leads to population control problems within the facility. If DOC supports this treatment, it will give rise to more providers and increase likelihood of creating or expanding a black market.

Pennsylvania and Ohio have done similar programs. He has to prioritize the opioid population, because it is a big driver of recidivism and theft. He was at Hiland a couple of weeks ago and asked a group of women why they were there; virtually all of them were there because they were addicted to drugs or alcohol.

DOC also needs to work on warm handoffs— where reentering citizens can get their next Vivitrol shot. He was not convinced that across the board handoffs to residential treatment would work. Those beds are expensive and not effective for everyone. They need to rethink what treatment is.

On related note, DOC also needs to do something about what to do with treatment in small communities. People who need to do treatment as a condition of probation but are from a village have to stay away from home. There is a need to look at expectations in that regard.

Commissioner Stanfill said she understood that Akeela's contract had been canceled. Was there a plan for a new contract? Commissioner Williams said there was. Akeela needed more money for an already-negotiated contract, so they agreed to dissolve the contract. He is looking at smaller contracts, and at trying to build back up the RSAT programs.

5. Native Reentry – Morgen Jaco from DOC will discuss Native reentry issues.

Morgen Jaco next addressed problems in reentry for Native persons leaving prison. She had outlined some of the problems on the handout provided to the Commissioners. She was looking at solutions-including telemed options for people in remote villages. She wanted to find ways to use resources that

are out there, such as VPSOs and behavioral health aides. There is a need for culturally responsive resources and treatment, such as Healing circles and sentencing circles. What's happening now is not working. There is also a need to look at trauma-informed care. These concerns are coming from local coalitions—these needs were expressed by many individuals.

Nicole Borrromeo from AFN addressed the Commission, and reminded the group that AFN is the largest statewide Native organization. The Native community has been discussing forming better partnerships— to try to bring everyone together under one umbrella. Case management would help solve a lot of issues, particularly in providing follow-up services. There needs to be ways to plug offenders back into the tribe and their community. Legal services and ANJC are also interested in working on this problem.

Ms. Jaco suggested meeting to talk about ways to get these voices to the Commission. Ms. Borrromeo was interested in working with her and others on ways to go forward.

6. Public Comment

Commissioner Jessee opened the floor for public comment.

Ms. Dunham reminded the Commissioners that she had provided them with a packet of comments that had been submitted in advance:

- A resolution from the Lupiak Elders Court demanding that all Native prisoners be returned to their communities.
- A letter from Community United for Safety and Protection (CUSP) asking to amend the sex trafficking laws to enable sex workers to work together for safety without fear of being charged with sex trafficking.
- A letter from an anonymous sex worker asking the Commission to support CUSP's proposal.
- A report from CUSP in support of HB 112, which would make it a crime for a law enforcement officer to engage in sexual penetration with someone who is under a criminal investigation as a victim, witness, or defendant.
- A letter from Steven Stoneking proposing statutes that would replace the current good time system with "earned good conduct time" and "earned time," with draft language for these statutes.
- A letter from Steven Stoneking proposing an expansion of eligibility for geriatric parole.
- A letter from Angela Hall on behalf of Supporting Our Loved Ones Group (SOLO) asking for early parole for youthful offenders serving lengthy sentences.

Ms. Dunham also read an email from Ms. Hall, who wanted to present a public comment but had to work: "I would like the Commission to consider creating a future Workgroup to discuss Juveniles waived to the Adult system who have lengthy de-facto life sentences in the State of Alaska. More

particularly, consideration of a recommendation to the Legislature that Juveniles that fall under this category be given an opportunity for parole review after having served 15/20 years of their sentence. ”

Terra Burns from CUSP also gave public comment in person regarding the Commission’s recommendations for SB 54 (the bill containing fixes to SB 91 discussed at previous meetings). She noted that contrary to the Commission’s recommendation, the definition of compensation was not in the bill. Also, one of the recommendations from the Commission mentions a “sex trafficking enterprise” but that language is not found in statute. “Prostitution enterprise” is included. She asked the Commission to reverse its recommendation on sex trafficking and to recommend leaving sections 39 and 40 of SB 91 alone. Her understanding was that the recommendation was based on information that people were using those sections to get away with certain conduct, but that conduct is already penalized in statute; the Commission’s recommendation was also a departure from the evidence base.

7. Whether the Commission Should Comment on Pending Legislation

Commissioner Stanfill asked how the Commission wanted to approach being asked to comment on bills that are currently in the works, for example HB 112. People have been getting in touch with her about this and she wanted to know how to respond—should the Commission take a position as a group? Ms. DiPietro remarked that this will likely keep coming up with more frequency. Some things can be referred to work groups. Commissioners will have different priorities for their jobs as well. She didn’t want the Commission to get sidetracked by other projects.

Commissioner Steiner pointed out that it was difficult to weigh in on bills as they come in. They are often changed and the Commission meets only so often—the Commission would end up commenting on a version of a bill that no longer exists. The Commission can look at the broader issues raised by proposed legislation, but as a practical matter is probably not going to have opportunity to weigh in on the bill.

Judge Rhoades said it also poses some challenges for members of the judiciary to comment on legislation. She is comfortable taking a look at broader issues but not individual bills.

Commissioner Claman said he hadn’t looked at SB64 in some time, but didn’t think that commenting on legislation was in the Commission’s mandate.

Commissioner Jessee echoed that bills can change rapidly, and it would be hard to put the Commission’s imprimatur on a bill that will then evolve.

The Commission decided not to comment on pending legislation as a rule.

8. Future Meeting Dates & Tasks

The next meeting date was tentatively set for April 28 in the afternoon, pending confirmation the following week. The meeting for June would be arranged by Doodle poll.

Judge Stephens asked to put the issue raised by Ms. Burns on the next agenda. Commissioner Steiner also had agenda items raised by today's discussion. Ms. DiPietro encouraged the Commissioners to email Ms. Dunham with any proposed legislation.

DRAFT

Alaska Criminal Justice Commission

Meeting Summary

Friday, January 27, 2017

9:30 AM – 12:30 PM

Audio-teleconference

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

Commissioners absent: Stephanie Rhoades

Participants: Gregg Olson, Butch and Cindy Moore, Nancy Meade, Jeff Jessee, John Skidmore, Jordan Schilling, Denali Daniels, Kaci Schroeder, Fred Dyson, Tracy Wollenberg, Steve Williams, Natasha McClanahan, Ed Mercer, Jeff Edwards, Kara Nelson, Lora Reinbold, Seneca Theno, Morgen Jaco, Janet McCabe, Eric Glatt, Kathy Hansen, Brad Myrstol, Mike Mathews, Richard Hill, Kaci Schroeder, Lacy Wilcox

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

Introductions

The meeting was called to order at 9:45 a.m.

Chair Greg Razo had Commissioners, staff, and those listening on the phone introduce themselves. (See list of participants above.) He noted that this was a public meeting, and that the purpose of the meeting was to continue the discussion begun at last Friday's meeting in Juneau.

Approval of Agenda

Chair Razo called for approval of the meeting's agenda. Commissioner Steiner moved to approve the agenda and Commissioner Lindemuth seconded the motion. The motion passed unanimously.

Approval of Summary from Last Meeting

Chair Razo called for approval of the summary from the previous Commission meeting. Commissioner Lindemuth so moved and Commissioner Sell seconded the motion. The motion passed unanimously.

Substantive Fixes to SB 91

The Commission began with a general discussion on recommending changes to SB 91. Commissioner Jessee said that after the previous meeting, he had given a lot of thought to the role of the Commission, and the tension between following the science and political pressure, plus the need for clearing up misunderstandings. He wondered whether it would be useful to have a

broader discussion about the role of the Commission. Should the Commission be sticking to the science? Or go forward with recommendations that aren't backed by science?

Chair Razo said he thought it was appropriate to discuss this and read the proposed language staff had drafted to send to the legislature to explain the recommendations:

The following recommendations from the Alaska Criminal Justice Commission are the result of discussions at the Commission's plenary meetings on January 19 and 27, 2017. At these meetings, the Commission heard the concerns of Commissioners, interested citizens, and stakeholders regarding certain provisions of the criminal justice reform bill, SB 91, passed in 2016. These concerns prompted the Commission to make the recommendations below.

When the Commission was created in 2014, the Legislature directed the Commission to make recommendations based on, among other things:

- The need to rehabilitate the offender;*
- The sufficiency of state resources to administer the criminal justice system;*
- The effect of state laws and practices on the rate of recidivism; and*
- Peer-reviewed and data-driven research.¹*

Since the Commission began operation, it agreed to forward only recommendations that were backed by data and were evidence-based. In 2015, the legislature further directed the Commission to forward recommendations that would either (1) avert all future prison growth, (2) avert all future prison growth and reduce the current prison population by 15%, or (3) avert all future prison growth and reduce the current prison population by 25%.

The following recommendations, if enacted, will change some of the provisions in SB 91. The Commission has been tasked with monitoring the efficacy of SB 91 using data collected from various state agencies. Because SB 91 was enacted in July of 2016, and parts of the bill won't be in effect until January 2018, the Commission does not yet have enough data to assess whether SB 91 is achieving its intended outcomes. These recommendations are not based on data-driven research, and are not based on empirical evidence. Nor are they expected to reduce the prison population or reduce the criminal justice system's usage of state resources.

These recommendations are, however, based on feedback and anecdotal evidence from members of law enforcement, prosecutors, and the community. They reflect other factors the Commission has been directed to consider in making recommendations, including:

- The need to confine offenders to prevent harm to the public;*
- The effect of sentencing in deterring offenders; and*

¹ See AS 44.19.646. This statute was enacted in 2014 as part of SB 64.

- *The need to express community condemnation of crime.*²

The Commission recognizes that the factors it has been instructed to consider in formulating its recommendations often work in tension. Not all of the recommendations below received unanimous support from the Commission. If a recommendation did not receive unanimous support from the Commission, the recommendation will include an explanation of the concerns of the Commissioners who did not support that recommendation.

Chair Razo said that Commissioner Jessee's comments were well-taken. These proposals were not supported by data, but they have the support of many people with years of experience in criminal justice. He thought the Commission was obligated to consider all the recommendations before it. At the end of the day there must be fidelity in what the Commission does. In situations where it is not possible to gain consensus on a given recommendation, the Commission will report that, so that the legislators will know exactly what went into the consideration of the recommendation. The Commission is still working within the very broad mandate in SB 64. If the new recommendations are not supported by evidence, then the Commission will also report that, or report the form of the evidence. That way the Commission won't discount the anecdotal evidence from state agencies and victims across Alaska.

Commissioner Steiner said he had no objection to proceeding that way, and no objection to basing recommendations on the broader criteria in the Commission's mandate. But he wanted to note the Commission didn't do that for the VCOR recommendation. [At the previous meeting, the Commission voted to return violations of conditions of release (VCOR) to a criminal offense rather than a noncriminal violation.] The VCOR recommendation was passed just to correct an administrative problem; the reason for the recommendation was outside the bounds of the statutory criteria.

Commissioner Stanfill asked to clarify: did the Commission's original mandate include just those three criteria listed at the top? Chair Razo noted that it did not; there was a list in SB 64 which Commissioner Stanfill then examined. Chair Razo explained that the Commission made the rule to operate by consensus and to forward only data-driven recommendations itself. Commissioner Lindemuth said the Commission can also change the draft language to accompany the recommendations if need be.

Chair Razo said he thought the draft contained Commissioner Jessee's concerns. There were no objections to proceeding to discussing the proposals.

Recidivist Theft

Commissioner Lindemuth explained that prosecutors, especially municipal prosecutors, were seeing problems with repeat offenders. They were hearing anecdotal evidence from small liquor stores to larger ones. As explained at the last meeting, Juneau prosecutors say they have individuals with 8-11 cases pending. The Department of Law considered proposing heavier consequences for theft generally, but ultimately decided to propose re-enacting a recidivist theft provision. The recidivist theft statute, former AS 11.46.140(a)(3) [which provided that a

² *Id.*

defendant's third theft of under \$250 in value could be prosecuted as an A misdemeanor], was abolished in SB 91. Law would like to reinstate it.

Commissioner Lindemuth invited John Skidmore to explain further. Mr. Skidmore said that the overall intent of SB 91 was to reduce reliance on incarceration. This proposal was in line with that intent. The recidivist provision would make a turn a third Theft 4, normally a Class B misdemeanor, into a Class A misdemeanor—which would carry a presumptive term of 0-30 days post-SB 91. It would apply to anyone with two previous convictions in the previous five years; at that point efforts at reducing recidivism clearly would not have worked for such offenders.

Commissioner Sell said that what she was hearing and what JPD was seeing was that the low-level theft offenders are failing to appear for their court dates, but judges won't detain defendants charged with a crime not punishable by imprisonment. The question is how do we get people to show up to court?

Mr. Skidmore said that Law's proposal wouldn't necessarily help with that, as it's based on convictions. To get someone to appear, prosecutors would rely on the usual process. Commissioner Sell asked whether judges would issue a warrant to get someone to appear in these circumstances. Mr. Skidmore said he was not sure, and was hesitant to walk through a hypothetical.

Commissioner Jessee asked whether there was any evidence that this provision would be effective at stopping theft. Was there any reason to believe chronic thieves will be deterred? Susanne DiPietro said that previous Judicial Council recidivism studies have shown that these crimes have always had a very high recidivism rate. The Council has no evidence to indicate that this change would reduce recidivism; it's also what Alaska was doing before SB 91, when the Commission documented high recidivism rates. There is also no evidence to indicate that jail time is generally effective to reduce recidivism.

Commissioner Lindemuth said that there was anecdotal evidence that the change to the Theft 4 statutes enacted by SB 91 was not working; the Commission heard from the Juneau police at its last meeting that the rate has gone up this past year. Jail time may be a sufficient deterrent. Ms. DiPietro said that is plausible theory, though crime rates have been rising for the past 2-3 years, and causation is hard to attribute. Certainly there could be deterrence from jail time.

Commissioner Steiner said that there has been a lot of mention of the idea that you can't go to jail for Theft 4, but that's incorrect—the first two are no jail, the 3rd carries a suspended sentence, and the 4th carries actual jail time. This proposal would be a significant rollback in light of the evidence that jail doesn't work. He suggested just having active (not suspended) jail time for the 3rd offense.

Commissioner Claman said that it makes more sense to have a greater range of jail time for a 3rd or 4th offense but to keep the offense level at a B misdemeanor. He was troubled by increasing the severity level of the offense. He would rather change the consequence for repeat offenders than raise the level of offense.

Commissioner Stanfill said that she was reading up on low-level theft offenders and remarked that most of the products stolen at this level are alcohol or hygiene products. She kept thinking about

the reinvestment part of SB 91. In Fairbanks, jail is not a deterrent—it is a winter home. It happens so often that offenders have developed a method of getting into jail-- it is a way of working the system. She wanted to get this population out of jail and find solutions to address the underlying causes of their behavior. She was not sure jail was the solution.

Commissioner Sell said that like Fairbanks, Juneau also has this problem. There is at least one person she knows by name, and the law has been training him to use jail as a home. She thought that SB 91 may also inadvertently have created a path for addicts to increase theft to pay for drugs. Rather than one larger burglary, they are committing a series of smaller shoplifting crimes. It is important to always to look at what we're training people to do. Some addicts actually fear going to jail because they fear going through withdrawal.

Commissioner Monegan noted that the discussion had been focusing on the offender, but Public Safety is encountering complaints from shop owners who think nothing is being done. There have to be some consequences. Ultimately there is a need to do something radically different with these offenders, and that's something the Commission should look into, but there should be something done in the interim –otherwise people will take law into their own hands.

Commissioner Lindemuth said that Law is not committed to a particular number [in terms of jail days], but rather the idea of ratcheting up the consequences. Their proposal seemed like the simplest solution.

Commissioner Steiner moved to change the penalty for a third theft 4 from 5 days suspended to 0-5 days in jail. Commissioner Stanfill seconded the motion.

Commissioner Claman asked Commissioner Steiner why he did not just propose the usual 0-10 for a B misdemeanor. Commissioner Steiner said he was just changing the existing provision for suspended time to active time. He was not opposed to a term of 0-10 days, but reminded the Commission that any additional 24 hours in jail increases an offender's risk of recidivism.

Commissioner Lindemuth said that Law would like 0-10 at a minimum, so that judges have the discretion to ratchet up to 10 if need be. She proposed amending the motion to 0-10 days. This amendment was agreeable to Commissioners Steiner and Stanfill, and the discussion proceed on the motion so amended.

Judge Stephens said he didn't view Law's original proposal as a sea change from the intent behind SB 91. He agreed with Commissioner Claman—the 3rd or 4th Theft 4 should still be a B misdemeanor; after that, it should be a higher-level crime. At that point the offender is a recidivist, and consideration of rehabilitation would be lower with respect to the other *Chaney* factors. Judge Stephens observed that SB 91 had taken away some of the sticks with which to encourage offenders to rehabilitate. A longer term of probation will get them into treatment.

[At this point Commissioner Claman had to leave.]

Chair Razo said he was still troubled by the fact that it's impossible to correlate an increasing crime rate to SB 91. He has been the victim of theft twice in the last year, but he couldn't logically say that SB 91 did that. When he was practicing, he prosecuted and defended the same people over and over for these kinds of thefts— jail time just didn't seem to be an effective punishment for

them. That said, there is a significant call from the community and law enforcement to do something about this.

Commissioner Steiner clarified that his motion was to make the penalty for the 3rd Theft 4 (and beyond) 0-10 days in jail. Commissioner Monegan said he objected to this—he liked Law's proposal to make it a higher misdemeanor.

Chair Razo called for vote on the motion as stated by Commissioner Steiner. Commissioner Monegan and Judge Stephens both voted no; all other voting Commissioners present voted yes. Judge Stephens clarified for the record that he voted no because he agreed with Commissioner Monegan – he thought the proposal didn't go far enough.

Commissioner Stanfill said that she would like the Commission to try to do something with this population—if this population is supported, and put in housing, they will succeed. She cautioned the commission not to go backwards and urged the Commission to focus on the reinvestment side of things.

Chair Razo said he agreed with this— misdemeanants have the least amount of available services.

Commissioner Jessee said that he would echo that. He was concerned the message really wasn't getting out that these people aren't getting help. The problem is not that they (the offenders) need to get the message but we (the public) need to get the message.

Municipal Violations

Commissioner Razo asked Jordan Shilling, staff to Sen. Coghill, to explain the proposal regarding municipal violations. Mr. Shilling asked Nancy Meade, general counsel for the court system, to explain as she was more well-versed in the proposal. He noted that having this issue addressed was a priority of the Municipality of Anchorage.

Ms. Meade explained that section 113 of the bill says that if a municipality has an offense in municipal code similar to an offense in state statute, the municipality can't impose a greater punishment for violation of the code provision than the state may impose for a violation of the state law. It was her understanding that the reasoning behind this provision was that this was part of the effort to decrease the jail population, and it didn't make sense to let the municipalities counteract that effort. However, the language of bill refers to punishment, not just jail time, so this provision includes fines. The municipalities had to go through all of their ordinances and lower their fines. Also, this provision only refers to Titles 11 and 28, and there are a lot of offenses included in regulation that are not included in these titles. She noted that this provision was the subject of litigation pending right now.

Mr. Shilling added that Seneca Theno, the municipal prosecutor for Anchorage, was on the line and could explain the difficulty municipalities were having. Chair Razo called on Ms. Theno to explain. Ms. Theno noted that Amy Mead, municipal prosecutor for Juneau, explained this issue well at the last meeting. Almost immediately after SB 91, the Municipality was seeing reduced fines for municipal speeding. The municipality had also just revised its fines upward in January 2016, and instituting the state fines, which are relatively much lower, was a drastic change. Modifying this provision in SB 91 would be incredibly beneficial to the Municipality.

[At this point Commissioner Coghill joined the meeting.]

Ms. Mead also noted that Juneau would also like a clarification of what this provision was meant to cover— if it just applies to jail and probation terms, that should be made clear. There is also a question of whether municipalities can require community work service, impound vehicles, or impose other alternative sanctions. Thus far this provision of SB 91 has been interpreted as binding the Municipalities from doing so.

Chair Razo asked if there were any other representatives of municipalities on the line. He called for discussion on this proposal.

Commissioner Steiner asked to clarify the proposal—would it be limited to noncriminal offenses? If so, he was comfortable with the proposal. There was no objection from the Commission to clarifying that the proposal was to amend section 113 of SB 91 so that it does not apply to non-criminal offenses or non-criminal offenses found in regulations.

There was also no objection to the proposal generally and the proposal passed unanimously.

Revision to Sex Trafficking statute

Chair Razo handed the chair to Commissioner Sell temporarily, who asked Mr. Skidmore to explain the proposal regarding sex trafficking. Mr. Skidmore noted that the changes to the sex trafficking law in SB 91 were not prompted by any Commission recommendation. However, because it was in SB 91 and has had unintended consequences, the Department of Law thought it prudent to bring to the Commission's attention. Governor Walker attempted to introduce a fix to this provision in special session last year. The purpose of the provision was to ensure that sex workers who were working in the same place but not exploiting one another would not be charged with sex trafficking. The unintended consequence of the provision is that it allows some people to get away with sex trafficking. For example, someone running a massage parlor who also engages in sex work would not be able to be prosecuted. The Department of Law spoke with Public Defender Agency about this and they agree.

Commissioner Steiner added that the Public Defender Agency agrees with recommendation—with the caveat that the term “compensation” be defined in statute so as to exclude things like rent.

Commissioner Stanfill asked about the letter from CUSP [Community United for Safety and Protection], which that organization had sent to the Commission just prior to the meeting. Their concerns were that things like sharing a hotel room or splitting gas might be included in the old provision—would providing for a definition of compensation help? Commissioner Steiner said it would—technically the word compensation could be interpreted as excluding those things anyway without having a statutory definition, but it would be best to be as clear as possible.

Commissioner Razo called for objections to clarifying the definition of compensation. There was no objection. There was also no objection to proposal, which was:

Repeal sections 39 and 40 of SB 91; amend statutes as follows:

- i. AS 11.66.130(a): After “a person” insert “receiving compensation for prostitution services rendered by another”*

- ii. *AS 11.66.130(a)(3): Delete “as other than a prostitute receiving compensation for personally rendered prostitution services,”*
- iii. *AS 11.66.135(a): After “a person” insert “receiving compensation for prostitution services rendered by another” (Coghill)*
- iv. *Explanation same as that provided by Law—Law agrees this proposal from Sen. Coghill’s office would address their concerns.*

Pre-trial Services Officers- release recommendations

Chair Razo called for discussion on the issue of pretrial release recommendations. Commissioner Lindemuth asked Mr. Skidmore to explain the Department of Law’s proposal. Mr. Skidmore explained that the mandatory release recommendations for pre-trial services officers did not align with the judge’s discretionary authority to set bail. (He referred to the charts found in the Practitioner’s Guide to SB 91 that set out the differences between the two.) He said that the credibility of the pre-trial services officers might be decreased by being hampered in their recommendations where a judge is not. He thought that the discretion for pre-trial services officers should be aligned with the discretion for judges.

Commissioner Stanfill said that the discrepancy was actually consistent with what the Commission talked about and what she remembered from participating in the pre-trial workgroup. There are situations where OR should be the presumptive release and warrant a mandatory recommendation for release, but the judge could find by clear and convincing evidence that OR is not appropriate. It was a way to get the judge to state on the record why they went outside the recommendation of the pre-trial services officer. She was not sure why this was an issue. It might be premature to think about this since Pre-trial Services hasn’t been rolled out yet. Chair Razo clarified that this difference was intentional.

Commissioner Steiner agreed with Commissioner Stanfill. The intention was to have a statutory recommendation from the pre-trial services officer that a judge could choose to accept. He said judges would be trained on this and will not be confused.

Commissioner Williams agreed that this was intended to be there— he went back and looked at previous meeting summaries. He agreed that pre-trial services officers should be more restricted than judges. He also endorsed the fact that this component of SB 91 hasn’t been rolled out yet; the other proposals addressed provisions that have at least seen the light of day. He thought it was premature to change this, especially since it was intentional. If there is a problem with this once implemented, he will be the first one to bring it to the attention of the Commission.

Commissioner Lindemuth asked Judge Stephens whether he thought this discrepancy would be a problem. Will judges mistrust a pre-trial services recommendation that is mandatory? Judge Stephens said it was hard to say, but just off the cuff, no. He didn’t recall discussing this in the pre-trial workgroup. But the pre-trial recommendations are just that. He trusted that all judges will do what’s necessary under the constitution.

Commissioner Jessee said that this was a hypothetical problem, and he would rather focus on things that are begging for attention now. He would be open to looking at this again if it became a problem down the road.

Commissioner Lindemuth said that Law had put this recommendation in as a technical fix thinking it was an oversight. Given this discussion she withdrew the proposal.

C Felonies

Commissioner Lindemuth said that the public was very concerned about Class C Felonies. She pointed out that C Felonies can include violent offenses. Prosecutors are having trouble encouraging defendants into treatment without more of a threat of jail time, and treatment is what gets at the underlying cause of the offense. The underlying focus of SB 91 was to address these root causes. The proposal from the Dept. of Law is to give judges discretion to impose active jail time if need be; there may be cases that require no jail time. The Dept. Law is flexible on the upper limit of time to impose, but it should be significant— at least 12 months.

Commissioner Razo asked to hear about this from Mr. Skidmore. Mr. Skidmore said that when the Commission recommended revising felony sentencing ranges, it primarily focused on adjusting those ranges back to pre-*Blakely* levels. [In order to align average sentences with those imposed before sentencing ranges were enacted.] This was not the case with C Felonies; currently, C Felonies do not carry jail time without aggravators. The Dept. of Law didn't argue vigorously about this in the first go-round, but in practice, prosecutors are now finding cases where jail time is appropriate and a judge's discretion is needed. He gave some examples of Class C Felonies: Assault 3 involving an offender pointing a gun—the aggravator for use of weapon can't be used in that offense because it is part of the offense; the snowmachiner in the Iditarod who crashed into two mushers received jail time but the jail time received was because of the misdemeanor convictions, not the C felony convictions. There was a case of a man who put a camera in a women's bathroom; this was a C Felony not subject to jail time. Other crimes include Burglary 2, Arson 3 (arson of a vehicle), Criminal Mischief over \$1000, Endangering the welfare of a vulnerable adult, and Promoting contraband.

Commissioner Steiner said that the idea behind a presumptive probationary term was that probation is more difficult than jail, and jail will disrupt an offender's pro-social networks. The Commission has talked a lot about jail not being "the thing." This proposal will result in more felony pleas. Prosecutors can always get jail time by having a defendant plead to a misdemeanor. All that said, there is concern in the community about this provision. But he wanted the Commission to be clear that this is a total rollback in this area. Community condemnation needs to be considered, but that consideration can be satisfied with either a carve-out for violence or a 30-60 day cap. A presumptive term of up to one year is a complete repudiation of the policy behind SB 91 with no evidence to back it up. There are also plenty of aggravators available to allow a judge to impose jail time if necessary.

Commissioner Stanfill said that as a victim advocate, she was aware that victims are of a mindset that jail is what shows that someone is being penalized. As a state, we will have to reexamine our mindset on that. The reason she initially thought this would work is that she observed the PACE program firsthand and saw that supervised probation makes a difference. The participants in PACE started finishing treatment because they had something hanging over their head, so there was something to be said for that. But she wanted to make sure the Commission didn't lose that vision. She didn't want it to be an automatic 30-60 days.

Commissioner Sell said that most people who are offended by SB 91 are offended by this provision. She agreed with supervision in theory. But if your car has been stolen, you don't like to hear that person can't be put in jail. And you can't talk about aggravators at the time of arrest. She thought the Commission hadn't met people's standards for community condemnation. She didn't think there was a choice on whether to change this provision. If there was a hole that would sink the whole ship, it would be this one.

Commissioner Jessee said that his first preference was to look at a carve-out for violent offenses. But the problem is the list Mr. Skidmore read is too long—he was not sure that a carve out was practical. He agreed with Commissioner Steiner, that jail time should be low on the scale. He recalled from previous discussions that the Dept. of Law had been okay with 120 days. A sentence in the 60- to 80-day range would address the concerns of the public but would not totally undermine the intent behind SB 91.

Commissioner Coghill said he agreed with Commissioner Sell's boat analogy. There needs to be some kind of stick to get people into treatment.

Judge Stephens said he supported at least the possibility of jail time. He didn't think this contradicted the overall view that jail time is to be imposed only when necessary, but there are situations when jail time is necessary for C Felonies. He was not sure of what the right amount of time would be, but in some circumstances, it would not need to be a substantial amount. He thought that the judges should be trusted with the discretion to do what is appropriate.

Commissioner Monegan agreed there was a need to incentivize individual change. He didn't want to encourage offenders to flat-time, and liked a 12-month cap, which would be a bit longer than a 9-month treatment program.

To focus the discussion, Commissioner Lindemuth moved to recommend presumptive sentence ranges of 0-12 months for violent C Felonies and 0-6 months for nonviolent. Commissioner Stanfill seconded the motion.

[Commissioner Claman re-joined the meeting at this point.]

Commissioner Claman said that it was his understanding that first-timers don't need a longer treatment program than a 30-90 day program; he suggested the recommendation align the presumptive range to that. One year in prison is a second-time level. In cases where there was excessive violence, an aggravator would apply to increase the sentence.

Commissioner Steiner said that it was a false equivalency that jail time had to equal treatment time. A term of probation would still encourage offenders to complete treatment within the probationary period; the suspended time hanging over their heads while on probation is what makes these offenders complete treatment.

Judge Stephens said he agreed that the suspended time should be commensurate with the length of a treatment program. The shortest residential treatment programs are 3-6 months. 30-day programs don't work. His biggest concern was whether there would be enough probation time.

[Judge Stephens had to leave the meeting for an emergency hearing at this point.]

Commissioner Steiner moved to amend Commissioner Lindemuth's motion by changing the recommendation to a presumptive term of 0-90 days for all crimes. Commissioner Stanfill asked to clarify the motion— could the court still impose a suspended sentence of up to 18 months? Commissioner Steiner said the balance of 18 months (subtracting the 0-90 days) would be suspended. Commissioner Jessee seconded the amendment.

Commissioner Jessee said he thought this was a good compromise. It allowed for more serious punishment but didn't do as much damage as a longer period would.

Commissioner Stanfill asked whether this would affect existing carve-outs? Commissioner Steiner said it wouldn't. [NB: the only carve-out for C Felonies is for Felony DUIs.]

Chair Razo called for a vote on Commissioner Steiner's amendment. Five voted in favor of the amendment, and four opposed.

Commissioner Monegan asked if the Commission should wait for Judge Stephens to rejoin the meeting before voting. Chair Razo said he thought the Commission had to go forward. Commissioner Stanfill said the Commission should forward this discussion along with the final recommendation.

Chair Razo called for a roll-call vote on main motion. Commissioners voting yes: Steiner, Stanfill, Bryner, Jessee, Williams. Commissioners voting no: Sell, Razo, Lindemuth, Monegan.

Commissioner Lindemuth asked that this recommendation be submitted to the legislature with an explanation that the four commissioners voting against the recommendation did so because they wanted a greater penalty for C Felonies.

Chair Razo said he thought this recommendation fundamentally rolled back SB 91, but from his experience the possibility of actual jail time was a way to get felony-level offenders to comply with probation conditions.

Break – 10 minutes

Aggravator for A Misdemeanors

The Commission next discussed the Dept. of Law's proposal regarding the aggravator for A misdemeanors, which allows a judge to impose a sentence of up to one year if the offender has prior convictions for similar conduct. (Without this or another aggravator, the maximum term for an A misdemeanor is 30 days.) The Department proposed amending the aggravator to require only one prior conviction for similar conduct.

Mr. Skidmore explained that since the current maximum sentence for an A misdemeanor was 30 days' active and/or suspended time, this limited the amount of suspended time a judge could put over someone's head for a second-time misdemeanor offender. For second-time DUI offenders, the minimum term is 20 days. With a maximum of 30 days, that leaves room for only 10 suspended, which may not be enough of an incentive for treatment. With the aggravator applying for a second similar offense, the penalty could be up to one year.

Commissioner Steiner said he thought this proposal was overbroad. He would rather have an additional aggravator apply for one similar prior, which could result in a sentence of 0-60 days. He

moved that the Commission make this recommendation. Commissioner Jessee seconded the motion.

Commissioner Williams asked for more explanation of this motion. Mr. Skidmore said that instead of altering the aggravator that exists, it would add another aggravator for defendants who have one prior similar conviction, which would allow a judge to impose up to 60 days of active or suspended jail time. For second-time DUI offenders, the minimum sentence would be 20 days to serve, with up to 40 suspended.

Commissioner Claman asked if judges often impose the maximum term for second-time DUIs rather than the minimum. Mr. Skidmore said they wouldn't usually; the sentences would vary somewhat.

Chair Razo asked whether the Dept. of Law would have any concerns with the proposal as suggested by Commissioner Steiner. Mr. Skidmore responded that it would change what the Department proposed but would address the underlying motivation.

Chair Razo called for a vote on the motion; the motion passed unanimously.

Public Comment

Chair Razo opened the meeting for public comment.

Butch Moore said he was concerned that people were not being arresting for C Felonies. He believed the cases of the murder of William Schmaus and the Tampa airport shooting could have been prevented. He was worried that offenders weren't being convicted of their first offense, and without a first conviction, they can't get the increased penalty the next time around. He wanted a minimum term imposed for violent crimes for both C Felonies and A Misdemeanors. Josh Alameda had a prior felony, was given probation, and killed Mr. Moore's daughter Bree a year later. Police are not arresting C Felons because there's no jail time. The murder rate is the highest it has ever been. Vehicle thefts are up. SB 91 was doing what it was intended to do, but the state is not reinvesting the savings. He would like the Mental Health Trust to fund more facilities. The forfeited dividends of convicted criminals should go to the mentally ill. There needs to be a policy in place so that these cases be prosecuted.

Ret. Sen Fred Dyson commended the Commission for its work. Often legislation he has sponsored that was well-intended has fallen through when it came to implementation. There is a tension between theoretical purity and practical policy. He encouraged the Commission to keep its lofty goals but be practical about implementation. It is a problem if practitioners can't make it work. He would like the Commission to look at phasing in implementation in the field. The Permanent Fund Criminal Fund money should to treatment after victim restitution. Treatment beds in Alaska are woefully inadequate. It's hard to tell someone to complete treatment when there is a 6 or 7 month waiting period.

Richard Hill said he was saddened listening to the discussion this morning. He said there has been a lot of theft in midtown and several businesses have been hit, including the Denali Food Group. There has been a huge increase in crime in the last month. While midtown hasn't been crime free

in the last 19 years he's been working there, it has increased a thousand fold recently. He has been losing money, and has a mortgage to pay. He understood that people should be rehabilitated, but didn't understand having a policy of catch and release. He can't afford more losses—if this happens again he'll need to sell his business and move out of state. He was concerned that if everyone does that then it will just be criminals left in Alaska. He did not agree with being used as a guinea pig. He would like to yank SB 91 off the table—he would have preferred setting up treatment facilities before the law was changed.

Commission staffer Barbara Dunham read an email from Deric Counter, who wondered whether there had been an economic impact analysis completed before SB 91 was passed. In his view crime was going up. His family has been robbed twice and they have spent thousands replacing missing items and buying guns, bullets, and security cameras. He wondered what was needed to repeal SB 91, and thought that things were going to get ugly if nothing was done. He wondered whether there was going to be an assessment of SB 91 and whether that would be compared to the costs of increasing crime. As a taxpayer, he would rather spend more in taxes to open prisons than be worried about his family's safety and carrying a gun.

Vicki Wallner, organizer for Stop Valley Thieves, said she had heard the discussion on public condemnation and said that it didn't seem to be a big priority. There is a lot of public outrage that is building up. In her view, theft is basically no longer a crime. Troopers let kids walk away because they commit misdemeanors. People feel like troopers are not going to protect them. She has read the Commission's studies. There was no study on felonies being pleaded down to misdemeanors, which happens a lot. All these prisoners are being released before the pretrial services, and at the last meeting people said this was due to the bail schedule. But the bail schedule cited SB 91. She believed that because of SB 91 over 500 people have been released, enough to close a prison. The savings are coming off the backs of the public. She would like more consideration for what the public is going through.

Kara Nelson, director of Haven House in Juneau, said that she was also known as DOC prisoner 2038206. She was speaking as someone who went through the Alaska criminal justice system. She is the mother of three, and her children will have to carry the consequences of her felony. She encouraged the Commission to have fidelity to facts and data. Felons are often set up for failure. Criminal justice reform is a nationwide process that has been going on for several years. There is a collaboration to improve services to reentering citizens right now that is happening, and maybe the public isn't hearing that, but it is happening. What is happening now does not meet the full need, but it is helping communities get up to speed. She said there were many pieces to this puzzle, and the Commission needs to stay focused on the reinvestment piece. She noted that she has also been a victim of crime. She commended everyone for speaking up. She will continue to support this Commission.

Amy Mead, Juneau prosecutor, said that one of the upcoming proposals regarding probation terms for Theft 4 offenders was consistent with her reading of the statutes. The statutes are silent on the probation terms for a first or second offense.

Maxine, a member of CUSP, said she would like more collaborative input on the proposals that affect the sex worker community; without input the process feels a bit disenfranchising. CUSP is available to work in collaboration with the Commission on the sex trafficking law.

Terra Burns, also a member of CUSP, said she was calling from England where she had just presented at a conference at Cambridge. She wanted to talk about Sex Trafficking 4, which can include people who give out condoms. The first person charged under this law was charged for sex trafficking herself. The proposal the Commission was looking at does not reflect realities. She will send an additional letter. Chair Razo noted that the Commission did receive the letter she had sent earlier.

ASAP Program

Nancy Meade said she considered this proposal pretty technical. She explained that SB 91 limits ASAP to DUI/Refusal offenses. SB 165, also passed in 2016, made minor consuming alcohol a violation, and also said that fine can be reduced for that violation if the defendant goes through ASAP, so it contemplates that ASAP will be available for these non-DUI offenders. So the law needs to be reconciled. ASAP is taking these cases, and it doesn't appear to be a funding problem for them. Commissioner Stanfill said that she knows that Judge Rhoades was concerned about having ASAP be very narrow. Diane Casto from DHSS explained that there are both adult and juvenile ASAP programs.

The Commission voted unanimously to recommend that ASAP be available to minor consuming defendants.

Mandatory probation for sex offenses

Mr. Skidmore explained that this proposal stemmed from an omission in SB 91 that appears to be inadvertent. The bill deleted AS 12.55.125(o), but that was the only place in statute that required a sex offender to complete a term of probation as part of an imposed sentence. The recommendation was to reinstate (o). Commissioner Steiner wondered whether it was possible to solve this problem in another way. Reenacting (o) might cause conflict with other provisions. Commissioner Lindemuth suggested that the Commission just leave drafting up to the Legislature.

The Commission voted unanimously to recommend that the Legislature enact a provision requiring sex offenders to complete a term of probation as part of their sentence.

Probation terms for Theft 4

Mr. Skidmore explained that there was confusion about probation terms for Theft 4. The maximum probation term for an offender's third Theft 4 conviction is 6 months under SB 91. The law is silent on the allowable length of probation for first and second Theft 4 convictions. In practice, some judges say one year, and some say none. The Dept. of Law's recommendation is to have the Legislature clarify the intended terms; they were not proposing anything in particular.

Commissioner Steiner suggested recommending that probation be set at 6 months for the first and second offense, as it was already set at 6 months for the third. Commissioner Lindemuth suggested that the Commission just leave it up to the Legislature to clarify their intent.

Commissioner Steiner pointed out that the Commission's recommendation was to cap the 3rd at 6 months.

Commissioner Stanfill said that the Commission could recommend that there should be probation for all Theft 4 offenses, and the Legislature can decide if the appropriate maximum term is 6 months or a year. Commissioner Sell thought the Commission should make recommendations for the first, second and third convictions. Commissioner Lindemuth suggested that the Commission just clarify that probation is always appropriate and the Legislature should resolve the details. She was hesitant to recommend 6 months if some judges thought it was 1 year. Mr. Skidmore reminded the Commission that with earned compliance credits, it was possible for an offender to serve only half the probation term imposed.

Commissioner Williams had no position on this.

Commissioner Jessee moved to recommend that the Legislature clarify its intent as to the probation terms for first and second theft 4 offenders, and that a probation term is always appropriate for Theft 4. Commissioners Lindemuth and Steiner seconded the motion. It passed unanimously.

Victim Notification

Chair Razo asked Mr. Shilling to explain the proposal regarding victim notification. Mr. Shilling explained that the proposal was from the court system. He viewed this as a technical change but had heard some concerns about the proposal from the Office of Victims' Rights.

[At this point Judge Stephens rejoined the meeting.]

Ms. Meade explained the proposal. Section 65 of SB 91 requires the court to "provide the victim with" information on who to ask about the defendant's sentence or release and the potential for a defendant's release. The Court System has developed a form for this information, and clerks are distributing it to any victim who is present. It's also on the court system website—it will be the first result for "victim" when searched. But they don't mail the form out to victims—not all victims will want to participate in the process. The Court System feels it is complying with Section 65 to best of its ability. The proposal is to delete "provide the victim with" and replace with "make available to the victim, if present."

Kathy Hansen from the Office of Victims' Rights said she recognized that some victims choose not to be present and wouldn't want to be given a form that would remind them of the crime. On the other hand, some victims might have difficulty getting to the courtroom, especially out in villages. She suggested that if the victim is on the phone, the court could orally advise the victim of this information.

Commissioner Stanfill said that victim advocates had asked for this provision in SB 91. The intent is not to require victims to be present.

Ms. Meade said that victims who are participating on the phone are told that the information is available.

Commissioner Stanfill said that the words "if present" might present a problem.

Commissioner Jessee said that the Court System can only do so much. Perhaps the Criminal Justice Working Group could discuss these practicalities. He moved to adopt this proposal.

The Commission debated the language: Commissioner Sell suggested “make available to victim if possible” while Commissioner Stanfill suggested “if available.”

Ultimately the Commission decided on inserting the words “if practical,” so that the statute would read “the court shall, if practical, provide the victim with...” The motion to approve this language passed unanimously.

Felony DUIs

Ms. Meade explained that there are two statutes that describe the penalties for Felony DUI and Refusal—essentially there are two different punishment provisions (one in Title 12, and one in Title 28) for the same offenses. The Court System recommended having one provision only, either in Title 12 or 28. Commissioner Lindemuth said the Department of Law agreed with this proposal. Commissioner Steiner said he agreed and thought that the penalty should be in Title 12. The Commission agreed to simply forward the recommendation that the penalty provision should be in only one statute. This recommendation passed unanimously.

Unclassified Misdemeanors

Ms. Meade explained that many misdemeanors were not included in the changes to misdemeanor sentencing in SB 91. For example, there are sentences for Fish and Game misdemeanors that are punishable by up to one year in jail. Most misdemeanors are now punishable by up to 30 days in jail. Ms. Meade said that because there are so many statutes that provide for misdemeanor jail time outside the criminal code (e.g. outside Title 11), that it would be a big project to identify them all and make recommendations for the appropriate penalty. The Court System therefore withdrew this proposal.

Suspended Entry of Judgment and Suspended Imposition of Sentence

Several proposals discussed Suspended Entry of Judgment and Suspended Imposition of Sentence (SEJ and SIS). One proposal was to clarify whether shock incarceration (short jail stays as a condition of probation) could be imposed for either SEJ or SIS. Mr. Skidmore pointed out that the issue will be resolved for SIS if the Commission’s recommendation regarding jail time for C Felonies is passed, because jail time will be automatically available for all felonies. The issue still needs to be clarified for SEJ.

Commissioner Sell said that people who are appropriate for diversion programs like SIS and SEJ are typically terrified of jail. She suggested that should be used to the state’s advantage to not strain resources. Commissioner Steiner said he didn’t think the Commission should recommend shock incarceration for SIS either. The idea with both SIS and SEJ is to give people who will do best a chance. Shock incarceration will have a negative impact on recidivism. There are studies showing that these approaches don’t work—Scared Straight, for example, makes kids more likely to offend in the future.

Chair Razo suggested that all of the proposals regarding SIS and SEJ be reserved for the next meeting, so that Judge Rhoades, who took a particular interest in this, can participate.

Pre-Trial Assessments

Chair Razo read the proposal from the Department of Corrections:

Sec. 117 [of SB 91] states - The commissioner shall establish and administer a pretrial services program that provides a pretrial risk assessment for all defendants, recommendations to the court concerning pretrial release decisions, and supervision of defendants released while awaiting trial as ordered by the court.

The language in the bill says that “all” defendants should be assessed. Our limited resources would best be prioritized for quality supervision of higher risk individuals who have been released from custody for the purpose of pretrial “supervision” as opposed to assessing those who were already released following citation. DOC would like to dedicate the time and resources to higher quality assessment and supervision for those who were booked. The Pretrial Assessment Tool is mostly a tool to assist with the release decision. DOC would like the commission to consider whether we really want just “booked” defendants that face jail time assessed, or truly “all” defendants assessed.

Commissioner Williams explained that this presented a significant workload issue. The whole point of SB 91 is to use prison beds wisely. DOC could use a clarification of intentions here.

Commissioner Stanfill explained the history of this provision: an earlier version of the bill envisioned that some defendants weren't going to be arrested. Those going to jail would therefore be the more serious defendants who would need pre-trial assessments, and there would be fewer defendants booked. Since that version didn't pass, now there will be some folks brought to jail that weren't initially intended to be in the assessment group. The Commission needs to make sure that Pre-Trial Services will assess “repeat customers.”

Commissioner Sell pointed out that a couple things influence an officer's decision to cite and release. It isn't always because the person is low-risk. Sometimes an offender will need medical care, and the officer doesn't want stand around and wait for treatment to be completed at the hospital—they will issue a citation and get back to work. DOC also now has limits for people who are intoxicated. Officers also don't want to sit around and wait for sober up. So not everyone cited and released will be low-risk. The Commission needs to make sure that people who are higher risk are assessed as such.

Commissioner Steiner suggested that an assessment could be ordered at a bail hearing, or the arraignment could turn into a bail hearing. Commissioner Williams wanted to be sure this didn't extend to absolutely everyone— lower level shoplifters, for example. Commissioner Sell pointed out that some of those shoplifters might be drug addicts. Commissioner Steiner suggested that all defendants appearing at bail hearings be assessed. The prosecutor could also request an assessment.

The Commission unanimously agreed to recommend amending the statute to read: “The commissioner shall establish and administer a pretrial services program that provides a pretrial risk assessment for all defendants brought into custody or at the request of a prosecutor at the next hearing or arraignment. “

Drafting error regarding victim notification

DOC's proposal to fix a drafting error was as follows:

Currently, the parole board is being directed to send notification to victims for administrative parole hearings that offenders are not eligible for. The department suggests deleting the notification for arson or crimes against a person as notifying victims for an administrative parole hearing that those two crimes aren't eligible for doesn't make sense and appears to be a drafting error.

The Commission adopted this proposal unanimously.

EM/Home Confinement for First time DUI

DOC's concern regarding electronic monitoring (EM) was as follows:

Currently there is no available proportionate consequence for a violation of a 1st time DUI sentence. Right now for offenders on EM/home confinement the normal process of bringing an offender back to jail for a violation is status quo (they have time hanging over them) however in this case it would seem excessive considering the intent was to keep them out of jail. Further, it seems odd that the consequence for a violation (imprisonment) would be more severe than the original sentence (EM/Home Confinement).

Commissioner Williams explained that the EM workload was proving to be profound. As he understood it, the reason 1st time DUI offenders are put on EM is that they are often people who just made a mistake, and they will not be repeat offenders. It was hard to describe the extent of the work to get people on EM and monitor them. This misdemeanor has been treated differently to educate the public on the seriousness of drunk driving. At this point, he was not sure this misdemeanor should be different from other misdemeanors. EM is a tool for higher-risk individuals.

Commissioner Lindemuth said that if someone isn't doing well on EM, there needs to be an alternative of real consequence. Commissioner Williams said there are many different sanctions used for this around the country. Some states have minimum time in jail. Others have community work service or other deferred sentencing. He was just not sure how to get compliance out of this piece. Home confinement is hard to track. It also throws off time accounting.

Chair Razo said this probably deserves some thought to come up with an alternative. Commissioner Williams agreed, and said he had no alternative to offer, but this is going to be an issue. There will be more home confinement because of the resource issue in getting EM equipment. He suggested assigning the topic to a subcommittee.

Chair Razo asked if there was any objection to having the Sentencing Workgroup take a look. There was no objection.

Comment regarding previous meeting

Commissioner Stanfill said she had been going through the notes from the previous meeting regarding the re-criminalization of Violating Conditions of Release (VCOR) and wanted to make sure there would not be a return to the practice of pleading to VCOR and not the underlying charge. The Department of Law has said they will not do this; Commissioner Stanfill said she

wanted a commitment from the Commission that it will address this issue if that practice resumes. The Commission agreed.

The meeting adjourned at 1:38 p.m.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, January 19, 2017

9:00 AM – 12:30 PM

Jury Assembly Room

Dimond Courthouse, 123 4th 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, Alys 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 8th 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 1st Assault 4 has OR release, but the 2nd 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 1st 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 1st 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.

Alaska Criminal Justice Commission

Meeting Summary

Thursday, December 8, 2016

11:00 AM – 4:30 PM

CIRI

725 E Fireweed Ln #800

Anchorage, AK 99503

+ audio teleconference

Commissioners present: Greg Razo, Jahna Lindemuth, Jeff Jessee, Walt Monegan, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Trevor Stephens

Commissioners absent: Alex Bryner, John Coghill, Wes Keller, Dean Williams (Geri Fox, DOC Director of Pretrial Services, sat as Commissioner Williams' designee)

Staff: Barbara Dunham, Brian Brossmer, Staci Corey

Participants: Jordan Shilling, John Skidmore, Geri Fox, Nancy Meade, Araceli Valle, Tristian Monterastelli, Tracey Wollenberg, Donald Revels, Mike Holmen, Taylor Winston, Tara Rich, Christina Sherman, Gregg Olson, James Minton, Marna Sanford, Diane Casto, Don Habeger, Fred Dyson, Rep. Lora Reinbold, James Stinson, Carrie Belden, Wilma Osborne, Kaci Schroeder, Ryan Bravo, Shaul Goldberg, Leslie Hiebert

Introductions

Commission Chair Gregory Razo called the meeting to order at 11:03 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).

Approval of Minutes from October and November Meetings

Chair Razo called for a motion to approve the meeting summary from Oct 13, 2016.

Commissioner Stanfill moved to discuss and was seconded. She noted that in the summary it was stated that the Barriers workgroup forwarded the recommendation to DHSS to put barrier crimes regulations on hold, when it was actually the Commission that did so.

Chair Razo called for approval of the summary as corrected; the summary was approved unanimously.

Chair Razo called for a motion to approve the meeting summary from Nov 29, 2016. The motion was made and seconded. Chair Razo called for approval of the summary; the summary was approved unanimously.

Approval of Agenda

Chair Razo called for discussion on the agenda. Commissioner Stanfill was interested in hearing whether there was any update from Results First Initiative (RFI). Araceli Valle, researcher for RFI, agreed to give an update and was added to the agenda at the bottom of item 4. Commissioner Steiner moved to approve the agenda and Judge Stephens seconded; the agenda was approved unanimously.

Implementation issues

Department of Law

DA Christina Sherman addressed the Commission, stating that she wanted to make the Commission aware of real world examples of SB91 implementation issues DAs are facing. For C felonies (which carry a presumptive probation sentence under SB91), some crimes should, in her opinion, carry jail time: third-degree assault (she mentioned an example of a first-time felon threatening someone by waving a knife or a gun) and felony eluding from police. She reported that victims are very dissatisfied that people in these types of cases are not receiving jail time.

Flat time: She also noted that there were no flat time options for first time felons so there have been some offenders who get their presumptive probationary sentence and immediately violate to get flat time. She relayed a story of an offender who was sentenced to 12 months/12 suspended, and immediately after sentencing announced they would not go to probation, and then had the 12 months imposed.

VCOR: She also reported there were problems with remanding offenders who violate conditions of release (VCOR). Officers have been having trouble getting warrants or remands for these offenders. She gave an example of an offender who was charged with a DV crime and ordered not to return to his village, but the offender did so; he was given a VCOR citation and released.

ASAP: She reported a gap left by changes to ASAP: previously people with any alcohol-related offense could be monitored via ASAP but with SB 91 it's been narrowed [to just DUI offenders]. She believed that prior to SB91 changes ASAP provided some utility in cases such as MICS 4 and DV in monitoring whether offenders complied with their treatment requirements. Wellness court is now at capacity and takes only high risk/high needs cases.

Reaction to SB91: She stated that since the passage of there are reports of people being emboldened – i.e., “just give me my ticket, I know I can't be arrested” – not a lot of reports but some anecdotes of this happening in the community and it's inhibiting investigations.

Questions from Commissioners: Commissioner Jessee asked whether these types of problems have occurred in other states – how did they deal with them? → Staff will follow up with PEW.

Judge Rhoades said, regarding the ASAP comment, that there was no monitoring for any misdemeanor offenders – that is a problem not exclusive to the changes that have occurred in ASAP as a result of SB91.

Judge Rhoades asked whether the DAs were offering SEJs under the new provision in SB 91— in her experience she thought it was not really being used. DA Sherman said that in her office they have done several. Commissioner Steiner said he has heard reports from some jurisdictions where DAs have said they won't offer SEJs as a matter of policy. John Skidmore from the Dept of Law said that DAs were reporting from around the state that they were using SEJs, and if anyone has said they weren't, it was not at the direction of the Dept. of Law.

Commissioner Stanfill asked whether the VCOR problem was a misunderstanding or a problem with the wording of the statute. DA Sherman replied that magistrate judges looking at another judge's case at 2am are simply not comfortable re-setting bail in that case. Judge Rhoades noted that the court practice was usually to pull the main file, so if a magistrate in a different location doesn't have access to that file they may not want to reset bail.

Chair Razo asked whether C felonies were being prosecuted [given the presumptive probation term]. DA Sherman said they were. Judge Stephens noted that defendants wanting jail time could always plea to an A misdemeanor. Chair Razo thanked DA Sherman and said that it is really important to know how SB91 is working in practice.

DA Gregg Olson from Fairbanks spoke next. He support everything DA Sherman said. He said in Fairbanks, they have done some SEJs – they come through Olson to ensure they go to those that deserve them. He said there was some confusion about whether the probation for SEJs would be supervised for felons- he was not as concerned for misdemeanants. He was also not clear whether SIS or SEJ first time offenders can get shock time as a condition of probation.

DWLS: DA Olson said that for Driving With License Suspended/Revoked (DWLS), arrest/citation decisions are made by officers without enough information – they need to see records and see sanctions to know how to class [i.e. infraction for non-DUI-based DWLS, misdemeanor for DUI-based DWLS]. Also he noted that in the past, their practice has been to offer DVOL (driving without a valid license) as a lesser charge, but now DVOL is treated more seriously than DWLS. Officers are also having a hard time with DWLS violations because they handle those prosecutions themselves, and judges want to see certified records of the underlying revocation.

DUI: For second DUI offenses, Olson explained that the presumptive sentence was a minimum 30 days with 20 suspended, and with only 10 days hanging over their head, offenders do not have as much incentive to get treatment except needing to get relicensed. He also noted that there was no way to distinguish between .08 and .14 or .291 DUI.

Reaction to SB91: He echoed DA Sherman's anecdotal reports of misdemeanants being emboldened by less jail time. He said that someone charged with a B misdemeanor could have 52 prior convictions, but most a court could impose was 5 days, and there weren't mechanisms to effectively deter someone from further actions. This was a problem for recent B-misdo theft and indecent exposure cases. There was no ability to hold time over their head or put them on probation and get them help for substance abuse.

Probation term length and treatment: Olson also noted that shorter probation times limited their ability to incentivize treatment – when the maximum probation is a year, then they can’t extend it if someone isn’t progressing towards rehabilitation well—there are significant wait times to get into treatment. There’s also a lag between probation violations and the DAs being notified of the PTRP, which makes this more difficult as well – getting these PTRPs and being able to react.

Commission procedure regarding implementation: Chair Razo said that it was important for the Commission to be aware of implementation issues. He suggested the Commission could make an implementation workgroup to identify problems and recommend changes to the legislature. Commissioner Monegan asked whether that was what the Criminal Justice Working Group (CJWG) supposed to do? Chair Razo asked whether there should be an intermediary between the CJWG and the Commission. Judge Rhoades said she thought that was supposed to be her role. She noted that some issues are statutory, some administrative, some funding – the first step would be to list what problems are and decide which are which of the above (statute, admin, funding).

Questions from Commissioners: Commissioner Stanfill said that her understanding was that the CJWG was tasked with the data monitoring and reinvestment component, but this [implementation issues] is distinct. Commissioner Steiner asked whether implementation should be looked at by a sub group or CJWG or the Commission? He thought the CJWG was better because there was more formality to the ACJC. Commissioner Jessee suggested augmenting the CJWG with more Commission members to better address these issues. Staffer Dunham noted that the Commission had sent a letter to the CJWG to ask for assistance with looking at data and suggesting reinvestment, so the Commission may need to send another letter to the CJWG to task it with looking at implementation. AG Lindemuth said she agreed with additionally tasking the CJWG with this issue. Commissioner Monegan and Judge Rhoades agreed.

Chair Razo said that at the end of the day the Commission is tasked with oversight, but if these issues are brought forward through the CJWG that may work. He encouraged the DAs to produce notes and fixes that you they would work so that they may be entered into the record. Commissioner Monegan said he has offered to collect officer complaints to bring forward; Chief Justice Stowers has said he will do something similar for Courts. Judge Rhoades noted that some problems may simply be an education issue; there are some problems with implementation but no one knows what the law is yet. SEJ was intended to supplant SIS and was not supposed to be different from SIS except to avoid the felony record from creating barriers to jobs and housing.

Staffer Dunham asked for clarification from the Commission—should there be a regular agenda item for implementation issues to forward to CJWG? Chair Razo said that seemed to be the consensus.

Geri Fox, DOC’s director of pretrial services said that, regarding DA Olson’s comments, that she and Carrie Belden (director of probation and parole) were aware of the SEJ issue and that SEJ probationers were being supervised by DOC. Regarding shock time, the problem with shock time is that it leads to destabilization. The reason you have short stays or no stays is in order to not destabilize people and then expect them to recover and not recidivate.

Law Enforcement

Staffer Dunham presented for Commissioner Sell who had to miss the meeting due to another commitment. Commissioner Sell reported that they have had some cases in Juneau of offenders escalating their behavior to ensure they would get some jail time, and therefore guaranteed housing. One such person had in the past committed low-level thefts once the weather started to get colder, to ensure that he would spend the winter in jail. He tried that again this fall but didn't get as much jail time. When he was released he punched a JPD officer so that he could get put back in.

Commissioner Stanfill suggested the Commission try to work with the governor's homeless coalition on this—people should not be using jail as housing; the Commission wanted to end that practice.

Judiciary

Judge Stephens had wanted to discuss the problem with setting bail for offenders who commit VCOR or FTA. However, he thought the problem had been addressed- the solution being used in Fairbanks, to include language on the original bail order that can be used to hold someone who commits VCOR or FTA, should be going statewide. For failures to appear, his practice has been to issue a warrant if it is needed to get the person to court.

Regarding issues previously discussed, Judge Stephens said that for SEJ defendants, the language of SB 91 contemplates they will have a PO. He was unsure what to do with defendants who were given an SIS before the bill passed (under a statute that previously required jail time) but then violated their conditions and had the sentence imposed after the bill went into effect (with the same statute now requiring no or little jail time). He was more interested in seeing offenders sentenced to probation with treatment than to jail time.

The Fairbanks fix to FTA/VCOR is to put language in the bail release order that says the order is revoked, and the defendant to be held without bail until the next hearing, if the defendant violates release conditions or fails to appear. Judge Rhoades said that Anchorage has been slow to adopt this fix. Chair Razo said he was concerned about uniformity on this across the state. Judge Stephens said the presiding judges were now communicating more than they had been in the past.

[Edit: this language is now included in all bail release forms used statewide.]

Geri Fox wondered whether it would be wise to get ahead of any other changes on the horizon and educate practitioners to limit confusion such as this in the future. Chair Razo asked staffer Dunham to get CJI to perhaps prepare something.

Booking

Geri Fox and staffer Dunham toured Anchorage's booking facility earlier in the week. For those interested, director Fox can arrange a similar tour for Commissioners. Staffer Dunham relayed concerns from the booking officers that intoxicated defendants, for example first-time DUI

defendants, are being brought to the facility but then released OR while still intoxicated. In the past, these defendants have been placed on what's called a "sober hold" by magistrates and released when they're sober. For a time after the new bail schedule came out, magistrates were not giving "sober holds" although they seem to be doing this more now.

Judges Stephens and Rhoades said that there isn't anything in statute that says intoxicated arrestees must be held until they reach a certain BAC. Local prosecutor James Stinson said that in the past, the practice in Anchorage has been to hold such persons until they reach a .02.

Judge Rhoades said she thought this sounded like a practice problem. Commissioner Monegan noted that if someone is released while still intoxicated and that person harms others or comes to harm themselves, the state could be held liable.

Results First

Araceli Valle of the Results First Initiative informed the Commission that RF has finished doing a costing exercise for the programs it is analyzing; for each program they are looking at what the program costs per person. They recently figured out how to get data on amount of time people are on probation, which was difficult. They hope to run their cost-benefit model by mid-January for the first time.

Break – Lunch 12:30-1:00

Alaska Court System

Nancy Meade, general counsel for the Alaska Court System, addressed implementation issues and legislative drafting errors in SB 91. She had planned to raise the VCOR issue as well, and noted that it was being resolved as Judge Stephens had said.

Suspended Entry of Judgment: There was a question about when SEJs can be used, and whether they were meant to track SIS (Suspended Imposition of Sentence). Section 77 of SB 91, which established SEJs, excludes some offenses. Many other statutes, however, contain a provision which makes SIS unavailable for the given offense. The question is whether those provisions in other statutes also refer to SEJ. The most common examples of this are DUI and Refusal- neither is excluded from the SEJ statute but they are excluded from SIS. This is something ACS can work with Legislative staff on.

ASAP program: The intention of the ASAP provisions in SB 91 was to limit ASAP to DUI/Refusal offenses. SB 165, also passed this past session, made minor consuming alcohol a violation, and also said that the fine can be reduced for that violation if the defendant goes through ASAP, so it contemplates that ASAP will be available for these non-DUI offenders. There is a disconnect there.

Unclassified misdemeanors: Many statutes, for example, those in Title 16 [Fish and Game] or Title 28 [Motor Vehicles] have unspecified [non-A or -B] misdemeanors that have their own specific sanctions; there may be a parity issue with SB 91, which generally reduces sanctions for misdemeanors. For example, some fish and game misdemeanors can be punishable by up to a year in prison, but the presumptive range for A misdemeanors generally is 0-30 days.

Felony DUI/Refusal sentencing: Section 90 of SB 91 sets out presumptive ranges for C felonies, including Felony DUI and Refusal. In Title 28, where the statutes creating the offenses of Felony DUI and Refusal are found, those offenses are given a mandatory minimum, not a presumptive range. Essentially there are two punishment provisions for the same offenses in two different statutes, which creates a conflict. Presumptive sentences mean the sentence can be set below the presumptive range, while a mandatory minimum is mandatory.

Outreach, training, and education efforts

Chair Razo then asked Nancy Meade about her outreach efforts to educate practitioners and the public on SB 91. She said she had just been in Bethel to talk about what's in SB91, and to help people understand what's in the law and the effective dates. She has been to Palmer twice, Anchorage 4 or 5 times (once doing an official CLE); and will go to Kenai later in the month.

Chair Razo noted that people in Kodiak were also interested in having someone come explain the bill to them. He asked whether other people were engaged in outreach, training or education. Commissioner Monegan said that DPS was making an effort at training to ensure everyone is on same page at "warm handoffs" – this is an on-going effort.

John Skidmore said that he had conducted trainings with all state prosecutors offices. He has sent information out to law enforcement regarding drug laws and created cheat sheets for law enforcement. He spoke at the previous two state DAs' conferences and the chiefs of police conference; he spoke on the Talk of Alaska radio show with assistant public defender Tracey Wollenberg; and he went with Nancy Meade to talk to the State Troopers.

Carrie Belden, DOC Director of Probation and Parole, said that DOC had conducted statewide training for probation and parole officers via funds facilitated by CJI; DOC has workgroups meeting every week to work on drafting policies; and there will be a training next week for POs to get a final look at these policies. They will be ready come January 1, but some regulation will not be finished by January 1, which just wasn't feasible. She expects the transition to be "bumpy" as this involves multi-agency collaboration. They have attempted to prepare to the extent possible but this is a large change with some unknowns. Employees range in levels of acceptance of the change. They have been updating ACOMS and hope to have the earned compliance credits system ready by January 1; data will be reportable, as a result.

Reinvestment

Commissioner Stanfill related that the grants have been awarded to expand reentry coalitions. The money should go out on or around January 1. Judge Rhoades said she would like an update on how those grants are proceeding for the next meeting –staffer Dunham will arrange. Commissioner Stanfill also noted that the violence prevention grants (the money that will go toward victims' services) are also going out right now. Commissioner Jessee said that the "Newman" grant money from the legislature for treatment services is also going out soon and will go towards programs that address any existing gaps in addiction treatment.

Public Comment

Fred Dyson: Ret. Sen. Dyson suggested the Commission work on low hanging fruit of issues with the bill; it will be an iterative process and to that end, the Commission shouldn't let the

perfect get in the way of the good. An extension of the Commission may be in order. He suggested placing ads in the paper, on the radio, etc. to ensure the public is not misinformed. Ensure that training that occurs in prisons are for jobs that offenders can get out of jail.

Concerning restitution for victims, the PFD for felons goes into the Permanent Fund Criminal Fund, and the law says the highest order of funds is to make victim whole; to this end, bridge funds from criminal fund should be used to help victims while not letting the offenders off the hook. He said he hopes that the Commission will modify the restitution report to reflect this. Staffer Dunham clarified that the Commission's restitution report was sent to the governor – it included the recommendations that the commission approved, including establishing more bridging funds either from either from the criminal fund or another source. Sen. Dyson thought this provision should be strengthened. He will draft changes he would like to see to report and provide it to the commission. Chair Razo said the Commission will take a look and see if changes can be made to the report now.

Wilma Osborne (Nome): Ms. Osborne explained that she is an Alaska Native from Nome and has a conviction stemming from a mental illness in 2013. Because of her conviction and the barrier crimes regulations, she has had trouble finding work. She wanted to communicate to the Commission the importance of the ability to expunge records in Alaska – to not foreclose opportunity, no matter the time elapsed, to account for the changes made in someone's life or the circumstances involved in the original offense.

She is pursuing a PhD in education now and would like a career teaching Alaska Native students, but she can't get a job as a teacher with her conviction. She might have to change her field of study but she feels strongly about being a teacher. She suggested a safety valve provision for first-time offenders or people who have been clean for many years. Chair Razo informed Ms. Osborne of the Barriers to Reentry workgroup and said she was welcome to participate.

Commissioner Monegan wondered what the status was of the Commission's work on Barrier Crimes. Commissioner Stanfill said that the Commission had asked DHSS to put their regulations on hold so that the Commission could weigh in. The Commission/ Barriers workgroup still needs to identify the right person to talk to—the Commission is awaiting DHSS' information.

Taylor Winston (Office of Victims' Rights): Ms. Winston wanted to remind the Commission that it is important to ensure victims are brought into the process while efforts are made to move offenders through the system quickly with new practices. For example resetting bail when someone violates conditions of release- the victims need to be notified of that hearing. With things speeding up and some offenders being released sooner she has heard some anecdotal evidence of victims not having an opportunity to be involved.

Commissioner Stanfill asked Ms. Winston to bring in specific reports so that problems may be addressed prior to these changes taking place in 2018.

Lora Reinbold (Legislature): Rep. Reinbold stated there was a lot of opposition to SB 91 in the community; she wanted to speak for those people and wanted ensure that this criticism was taken into account by Commission, and that the Commission allow pushback. State employees should be allowed a way to push back and have their concerns regarding the bill heard and not face backlash.

She said that public safety is the #1 government mandate and thought that SB91 is in many ways going the wrong direction. Victims' rights must be placed first; she was glad to hear about the restitution report. She also said that a representative from APD should be on the Commission.

Ryan Bravo (Clayton & Diemer): Mr. Bravo explained that AS 12.62.180, 13 ACC 68.205 are the statute and regulation that allow someone to seal the record of their conviction in the case of mistaken identity or false accusation. To do this, the person needs to complete form Seal Req 2-04, which requires the arresting officer to sign the form and if the person was charged, the prosecutor must also sign it. Both the officer and prosecutor must sign saying that the arrest (and conviction, if applicable) was the product of a mistaken identity or false accusation beyond a reasonable doubt.

Mr. Bravo is working on a client's case pro bono to help her seal an old record based on a false accusation, but has found it impossible to get the form signed, and there is no legal recourse for being denied a signature. He would like the Commission to take up this issue. Chair Razo said that this sounded like another item for the Barriers workgroup to tackle and encouraged Mr. Bravo to join those discussions.

James Stoneking- Mr. Stoneking is currently incarcerated at the Wildwood Correctional Center, and sent a letter to AG Lindemuth regarding the exclusions to the geriatric parole provision in SB 91. The AG's office forwarded the letter to the Commission, which was distributed to the Commissioners at the meeting.

Leslie Hiebert – Ms. Hiebert is a retired attorney but has heard anecdotal reports on SB 91 implementation and criminal justice reform in the legal community. She wondered if people in the community could provide written comments to the Commission. Staffer Dunham said that any member of the community could email her and she could forward their comment to the Commission.

Social Impact Bond report

This report had been circulated to the Commissioners before the meeting, and was due to the legislature on December 15. Staffer Dunham explained that there had been some minor updates to the report previously provided to the Commission in August. Chair Razo called for a motion. Judge Rhoades moved to transmit the report to the Legislature, and Commissioner Stanfill seconded.

Chair Razo called for discussion, and wondered who might be interested in funding the upfront money for this financing mechanism. Commissioner Stanfill thought that it may be a good fit for foundations. Judge Rhoades said that it will be interesting to see how the project just beginning in the municipality of Anchorage will work.

Chair Razo called for a vote of those in favor of send the report to the Legislature. The motion was approved unanimously.

Recommendations to send to the legislature

Draft language to send to the legislature regarding recommendations that the Commission had already approved had been circulated. Chair Razo called for a motion to transmit the

recommendations to the Legislature. Judge Rhoades so moved, and Commissioner Stanfill seconded. Chair Razo called for discussion. There being none, he called for a vote on the motion. The motion was approved unanimously.

Work plan for 2017

Staffer Dunham presented a draft work plan for the Commission that had been circulated. The first meeting of the Sex Offenses Workgroup was held that morning, and would track with the Commission's meetings for the first half of the year. Commissioner Stanfill explained that the group had discussed its objectives to get started, and identified its data needs for the next meeting in February.

The Presumptive Sentencing Workgroup will meet another four times every other month until July. Commissioner Stiner explained that the group was going to take a look at the 3-judge panel statute and a treatment mitigator.

The Barriers to Reentry Workgroup will meet another four times every other month until July. Commissioner Stanfill said the group may work piecemeal on recommendations to provide the Legislature with work as it is done (e.g, Ban the Box).

Behavioral Health Subcommittee will meet every other month and report out at July and Jan of every year. Commissioner Jessee and Judge Rhoades will discuss and plan meeting times.

Title 28 and Restitution and Restorative Justice will not meet until later in the year, after the Legislative session and data from SB 91 monitoring has come in. Judge Rhoades asked what was the Title 28 workgroup mission, given that report that has been produced. Commissioner Monegan suggested waiting on moving forward with the group until more information from SB 91 comes in. Chair Razo suggested putting Title 28 on the August agenda to see if any issues come up.

Results from a new Vivitrol study

Cathleen McLaughlin, Director of Partners Reentry Center at Partners for Progress, spoke about Partners' success in addressing the opioid epidemic in the criminal justice system with medically assisted treatment. She said that Partners has a mandate under their contract with the state to openly provide data to the Commission, as well as the state and community. They also want to use the center as a possible model – as such, the center has an open door policy.

Ms. McLaughlin provided the Commission with a handout on statistics from the initial implementation of the Vivitrol program. On average the program serves between 95 and 110 new clients per month, with 75 – 90 in housing placements at any given time. They use LSIR scores to tailor treatment and services. From jail, reentrants go to the center and receive a Vivitrol shot. Along with the medication, offenders are offered treatment programs, counseling, and/or support groups. They are funded using Medicaid funds used or Native Health coverage – no state funds.

They found that before the program, reentrants were often overdosing within 10 days of release. They found that reentrants needed to get the shot at release; substance abusers will use absent this effort. Since implementing the program in September, their data shows that reentrants who opt into Vivitrol have better outcomes than those who don't.

[Ed: the Vivitrol statistics from Partners show that 142 reentrants were offered Vivitrol. 92 participants accepted Vivitrol and of those participants, 72 remain in the community with housing and employment while 20 have recidivated. 50 participants declined to take Vivitrol and of those participants, 6 remained in the community, 44 have recidivated, and one died of a heroin overdose.]

Chair Razo asked whether there was any discussion of repurposing the closed Palmer facility to house participants or offer treatment. Ms. McLaughlin said they were looking at that.

Judge Rhoades said that Vivitrol was more effective than Methadone. However it needs to be reimbursable because otherwise it costs \$1000 per month. The reentrant needs to have Medicaid coverage before release; there needs to be a focus on getting people from jail to the center (money from reinvestment should be used for this). Moreover there needs to be some of these resources (that reentry services have) available for pretrial diversion. They need treatment coupled with the drug. Unfortunately there is no treatment on demand.

Ms. McLaughlin said reentrants signed up day they arrive and are given provisional Medicaid. For treatment, they are placed in whatever program they can find. Counselors come to Partners to evaluate and enroll them.

John Skidmore asked about the difference between cohort groups – the study compares those asking for Vivitrol and those who do not. Are there data on those who are interested in treatment but don't get it? Ms. McLaughlin said they don't have that data but may try to look at this question in the future.

Commissioner Monegan said he thought the Commission had been talking about getting those who are already signed up for Medicaid a suspension of Medicaid while in jail to just put their status on hold rather than starting over. Director Belden said they were working on this.

Commissioner Jessee asked how the 142 people in the pilot study were selected for an offer of Vivitrol. Ms. McLaughlin said that during a pre-trial release meeting in jail, she asks for people who are there for a drug related crime; those that say yes are flagged when they come into center following release. She would like to be able to do more inreach and possibly get them a shot in jail.

Commissioner Stanfill asked whether people who have a Class C felony (and thus won't get jail time) can get on Vivitrol while on probation. Ms. McLaughlin said that some POs will send people to the center for Vivitrol, but the problem is that it will put someone in active withdrawal and this doesn't go well for active users; so ideally they need to be clean or wait 15 days prior to the injection. People in prison are much more likely to be clean.

11. Outreach efforts

Staffer Dunham said that staff would like to organize outreach efforts to new legislators to bring them up to speed on the work of the Commission, and to law enforcement to hear what concerns they may have.

In talk to newly elected Legislators, the idea is to introduce them to Commission and to SB 91. Staff will contact these legislators in January. Commissioners are welcome to join but staff will

facilitate – staff will send out an email to see if Commissioners are interested in participating. Judge Rhoades thought it would be a good idea to highlight items that Legislators are saying they want to change that weren't recommendations from the Commission, yet made it into the bill.

On that note, John Skidmore noted that Law was working on some proposed legislative changes to C felonies, possibly looking at having a C felony coming with some jail time. AG Lindemuth said this was in part an effort to get parity with A misdemeanors, which have some jail time, and also it's more effective to have the threat of jail time to get offenders into treatment.

Judge Rhoades said she thought that changes, where possible, should come from the Commission as a whole. Mr. Skidmore said he was worried about the timing with the legislative session but would prefer to work through the Commission. Judge Rhoades suggested moving the next meeting sooner to January.

Commissioner Jessee said there was an advantage to knowing what's going on with the Legislature, and suggested the Commission use the next meeting to articulate the Commission's position for this next session. Chair Razo asked if the next meeting date were to be moved up where it would be moved to. Commissioner Steiner noted that the Criminal Justice Working Group was meeting on January 19. It was agreed that the next Commission meeting would be on January 19 and focus on potential legislative alterations to SB 91.

AG Lindemuth said Law will provide draft language of their proposed changes and also suggested asking Sen. Coghill to share his proposed changes at the meeting. Judge Rhoades suggested asking all the Commissioners if their entities are planning to propose legislative changes.

Staffer Dunham said staff were also interested in talking to law enforcement to hear their concerns and provide them with more information, as appropriate. Commissioner Monegan suggested talking to the Alaska Commission of Police. Judge Rhoades also suggested talking to Municipal prosecutors.

Future Meeting Dates & Tasks

Next meetings: January 19 and February 23 in Juneau. April meeting still TBD.

Chair Razo asked for final thoughts and noted that a future topic for discussion might be concerning allegations he has heard coming from Nome about discrimination against Alaska Native victims of sex assault – there are reports that their rape kits are not being processed. Commissioner Monegan suggested looking into this with an organization that operates where problem is occurring. Taylor Winston of the Office of Victims' rights said that if warranted a case can be brought to rectify the situation.

The meeting adjourned at 3:08p.m.

Alaska Criminal Justice Commission
Meeting Summary

Tuesday, November 29, 2016
Teleconference

Commissioners attending: Greg Razo, Jeff Jessee, Dean Williams, Alex Bryner, Walt Monegan, Stephanie Rhoades, Quinlan Steiner, Kris Sell, Brenda Stanfill, Trevor Stephens.

Commissioners absent: Jahna Lindemuth (John Skidmore from the Department of Law sat as AG Lindemuth's designee), John Coghill, Wes Keller.

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

Participants: Jordan Schilling (staff for Sen. Coghill); John Skidmore, Kaci Schroeder (Law); Bryce Johnson (JPD); Tony Piper, Alysa Wooden (DHSS).

Meeting called to order, introductions, agenda

Commission Chair Gregory Razo called the meeting to order at 4:30 p.m. He noted that this was a public teleconference meeting of the Commission, with a public comment period scheduled for later in the meeting.

Chairman Razo explained that the purpose of this meeting was to consider two reports due to the legislature on December 1. The reports each contained recommendations, but the recommendations would be considered separately from the report; the reports needed to be sent, but the recommendations did not. If any recommendations required further discussion, the issue would be noted for the report but not recommended to the legislature.

Title 28 Report

Chairman Razo asked staff member Barbara Dunham to walk the Commission through the reports. She began with the title 28 report and asked for any objections or comments to the report as a whole, not considering the recommendations. There were none. The next item was to consider the specific recommendations

A. Revision of AS 28 is necessary.

Barbara suggested tabling a vote on this until the other recommendations were considered.

B. License Revocation

1. Keep Administrative License Revocation (ALR).

Commissioner Steiner stated he was not clear on how the subcommittee concluded that both administrative revocation and judicial revocation were necessary. He was not sure that having both was in fact economical, and asked whether the workgroup had considered a blended system combining both elements. Barbara replied that she thought the conclusion of the working group was that each system had its own merits—ALR was more immediate, while judicial revocation allowed a broader scope of revocations. Chairman Razo said that the economics weren't discussed in the working group. Suzanne DiPietro added that while economics weren't discussed, the concept of keeping both processes in place was thoroughly vetted.

Commissioner Monegan observed that having only one system might create a bottleneck problem. He stated that both systems have their uses, and having two systems doesn't overly stress either one. Commissioner Sell agreed, and suggested removing the word "economical" from the report. She thought the flaw with ALR was that it was left in place if the judicial case resulted in acquittal, but that has been fixed with SB91. Justice Bryner suggested eliminating the reference to "economical" and replace it with "effective and comprehensive." There were no objections to retaining this recommendation with this edit.

2. Extend ALR to all mandatory license revocation offenses.

Commissioner Steiner said he was also unsure about this one, and asked what problem this was solving. John Skidmore noted that the purpose of having ALR only for per se DUI offenses is that they are relatively easy to establish a basis for [i.e. a BAC reading] ; other offenses would be less easy to prove and could engender lengthy mini-trials at the administrative review level.

Commissioner Sell said that this would be useful in a situation where someone has committed a serious non-DUI vehicular offense and is released pretrial. She cited a case in Juneau where a driver who was not drunk chased down and attempted to run over JPD officers—ALR would be useful in such situations to give offenders immediate consequences.

Commissioner Steiner said he shared John Skidmore's concerns about additional administrative trials, and noted that the offenses under consideration would be very serious charges. Chairman Razo said that this idea would be noted in the report but not recommended.

3. Keep judicial license revocation.

There was no objection to this recommendation.

C. Ignition interlock devices (IIDs)

1. Eliminate mandatory IID installation.

Commissioner Monegan objected to this recommendation on the basis that it seemed inconsistent with the research that IIDs were effective when properly used. Judge Rhoades stated that in Alaska, IID was not being used to best practice standards when compared with other states. There is no effective monitoring of IID use and no reporting of failures. If it was used in

conjunction with treatment or monitoring as is done in other states, that would be different. The recommendation would still allow for voluntary use for bail or limited licenses. Chair Razo noted that the workgroup had an extended discussion of this topic, with representatives from all relevant agencies, and the discussion really got into the minutiae of IID use. Suzanne DiPietro pointed out that the legislature did not ask for recommendations on this particular point, and the Commission was not obliged to send any.

Commissioner Stanfill said she thought the language of the recommendation needed clearing up- as written, it might be read to mean that IID use should be eliminated altogether. The IID can still be a useful tool. Commissioner Monegan said that it should be maintained, although it was a flawed process and would work better with mandatory compliance checks- there should be consequences for not using it properly. SCRAM is a better option. Commissioner Sell agreed, and thought that the private contractor system was not working. Ultimately she would prefer to use a tool that would “police the person, not the car.”

Chairman Razo suggested that this recommendation be noted in the report but not recommended.

2. Eliminate IID use as a predicate for license reinstatement.

There was no objection to this recommendation.

3. Retain IID as a prerequisite for approval of limited licenses.

There was no objection to this recommendation.

4. Add SCRAM as an alternative prerequisite for limited licenses.

There was no objection to this recommendation, but Commissioner Stanfill pointed out that this recommendation doesn’t necessarily flow from #3 and suggested editing #3 to include comparable devices. It was agreed to change #3 to reflect that.

5. Allow judges to impose an IID or SCRAM requirement as a condition of release in some cases.

Commissioner Steiner objected to having this condition imposed on first-time offenders. He was concerned that it would lead to over-programming of low-level offenders and could have the same effect as additional monetary bail. Chairman Razo asked whether this recommendation should be referred to pretrial services instead. He also thought that this recommendation would help address the situation Commissioner Sell had mentioned earlier. Judge Rhoades wondered whether pre-trial services officers would have the authority to set bail conditions.

Commissioner Steiner maintained his objection. Chairman Razo said the recommendation would be noted in the report but not recommended.

D. Sanctions

1. Reduce first-offense DUI/Refusal min. fine to either \$638.94 or \$600.

2. Allow defendants to offset their fines by the cost of treatment.

Commissioner Monegan asked whether the workgroup considered an option to keep the fine at \$1500 but suspend \$900. Judge Stephens noted that judges can suspend any amount up

to \$25,000 for a first-time offense. Judge Rhoades said the question was whether the minimum should be lower. Judge Stephens said that the current minimum is out of line with other states and it is a great burden on low-income people, especially when coupled with the SR-22 insurance. Commissioner Monegan thought that suspending \$900 would increase compliance; they would have that money hanging over their heads.

John Skidmore proposed instead to expand the second recommendation and include other ways to offset the fines, such as the SR-22 insurance. He noted that the current level of fines seemed to be working, as the DUI arrest rate declined from 2008-2014. He thought there was some inconsistency in the report because it does not recommend changing sentencing in order to let the changes from SB91 play out, but then does recommend changing fines. Chairman Razo agreed that that was an inconsistency in the report. Commissioner Sell agreed to expanding the second recommendation. In the current climate, legislators will not be excited about reducing fines. With an offset for SR-22 insurance, the \$1500 fine would disappear pretty quickly. Commissioner Monegan agreed.

Susanne DiPietro wondered what things exactly would be used to offset fines. John Skidmore suggested the SR-22 insurance, treatment, and the cost of IID or SCRAM. Commissioner Stanfill suggested license reinstatement fees.

Judge Rhoades pointed out that someone who gets Indian Health won't have to pay for treatment and may wind up paying more than others under this idea.

Chairman Razo stated that it sounded like D1 and D2 needed more work. These would be noted in the report but not recommended.

- 3. Reduce the mandatory license revocation period for first-time DUI and Refusal offenders from 90 to 30 days.*
- 4. Refusal offenders should also be eligible for limited licenses.*
- 5. Reduce 'hard' license revocation periods for repeat DUI /Refusal offenders from 90 to 30 days. ('Soft' revocation period remains the same.)*
- 6. Courts may still impose a longer license revocation period than the mandatory term.*
- 7. Limited license periods for all second or greater DUI/Refusal offenders could be conditioned upon supervision and monitoring.*
- 8. Retain IID restrictions (or alternatively, a remote transdermal monitoring or a 24/7 program) for any limited license.*

Brenda Stanfill was concerned about reducing revocation periods for the same reasons as noted above- these may have been working to reduce DUIs, SB91 already made a lot of changes, and moreover this kind of recommendation could be seen as needlessly "light on crime." Commissioner Monegan also noted that officers he had talked to were not in agreement with reducing revocation periods for repeat offenders.

Judge Rhoades noted that the reason for proposing these recommendations was to make it easier for people to keep their jobs—going without a license may be doable for most for 30

days, but after that it gets significantly harder. Judge Stephens noted that research showed that the effectiveness of revocation periods tends to diminish after 30 days. [At this point, Judge Stephens had to leave the meeting for a prior commitment.]

Chairman Razo noted that many of these recommendations seemed not ready to forward. Commissioner Steiner said he also objected to D6 because there was little reason to allow for more discretionary increases in revocation periods if the mandatory periods were not going to be reduced. Commissioner Sell said she agreed it was important to keep people in their jobs, but these recommendations need to be thought out more.

Commissioner Sell said she was in favor of D7. Commissioner Steiner said he was not sure what D7 was trying to achieve. Judge Rhoades said it would be like a PACE or ASAP program for high-risk repeat DUI offenders, and could include accountability hearings. Commissioner Steiner said he still had reservations and wasn't sure what this would achieve.

Chair Razo asked whether any of the remaining recommendations should be kept. There were no objections to recommendations 4 and 8, so those stayed in while the rest (D1-3, 5-7) were tabled.

Votes Concerning the Restitution Report

Chairman Razo asked whether anyone had any specific concerns with the report. Commissioner Sell said she was concerned about Recommendation 4, which would expand the civil compromise option to larceny offenses. She thought it would be fine for a first-time youthful offender, but didn't want to see it turn into a game where offenders buy their way out of trouble multiple times. Commissioner Stanfill observed that larceny was the only offense for which civil compromise was not allowed. John Skidmore added that under the statute, the victim has to agree to the compromise, which will naturally limit the number of times an offender can take advantage of it. Justice Bryner agreed with this, and said he was okay with Recommendation 4. Commissioner Sell said she was satisfied with this limitation and agreed to forward the recommendation.

Commissioner Monegan had a question about Recommendation 8, which would expand PFD eligibility for offenders previously ineligible if they only had a short sentence. What would a "short" sentence be? Barbara said that the workgroup had not been able to agree on what that meant, but decided to let the legislature decide. Commissioner Stanfill said that the workgroup thought this would be something that would take a lot of deliberation in the legislative process so it was best to leave it to them. Commissioner Monegan pointed out that many PFDs will be taken for child support. Commissioner Sell said she was okay with that, and if some money did go for restitution it would be for the greater good. Everyone has heard of people who won't apply for a PFD out of spite.

Chairman Razo asked if there were any objections to approving the report as is. There were none.

Public Comment

Chairman Razo called for public comment. There was none, although Commissioner Stanfill pointed out a typo in the restitution report.

The meeting adjourned at 5:35pm.

Staff Summary of Plenary Meeting
ALASKA CRIMINAL JUSTICE COMMISSION
Thursday, October 13, 2016, 9:00 AM –4:30 PM
Alaska Mental Health Trust Authority
3745 Community Park Loop, Suite 200
Anchorage, Alaska 99508

Commissioners attending: Jeff Jessee, Jahna Lindemuth, Greg Razo, Stephanie Rhoades, Kris Sell (phone), Brenda Stanfill, Trevor Stephens, Quinlan Steiner.

Commissioners absent: Alex Bryner, John Coghill, Wes Keller, Walt Monegan (Deputy Commissioner for Public Safety Bill Comer sat as Commissioner Monegan's designee), Dean Williams (pre-trial Services Director Geri Fox sat as Commissioner Williams' designee).

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

BJA Funded TA Providers: Melissa Threadgill, Abigail Strait CJL.

Participants: Commissioner Valerie Davidson, Randall Burns, Alysa Wooden (DHSS), John Skidmore, Kaci Schroeder (Law), Taylor Winston (OVR), Morgan Jaco (DOC), Donald Revels (Department of Labor), Kara Nelson (Haven House, Juneau, phone), Janet McCabe, (Partners for Progress), Natasha McClanahan (Governor Walker's office), Amory Lelake (Municipality of Anchorage), Brad Myrstol, Araceli Valle (Alaska Justice Information Center), Patricia Walker, Sam Greely (staff to Sen. Hoffman), Tony Piper (ASAP) Vicki Snow, Janet Weiss.

Meeting called to order, introductions, approve agenda

Commission Chair Gregory Razo called the meeting to order at 9:10 a.m. He noted that this was a public meeting of the Commission, audio-conferenced, with public comment periods scheduled for later in the meeting. Chairman Razo welcomed Commission members and guests.

The Chair asked for a motion to approve the agenda. Commissioner Jessee moved to approve the agenda, and Commissioner Stanfill seconded. The Chair asked if there were additions to the agenda; there were none. Members approved the agenda unanimously.

Approval of Aug 25, 2016 Meeting Summary

The Chair asked for a motion to approve the August 25, 2016 meeting summary. Commissioner Jessee moved to approve the summary. Commissioner Stanfill seconded the motion, and members approved it unanimously.

Oversight/Monitoring

Updates on SB91 implementation/ Pretrial Services

Geri Fox, the Department of Correction's (DOC) new Director of Pretrial Services, gave the commission an update on the implementation of SB91 at DOC and the formation of the new pretrial services unit. She noted that the Crime and Justice Institute (CJI) has been helping DOC with implementation and training. Round one of training for probation officers will be complete by 10/14/16. The POs have been trained on graduated sanctions and incentives and on earned compliance credits.

DOC is still working to finalize 10-12 policies that will need to be approved before the new procedures come into effect on 1/1/17. These policies are under review now, and relate to issues discovered during the training. DOC has been consulting with the DAs and PDs on this. Once all the policies are finalized, there will be a final training process.

DOC has also been working with CJI to develop the Pretrial Services division, as well as a pretrial risk assessment tool. They have been observing pretrial processes around the state, including bookings and bail hearings, and identifying opportunities for pretrial to become more efficient. There will be a stakeholders meeting in November to discuss the development of the new division.

Ms. Fox provided the Commission with materials (in draft form, she cautioned) explaining the timeline to get Pretrial Services up and running by January 2018 and how the unit will function. Right now the plan is to have the database that will be the basis of the risk assessment tool built by April 2017, to recruit staff in June of 2017, and to start pilot programs in a couple of locations in September 2017. They are developing a case management system as well, which will be able to use many features of the existing system but will need to have other features as well.

Regarding the risk assessment tool, Ms. Fox stated it was important to note that there is no tool that can ever predict risk with 100% accuracy. They will regularly audit the tool and employees using the tool to ensure fidelity and accuracy. She noted that while pretrial services officers will be making release recommendations based on the risk assessment tool, judges will still be making the final decisions about release.

Commissioner Stanfill asked about the new responsibilities for POs handling restitution payments. Will completing restitution payments be required for probation compliance? Melissa Threadgill from CJI, who has been working with DOC, answered that restitution payments will be required to earn compliance credits. Payment in full may not necessarily be required to earn compliance if the offender is up to date with the set payment schedule.

Commissioner Stanfill also asked about the case management system—what access will the rest of DOC, especially internal probation officers, have to information on those under pretrial supervision? Ms. Fox responded that that information will have to be handled very

carefully because people who are on pretrial release are still presumed innocent. There will be different standards for sharing pretrial information.

Judge Rhoades asked about the risk assessment tool and noted her concern that such tools used elsewhere have come under fire for being biased. Ms. Fox stated that researchers from CJI are developing the tool based on data from Alaska. These researchers have experience in developing similar tools around the country. The tool is entirely data-driven (there will not be a subjective component based on interviews) and the technical assistance team may need to add additional components to the tool once it is put into practice.

Judge Rhoades also asked about staffing for the new Pretrial Services unit. Ms. Fox informed the group that the unit is technically funded for 30 staff, though that money is being used for initial implementation and development right now. As the unit becomes operational, she will try to keep the staffing to a minimum and operate as efficiently as possible. The budget has additional room for staffing using projected reinvestment dollars, but actual increases in capacity will depend on actual savings realized.

Judge Rhoades also asked about pretrial diversion programs. Ms. Fox stated that diversion was on her radar, but would be difficult to implement for people who are still presumed innocent. Judge Rhoades noted that the point of pretrial diversion was to avoid having certain individuals go through a court system that is not designed for them. She suggested adding DHSS/behavioral health experts to the team of stakeholders for the implementation meetings as 65% of individuals involved in the justice system have behavioral health needs.

Commissioner Jessee echoed Judge Rhoades' suggestion, and added that the development of pretrial diversion is critical. There are already therapeutic courts, but once someone gets to a therapeutic court they're already in the system—there is a need for diversion for some individuals before they get into the system.

Criminal Justice Working Group

Susanne DiPietro, director of the Alaska Judicial Council, reminded the Commission that it had asked the Criminal Justice Working Group (CJWG) “to review and analyze the implementation of the recommendations made in the justice reinvestment report in December 2015, and other recommendations issued by the commission, and regularly report to the commission on the status of the implementation” (as required by SB91). She reported that at its meeting on 8/18, the CJWG accepted the Commission's request.

Data-sharing agreements

Ms. DiPietro also reminded the Commission that it would need to enter into data sharing agreements with the Alaska Judicial Council and the Alaska Justice Information Center to facilitate data collection and analysis.

Data Analysis- Yardsticks and Goals

Commission staff attorney Barbara Dunham reported that she went to a Pew conference in DC to learn more about data and performance metrics. She noted that while some performance metrics for SB 91 may not be measurable for some time (such as recidivism), others may be measurable in the near future. She asked whether the Commission had any thoughts on what performance metrics the CJWG should be focusing on for the coming months.

Chair Razo suggested forming a data work group to discuss metrics and come back to the Commission with goals and performance metrics, and noted a data group had existed in the past. John Skidmore, Assistant Attorney General, recalled that the previous group had not met often. He opined that data analysis is an important aspect of SB91 implementation, one that should be started right away so we can start measuring success now, and volunteered to be in a data work group.

Commissioner Jessee stated that data analysis is critical to get right. SB91 has already been getting negative attention, particularly from legislative candidates. Data that can accurately show success will help combat that. He suggested that the Commission will also need baseline data.

Ms. DiPietro informed the group that staff have been working on collecting crime rate statistics to start to get baseline metrics and hopefully look at historical trends.

Chair Razo suggested that Law, the Public Defenders, the court system, Public Safety, and the Trust all **identify designees for a data committee** and get back to staff with that information. There were no objections to this proposal, so Chair Razo identified this as the plan for data analysis. Commissioner Stanfill asked whether this would be a group open to others as well, and Chair Razo said that it would.

New and Continuing Work Groups

New Work Group: Sexual Offending

Ms. DiPietro informed the Commission that SB 91 required the Commission to “appoint a working group to review and analyze sexual offense statutes and report to the legislature if there are circumstances under which victims’ rights, public safety, and the rehabilitation of offenders are better served by changing existing law.” There is no due date given for a report. Commissioners Steiner, Stanfill, Stephens, and Lindemuth, as well as Deputy Commissioner Comer all indicated interest in joining this work group or designating an agency representative. Ms. Fox also stated that she thought DOC would be interested in joining.

New Work Group: Public Outreach

Ms. Dunham informed the Commission that staff thought it would be useful to have a work group dedicated to public outreach, to combat the negative and often inaccurate press SB91 has been getting, as well as reported confusion from practitioners. Ms. DiPietro noted that this has been a real problem, and that misinformation has been repeated by the press.

Judge Rhoades observed that there were really two outreach tasks: one, to inform and train practitioners, and two, to inform the general public about the purpose of SB 91. She suggested the latter task really needs attention. Practitioners have been getting training—they had one at the Court System. They will need more, however, as judges have been having a difficult time with things like reconciling differing municipal statutes with state statutes.

Attorney General Lindemuth questioned whether a workgroup was necessary. From her perspective, the various departments are committed to training staff. Law has been coordinating with Public Safety to try to provide consistent training. In terms of public outreach, she doesn't necessarily feel comfortable speaking for the Commission, though she can speak for Law.

Chair Razo said that he thought it was important to inform the public of any progress from SB91. He encouraged the various agencies to report out what they're doing to implement the bill—e.g. the Pretrial Services implementation and DOC training.

Commissioner Jessee stated that he thought there was a role for the Commission to communicate what's going on with SB91. The bill was a product of the Commission, and it's the Commission's responsibility to clarify what its product does and doesn't do. He suggested that the Commission needs good materials for outreach (such as the Practitioner's Guide) and to provide training on how to use those materials. He reiterated his earlier observation that SB91 has been getting a lot of negative attention and stated he is worried about rollback legislation.

Lt. Sell said that in Juneau, they are dealing with large numbers of mentally ill homeless people who are not being arrested, and it is difficult to explain this to the public. She said it would be nice to have all the various conversations that have been happening all in one place.

Commissioner Stanfill said that she viewed SB91 as the first step in a long process, and now that the bill has passed, the Commission needs to follow up with the reinvestment portion. Some of that money is now hitting the streets and this needs to be communicated to the public. If there is rollback legislation, we'll lose step one without getting to the next step. Chair Razo agreed that the public should know about the timing of justice reinvestment, and when statutory changes are going to take place.

Commissioner Jessee asked staff whether there was a capacity issue that limited staff ability to do outreach. Ms. Dunham replied that that was partly the issue—it would be nice to have more people to get the word out about what SB91 actually does. But staff would also like some direction and input from the Commission rather than act unilaterally. Ms. DiPietro said that staff have been doing a lot, but that it could be more organized. She and Chair Razo have been

attending community events as representatives of the Commission. Having another Commissioner or two to do that would be helpful. Commissioner Jessee said that he would be available, and would have the Trust's public information staff work with the Commission.

Chair Razo noted that most of the agencies represented on the Commission have spokespersons to communicate to the public. He asked the Commissioners to let Ms. DiPietro or Ms. Dunham know whether they or a designee from their agency would like to participate in an outreach workgroup. He noted that the Practitioner's Guide, available on the Commission website, is a useful starting point. He also noted that he is planning to speak at AFN to discuss justice reinvestment, along with Jordan Schilling and a rep from DOC.

-Fifteen-minute break-

Continuing Work Groups

Commissioner Jessee, co-chair of the Behavioral Health Workgroup, explained he had two motions that would turn the Workgroup into a standing committee. He noted that the initial work plan for the Workgroup had not yet been completed, and that behavioral health is an ongoing issue – there will be topics in behavioral health to address throughout the tenure of the Commission. Furthermore, there has been a problem in the workgroup whereby an idea seems to achieve consensus at the workgroup level with designees (rather than Commissioners themselves), but when that idea is presented to the full Commission, it gets a lot of pushback and is not approved. This is inefficient and it would be better to have actual Commissioners, rather than designees, sit on the proposed committee.

Commissioner Jessee therefore moved to establish a standing committee. He provided a written motion:

I move that the Alaska Criminal Justice Commission (the Commission) establish a Behavioral Health Committee (the Committee), as a standing committee of the Commission. The Committee would review the Commission's Behavioral Health Workgroup's Recommendations, along with criminal laws, targeted civil laws (such as AS § 47.30.700–AS § 47.30.915 Involuntary Admission for Treatment), and criminal justice/behavioral health practices and procedures. The charge of the Committee would be to identify opportunities where closer collaboration between Alaska's criminal justice and behavioral health systems in law or practice could reduce the overrepresentation of people with behavioral health disorders in the justice system, enhance public safety, promote both offender rehabilitation and a more cost effective and efficient criminal justice system. The Committee's proposed solutions, statutory or administrative, would be brought to Commission for recommendation to the Legislature and/or to the Governor.

Judge Rhoades seconded the motion. Chair Razo called for discussion on the motion. Commissioner Stanfill asked for clarification—would the work of the Workgroup be assumed by the Committee and the Workgroup would disband? Commissioner Jessee responded that that was the case.

Chair Razo wondered about the distinction between a workgroup and a standing committee, since the Commission's practice has been to form workgroups. He agreed that the

three-meeting limit that had been set before was unworkable, but was concerned about tying up Commissioners and limiting their availability for other workgroups. He had no real objection to the motion but wondered if it was really necessary.

Judge Rhoades stated that most issues of criminal justice have at their root a behavioral health issue, so the subject area is large enough to warrant forming a standing committee. She informed the group that two different workgroups have looked at the UNLV study and that it was time for a policy-level group to move the study's recommendations forward. She said there is a functional difference between a workgroup with mostly designees and standing committee whose members are able to set policy themselves.

Judge Stephens agreed that there was a need for an ongoing group to address behavioral health issues.

Chair Razo called for a vote. The motion passed, with Commissioner Sell voting no.

Commissioner Jessee then made a second motion, as follows:

I move that the membership of the Alaska Criminal Justice Commission Behavioral Health Committee consist of those Commissioners who are policy level criminal justice agency stakeholders and policy level behavioral health stakeholders who understand the challenges and needs of offenders with behavioral health disorders, specifically: the Alaska Criminal Justice Commissioners representing the Alaska Court System, the Alaska Mental Health Trust, the Public Defender Agency and the Department of Corrections, Law and Public Safety. Further, the Committee will invite the participation of other important stakeholders such as the Department of Health and Social Services, the Alaska Native Tribal Health system, rural tribal and urban behavioral health providers. Additional invitees may also be added at the discretion of the Committee.

Judge Stephens seconded the motion. Commissioner Stanfill agreed with the substance of the motion but thought that a victims' rights advocate should be included as a mandatory (rather than discretionary) member of the group. The motion was so amended.

Chair Razo called for a vote. The motion passed unanimously.

The Commission then discussed a proposal from Commissioner Stanfill to extend the life of the Barriers to Reentry workgroup and designate it as an ongoing workgroup. Commissioner Stanfill indicated that she thought her proposal should extend to all the current workgroups—the Restitution Workgroup, for example, never addressed its second component, Restorative Justice.

Chair Razo observed that keeping the current workgroups and adding more will require the Commissioners to commit to an increased workload. Ms. DiPietro noted that the impetus for creating limited workgroups was that staff capacity was limited.

Judge Rhoades suggested creating a work plan to address burning needs first, with a one-year schedule. She also noted that the Behavioral Health Committee will not need much in the

way of staffing, just minutes. Chair Razo suggested that staff draft a work plan for the Commission to discuss at the next meeting.

Commissioner Steiner had also proposed extending the Presumptive Sentencing Workgroup. He noted that the Workgroup had met 3-4 times and had come to consensus on proposing a new statutory mitigator (to be discussed later in the meeting) but had more to discuss on a several topics, including what to do about the three-judge panel statutes.

Annual Report

Ms. Dunham informed the Commission that the Annual Report (a draft of which had been provided to the Commissioners) was due on November 1. Because of the quick turnaround time, she asked the Commissioners to make any comments or proposed changes to the report by Friday, Oct. 21.

Public Comment – 11:30 a.m.

Chair Razo opened the meeting up for public comment.

Janet McCabe, chair of Partners for Progress, told the Commission that she thought pretrial diversion was a “marvelous” idea, given the opioid epidemic in Alaska right now. Partners sees an average of 51 people per day in its reentry center, many of whom are opioid addicts. Partners offers medically assisted treatment using Vivitrol, which has an 80% success rate. Ms. McCabe also said she thought the sex offense workgroup was necessary and that she had taken a look at the Practitioner’s Guide which was very helpful. She also stated she had a FY16 dataset that might be helpful to the Commission.

Chair Razo thanked Ms. McCabe and stressed the importance of reentry work. He asked whether she had any data in written form and Commissioner Stanfill asked whether this might be made public. Ms. McCabe replied yes to both questions. [*Ed.: data from the Vivitrol Pilot Program is attached.*] Judge Rhoades noted that a pretrial diversion program could possibly include Vivitrol in combination with treatment—any such program would need both.

Vicki Snow addressed the Commission, explaining that she found the Commission’s work very exciting and that she would like to be a part of it. She observed that the drug epidemic in Alaska affects everyone and that rehabilitation efforts need to be individualized. She noted that members of her family struggled with addiction and stated that it was important to give people living with an addiction a sense of hope and ties to the community. She related a story about a family member who was released on parole to a halfway house and had difficulty contacting the office in charge of electronic monitoring. Chair Razo informed Ms. Snow that there was limited time for public comments, but encouraged her to submit written comments for the Commission’s consideration. [*Ed: Ms. Snow’s comments are attached.*]

Tara Burns, social justice consultant with CUSP (Community United for Safety and Protection) next addressed the Commission. She recently completed a Master's in social justice at UAF, focusing on sex trafficking laws and how they are perceived by sex workers. As part of CUSP, she lobbied for the provisions in SB91 that deal with sex trafficking. She brought a summary of her research to hand out to the Commission. [Ed.: An electronic copy of Ms. Burns' research is attached.] One of the findings of her research was that most sex workers in Alaska agreed that the federal definition of sex trafficking is accurate and that the Alaska definition of sex trafficking is too broad.

Though SB91 addressed some concerns, sex workers still believed there was a problem with the law on second-degree sex trafficking. Some reported being charged with or fearing charges of sex trafficking for having safety measures such as having a friend wait in the car or sharing apartments or hotel rooms. Ms. Burns recently reviewed all charged instances of sex trafficking since the law was changed in 2012 and in her opinion, only two of the cases involved actual abuse. A number of cases involved the friends or roommates of sex workers being charged for being available as a safety resource. Some sex workers were charged with trafficking themselves. This is problematic because it discourages sex workers to cooperate with the law if they think they or their friends will be charged with trafficking. Trafficking is a barrier crime which makes obtaining employment difficult.

Ms. Burns said she advocated changing the statutory definition of sex trafficking to align with the federal definition, creating an expungement provision for sex trafficking convictions, outlawing police contact with sex workers who are witnesses to crimes, and increasing the availability of shelter services for sex workers who have convictions on their records.

Chair Razo thanked Ms. Burns and informed her she was welcome to participate in the sex offense workgroup that was just formed today.

Sex worker Cari-Jo spoke to share her perspective on the sex trafficking statute with the Commission. She said she has been a sex worker for 30 years. She started doing sex work in Tacoma, where she lost three close friends to the Green River Killer. [Ed.: *The Green River Killer was a serial killer who is believed to have murdered over 70 women in the Seattle-Tacoma area in the 1980s and 1990s; many of his victims were sex workers.*] She said that in her line of work, her safety depends on having others to rely on. She stated that she was not ashamed of her profession but that she was ashamed at the thought that she could put a friend at risk by asking them for help while she was working.

Former sex worker Cristal also spoke to share her perspective. She used to be a sex worker because she was an addict. She would often share rooms with friends for safety, and would ask friends to share a ride for safety. She said that these friends would be considered sex traffickers under the current law. She asked the Commission for help in changing the law as it is now, and thanked the Commission for the positive changes already enacted in SB91.

Kara Nelson of Haven House Juneau informed the group that she runs reentry programs for women. She has noticed a disconnect between probation and other services needed by reentering citizens. She is encouraged by the efforts at creating a pretrial risk assessment tool and a behavioral health committee—she hoped that this would prevent or reduce the siloing of services to people with behavioral health needs. She believes outreach regarding SB91 will be crucial—she has been getting a lot of questions regarding the bill. She also has written comments she will share with the Commission. [Ed. I have emailed Ms. Nelson for her comments.]

Taylor Winston of the Office of Victim’s Rights spoke next. She observed that there were many entities that want to see SB91 succeed, but in order for this to happen, those at the policy and executive level need to listen to the concerns of field workers. She was concerned that people would not be allowed to speak their minds; this bill and its implementation should serve all Alaskans. She encouraged the Commission not to be afraid of hearing voices of dissent.

Break – Lunch 12:10-12:40

Work Group Reports & Proposals

Title 28

Ms. DiPietro walked the Commission through the report on offenses in Title 28 of the Alaska Statutes (which contains Alaska’s alcohol-related motor vehicle offenses). She explained that both SB64 and SB91 required the Commission to look at Title 28 offenses, and the report is organized according to the questions posed by the legislature. The report was drafted by previous staff attorney Mary Geddes after workgroup members came up with the recommendations. She also noted that while the recommendations in the report were the product of consensus at the workgroup level, the Commission reviews the recommendations de novo. She encouraged the Commissioners to share the report with their technical-minded employees for feedback as the report is very technical.

The first question was whether both administrative law revocation (ALR) and judicial revocation processes be maintained. The report recommends retaining both ALR and judicial revocation because both are effective in different ways. It also recommends extending ALR to all offenses under Title 28 for which mandatory license revocation is required.

The next question was whether the use of ignition interlock devices (IIDs) is effective. The workgroup found that they were effective while they were in use, under certain conditions. It recommended eliminating IIDs as a mandatory sentence component or condition of probation and as a predicate for license reinstatement. It also recommended retaining its use for people with limited licenses and allowing an option of using a SCRAM device instead (SCRAM monitors alcohol levels through the skin).

Regarding IID use, Commissioner Stanfill stated that she thought dropping the IID requirement entirely might be too broad. Judge Rhoades praised the SCRAM device. Judge Stephens questioned what the initial purpose of the statutory IID requirement was. Judge Rhoades thought it was introduced by MADD but that once implemented, it did not operate as

an evidence-based program as intended. She also noted that while it is technically an offense to not have an IID installed when required, this is rarely charged.

The next question related to sanctions – fines and license revocations. The report recommends reducing fines to bring them in line with fines in other Western states, and reducing revocation periods for first-time offenders. Commissioner Jessee asked whether the workgroup had considered income-based fines, a system used in other countries. Ms. DiPietro and Teri Carns, AJC staff, informed the group that income-based fines were used in other countries and may be used in other states, but the group did not specifically consider them. Judge Rhoades commented that income-based fines would take fiscal reality into account—many fines on people who can't afford them simply aren't collected.

The final question related to whether there were effective programs for Title 28 offenders. The workgroup found that intensive supervision programs, like PACE and the therapeutic courts, are effective.

The Commissioners discussed deadlines for getting feedback to staff. It was decided that the Commissioners would get any comments and approval or disapproval of the report's recommendations to staff by November 7. Staff will then edit the report to reflect any changes in advance of the December 1 deadline. Commissioner Stanfill asked about the approval process for the report. It was agreed to schedule a teleconference on November 29 at 4:30 p.m. for commissioners to vote on the report, and if consensus is not reached on certain points that will be noted in the report. Chair Razo said that the Commission had provided minority reports in the past.

Restitution and Restorative Justice

Ms. Dunham walked the Commissioners through the report from the Restitution and Restorative Justice Workgroup. She noted that the landscape of restitution collection had changed recently when the Governor vetoed the funding for the Department of Law's restitution collection unit. The restitution collection rate for Alaska under the Department of Law had been comparable to the collection rate in other states. Starting in 2017, probation officers will be required to set up a restitution repayment plan for any felony probationer who owes restitution.

The proposals from the report were as follows: (1) Increase opportunities for victims to request restitution; (2) encourage DOC and the court system to work with victims' advocates to find ways to monitor the restitution obligations of misdemeanants and non-probation felony offenders and explore whether using an electronic tracking and reminder system might be feasible; (3) amend AS 12.55.045 to remove the requirement that a defendant provide a financial statement; (4) amend the civil compromise statute for misdemeanors to allow the compromise of larceny offenses; (5) streamline civil execution; (6) expand opportunities for victims to receive "bridging" restitution funds; (7) use technology to encourage defendants to make immediate in-court payments and online payments of restitution; and (8) expand PFD eligibility for certain offenders.

Judge Rhoades asked whether the workgroup had considered privatizing restitution collection. The workgroup had considered it, but ultimately rejected it. Judge Stephens noted

that contrary to the report's statement that petitions to revoke probation for nonpayment of restitution are uncommon, this practice is actually fairly common in the First Judicial District.

Chair Razo set the deadline for comments on the report for November 7th as well. Commissioner Stanfill asked whether there would be opportunity for further discussion. Attorney General Lindemuth said she was interested to see what the court system can do with restitution collection and said she was comfortable with the report as is. It was agreed to schedule a teleconference on November 29 at 4:30 p.m. for commissioners to vote on the report.

Behavioral Health

Judge Rhoades updated the group with the progress of the Behavioral Health Workgroup. Prior to the meeting the workgroup had provided the Commission a set of comprehensive recommendations that had been discussed at meetings, though they were "not ready for prime time" and would be a topic of further research and discussion for the newly-formed Behavioral Health Committee.

Judge Rhoades brought forward the final motion left over from the workgroup's slate of recommendations from the last meeting, copied here:

The Alaska Criminal Justice Commission requests that the Commissioner of Health and Social Services, in concert with designated ACJC representation, review the proposed statutory changes recommended in the *Review of Alaska Mental Health Statutes* conducted by the University of Nevada Las Vegas under the direction of the Criminal Justice Working Group's Title 12 Legal Competency subcommittee (May 2015). The review shall include 1) an analysis of the proposed changes, 2) a statement of clear agreement on the language of the proposed amendments that enjoy major stakeholder support, 3) recommendations for how Title 12 and the Title 47 changes would fit into the proposed redesign of the State's behavioral health system and the Department's effort to propose an 1115 BH demonstration waiver to CMS by the middle of 2017. The report should be provided to the Commission no later than September 1, 2017.

Judge Stephens seconded this motion. Judge Rhoades noted that several different groups had looked at the UNLV study before, but because DHSS would be affected fiscally by the recommendations in the study, DHSS would need to review the recommendations themselves. She understood that DHSS was on board with this proposal. DHSS Commissioner Valerie Davidson, who had joined the meeting by this point, said that DHSS was indeed on board.

John Skidmore asked, on behalf of the Department of Law, whether DHSS would check in with relevant stakeholders before implementing or recommending any changes. Commissioner Davidson said they would.

Chair Razo called for a vote on the motion to approve the above recommendation. The motion passed unanimously.

Sentencing

Commissioner Steiner updated the Commission on the progress of the Presumptive Sentencing Workgroup. The Workgroup initially considered a complete overhaul of the presumptive sentencing scheme, but ultimately rejected that idea because there were already significant changes to sentencing in SB91 that had yet to play out, and there was no evidence that any other sentencing system works better. [Ed.: A report on the activities of the workgroup and the proposed mitigators discussed below was provided to the Commissioners before the meeting.]

The workgroup had, however, decided to recommend a new statutory mitigating factor (mitigator). This was actually a two-part recommendation: one mitigator would apply in cases where a defendant pled guilty; the other would apply where a defendant went to trial but nevertheless demonstrated an acceptance of responsibility for the crime.

Commissioner Steiner noted that the workgroup had not come to a consensus on the details of how this mitigator would actually operate. He thought the Commission could either vote on the mitigators as they were proposed now, or try to hammer out the details. Given that the workgroup had not been able to agree on the details, he questioned whether this would be a productive use of time. Commissioner Stanfill said that this was an instance where not all parties would be able to agree on the minutiae, but that may not matter, as the minutiae would likely be changed during the legislative process anyway. The workgroup did agree on the concept. Mr. Skidmore agreed and noted that there was consensus on the language proposed, but not on how the mitigators would actually operate.

Judge Stephens moved to forward the two proposed mitigators as written to the legislature. Commissioner Stanfill seconded the motion. Those mitigators are worded as follows:

- AS 12.55.155(d)(___) “the defendant clearly demonstrates acceptance of personal responsibility for the defendant’s offense, as evidenced by entering into a timely plea agreement with the State of Alaska pursuant to Alaska Rule of Criminal Procedure 11(e).
- AS 12.55.155(d)(___) “the defendant, prior to sentencing, clearly demonstrates an affirmative and timely acceptance of responsibility for the defendant’s criminal conduct.

Commissioner Steiner explained that this mitigator was proposed in response to an issue that has frequently come up in plea and sentencing negotiation where parties wanted to give defendants “credit” for an acceptance of responsibility but didn’t have a good way to do that. Ms. DiPietro explained that one purpose was to incentivize timely resolution of cases, and it could also increase transparency by reducing charge bargaining. Mr. Skidmore pointed out it was already reflected in case law that defendants who accept responsibility are more likely to be rehabilitated after prison. Up to now, parties have been using inapplicable mitigators to try to reflect this. Judge Stephens noted that case law also recognized the non-statutory mitigator of

exemplary post-offense conduct. He thought the proposed mitigators were consistent with principles of restorative justice and would incentivize payment of restitution.

Judge Rhoades stated she was concerned about the way these mitigators were drafted and that they did not offer details about how they would operate. Commissioner Stanfill explained that that was the very problem that arose in the workgroup – ultimately the group concluded that the details would be left up to the legislative process. Judge Rhoades asked whether the Commission might forward the concept of the mitigators to the legislature without using this specific language. Mr. Skidmore noted that there would always be interpretation questions with new legislation. Judge Rhoades expressed her concern that Justice Bryner, who had not agreed with the second mitigator, was absent from the meeting.

Chair Razo called the motion for a vote. The motion was approved, with Judge Rhoades voting no. It was agreed that the recommendation would be forwarded to the legislature with language that would reflect Judge Rhoades' and Justice Bryner's concerns.

Ten-minute break

Chair Razo called the meeting back to order and noted that there were two items to add to the agenda—identifying tweaks for SB91 and granting authority for staff to submit the annual report to the legislature.

Barriers to Reentry

Commissioner Stanfill gave the Commission an update on the Barriers to Reentry workgroup. The workgroup met during the legislative session, which was a busy time for everyone, so the group was still working on the agenda items they started with. They supported the Ban the Box initiative, which Governor Walker indicated he would include in an executive order. He has yet to do this, so the workgroup will continue to push for it.

Regarding barrier crimes, the workgroup discussed this in February and March when DHSS was considering regulations regarding barrier crimes. They forwarded a recommendation to the Commission and the Commission asked DHSS to put that process on hold to give the Commission time to offer input. They still need to figure out who to connect with at DHSS and she asked for Commissioner Davidson's help with that.

The workgroup was also looking at expungement and coming up with a fix for suspended sentences to make them truly disappear from the record.

Chair Razo stated that Barriers to Reentry was one of the first areas the Commission wanted to focus on and that it sounded like it was a good idea for the workgroup to continue. Ms. Fox informed the group that Commissioner Williams is interested in participating in this workgroup.

Adjustments to SB91

Judge Stephens proposed that the Commission regularly discuss and track proposals for adjustments to SB91. He suspected that there are probably several lists of necessary tweaks floating around already. He could think of two or three areas of immediate concern. Chair Razo agreed, and asked staff to put it on the agenda for the next meeting.

Ms. DiPietro said that for every change to SB91, there could potentially be a change in the projected savings from the bill. Pew can help calculate these adjustments, but they will need advance notice to do that research.

Judge Stephens observed that a few simple fixes should be enough to quell SB91 naysayers. He will forward his list to the Commission. Commissioner Steiner asked what issues needed to be addressed. Judge Rhoades observed that there were unintended consequences of some provisions and inconsistencies in others. Chair Razo saw no harm in compiling these issues and sharing them with the legislature.

Credit for Time Served at API

Commissioner Jessee informed the group that there had been an issue with getting defendants credit for time served at API while they awaited competency evaluations. This had been the practice in the past but there was concern that it would not continue. The relevant stakeholders met and agreed upon an administrative fix for the problem.

Future Meeting Dates & Tasks

Chair Razo noted that the annual report was due to the legislature by November 1. He reminded the Commissioners that they should forward their comments to staff by October 21, and staff will then send a revised report out to the Commission. The Commission agreed to confer authority on the Chair to transmit the report, making it clear that any recommendations in the report that the Commission had not agreed upon would be taken out of the report.

The reports on restitution and Title 28 are due on December 1. Because the next Commission meeting is December 8, it was agreed that the Commission will meet in a teleconference for final approval of these reports. The Commissioners will get their comments and objections to staff by November 7, and staff would revise them accordingly. Commissioners can discuss the reports (and any other Commission business) one-on-one, but if three or more Commissioners meet, public notice must be given in advance. It was agreed that the Commissioners would get as much done as possible over email in November, and meet on a teleconference on November 29 from 4:30-5:30pm.

Next meeting: Thursday December 8, 9 a.m. – 4 p.m. in Anchorage

February meeting

The Commission set the next date as February 23, and agreed that unless something changes the meeting will be held in Juneau.

Attachment A- Data from Vivitrol Pilot Program

Vivitrol Pilot Program as of Sept. 30, 2016 (Developed by Partners Reentry Center in conjunction with Jyll Green, Family Nurse Practitioner)

118 individuals have been offered this program to date. (Pilot Program began 9/15.)

- 78 accepted the Vivitrol program as part of their post-release plan.
 - 62 remain in the community with housing and employment.
 - 16 have recidivated (of these 5 have re-released and are now back on Vivitrol).
- 39 declined the Vivitrol program as part of their post-release plan.
 - 0 remain in the community.
 - 38 have recidivated (or have warrants out for their arrest).
 - 1 died of heroin overdose.

Please contact Cathleen McLaughlin, Director of Partners Reentry Center, for additional information.

Attachment B – Written comments from Vicki Snow

My name is Vicki Snow, I was at the October 13th meeting. I spoke there....I was the one choking up. Sorry, I think the combination of nerves and the subject...well, I had a lot to say, few minutes to say it and then I spent time trying not to cry. My apologies.

A chain of events have taken place that led me to the governors office and then to Alaska Criminal Justice Commission to the meeting on October 13th. As I was reading on the website I become very interested in the work groups that are taking place. My interest in the Pretrial Services Committee and Reentry Barriers were of greatest interest to me. I do want to help by volunteering and possible employment down the road. I will be following up with both committees this week and hope I can help make a difference in many people's lives. Everything happens for a reason and I believe that I can help make a difference. One voice, one day at a time.

First I would like to bring to the attention of the Commission the reason why, the chain of events that led me to the meeting on October 13th.

I have a loved one in jail who at this point should be out. Finding things are not quite as they should be and I want to speak out.

8/4/16

Randall Soellner went before the Discretionary Parole Board. He was granted parole with a release date of February 1, 2017. He has been eligible for parole since August 2015. So why the extra 6 months? He has never had a write up. Successful work release for 3 years. Never failed a UA. Jails over crowded, Park View closed and moved everyone to Cordova Center. What is the point?

8/6/16

Randall Soellner turned in an application for electronic monitoring to his Probation Officer.

8/21/16

Randall Soellner was removed from his job at Preferred Pet Foods. He was told he would go back to jail for 3 days. He spent 7 days in jail. His infractions were using a company phone...calling the phone his and unauthorized visit. Mind you these are not breaking the law, but petty rules. He paid for his infractions.

9/14/16

Phone call to the Electronic Monitoring office to check on his application. They did not have his application. 38 days later and they do not have his application.

9/16/16

Phone call to Randall Soellner's PO at 9:25 am. She stated that she could not discuss with me anything about the incident at his previous job. She said she would not recommend him for Electronic Monitoring. So I told her since she could not talk to me I would talk to her. I talked to

her about the discrimination at Preferred Pet Food, (discrimination has been reported). Talked about his EM application and that he has paid for his infractions.

9/16/16

Phone call to Randell's PO Supervisor, I spoke with her about Randall's EM application. When it was turned in and that the EM office says they do not have his application. She assured me that she would look into it and if it is still with the PO it would be in the EM office before the end of the work day.

9/19/16

9:21 am phone call to EM office to verify if they had received Randall's EM application. They had received it on 9/16/16

9/28/16

Phone call to EM office. His application still in process.

10/5/16

His application has been denied for the following reason: Recent return to custody for non-compliance with furlough conditions.

Randall Soellner paid for this infraction with 7 days in jail in August 2016.

I just have to say, with the conditions of the Cordova Center versus our home..Our home is drug free and safe. His family, past employers, friends and myself all know he needs to be out. He needs to move on with his life. He is more than ready. And now needs all of our support, including yours, to get him out and on his way to being a contributing member of society. He has strong family support with love and a sense of belonging.

Randall and I have talked for many hours about starting up some kind of rehab, transitional housing. What it would take to make it work and what we would need to actually be able to help people. Help them so they stay sober. Help them make better choices. Give them a sense of community, belonging, to society instead of other drug users. Help them get out of the revolving door of our judicial system. What really works and what doesn't. I attended the Peninsula Heroin Epidemic meetings because I wanted to be a part of helping. But they are not ready for me yet. They are busy putting on band-aids...Band-aids are good and well needed..but not the answer to the problem...but a beginning.

Just in short I would like to outline my thinking on how to help our drug addicts. starting with Mandatory Rehab for at least 2 years. During this time there will be detox, doctors and psychologists. Counselling for rehab and education. They will need to better their education, be it get a GED or college, maybe tech school. Getting ready for the working environment. Getting a job that will support a home and food on the table, to feel better about themselves, a sense of belonging. Positive thinking that they can succeed and do succeed. They will need transportation that they pay for with their wages along with getting a drivers license or temporary work permit. They will need to get an apartment that they maintain even though they are not free to live there yet. All these things will be just a part of their daily life and

moving out of the rehab into real life outside of DOC or rehab will just be a move not a huge burden with no skills to accomplish, no mind set to succeed. This is what happens to a lot of people when they get out of rehab, transitional housing or jail.. Change. They find they have changed but everything else has stayed the same. Life is hard out here and we have to help them. Help them to not end up in the same environment that got them put in jail or rehab in first place. With skills and mind set to accomplish just that. So all of this thinking to put in play takes a lot of money. Well if Wildwood Correctional Facility spends 7 million dollars a year on taking care of people with drug related charges....I want that money to make the difference they need to succeed.

Thank you for your time! Thank you for all you do here! I want to be a part of making that difference as all of you are trying to do.

If you have any questions please feel free to call me.

Vicki Snow
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People in Alaska's Sex Trade: Their Lived Experiences And Policy Recommendations



Officers wiping a woman's hands after she interacted with an undercover officer during an Anchorage prostitution sting. Photo from the Alaska State Troopers Reality Show.

T. Burns

Acknowledgements

A couple years ago I wandered into Dr. Kayt Sunwood's office at the University of Alaska Fairbanks with this huge research project I wanted to do. Without her support and encouragement, I never would have made it through the registration process. Dr. Jean Richey took the helm as my committee chair, taught me how to do ethical qualitative research, and expertly guided me through the whole process. Dr. Brian Jarrett understood all the theories that explained the realities I was investigating.

Want to know more?

This report is a summary of the main points of a huge amount of data. If you have questions or want to read the whole thing, email me at: sextraffickingalaska@gmail.com

Research Context

In 2012 a task force, a working group, and a round table were established to discuss prostitution and sex trafficking in Alaska. The task force and working group made recommendations that shaped Alaska's new sex trafficking law, passed in 2012. People with first hand experience in Alaska's sex industry, including sex trafficking victims, were excluded from the groups and the process. Instead, the state turned to law enforcement and non-governmental organizations who profit from the criminalization of every aspect of prostitution.

The resulting law, passed in 2012, broadly redefined most adult consensual prostitution as sex trafficking. The only two people to be charged in the first two years of the laws existence were alleged prostitutes who were caught in ordinary prostitution stings and charged with facilitating or aiding prostitution (sex trafficking in the fourth degree) and felony sex trafficking charges like owning a place of prostitution (sex trafficking in the third degree) and receiving money from prostitution.

This legislation was followed by the creation of a state wide investigative unit targeting people in Alaska's sex trade and funding for conferences and prevention programs. On the other hand, I had received information from victims of force, fraud, and coercion within the sex industry that they were prosecuted for prostitution or trafficking themselves, and were regularly denied access to crisis shelter and counseling.

This research came from a desire to fully understand and quantify the effects of Alaska's sex trafficking and prostitution policies on all people in Alaska's sex trade. I was especially concerned about people's ability to access equal protection under the law, health care, and emergency shelter. I wanted to know what was working, what wasn't working, and what they thought would work better.

The Research

Although sex workers and sex trafficking victims are constantly talked about in the media and public policy, stigma and criminalization often prevent them from speaking for themselves in media and legislative processes. As Alaska creates more and more policies that affect people in Alaska's sex trade, it becomes crucial to create a means to bring their knowledge to the table. Participants' voices are foregrounded in this report because they have been so absent in other reports about sex trafficking and sex work in Alaska.

Rather than presenting participants in the context of their full lives, as is customary in social science research, I've done everything possible to protect their anonymity. That includes forgoing the use of pseudonyms and presenting some stories in pieces rather than with full context. All participation was voluntary and unpaid.

The Participants

Surveys: Forty-one people who self identified as having worked in Alaska's sex trade or having been profiled as a prostitute took the survey. One answered "erroneous data— please disregard" to all questions and was deleted, leaving 40 survey participants. The survey participants had from one to more than 31 years of experience in the sex trade, with the most common responses being 10 to 30 years. There was one male survey participant and the rest were female. Participants were white, Alaska Native, Native American, Black, Latino, and Creole. There were no Asian participants.

Interviews: Seven people who had recently retired from Alaska's sex trade and one elder with significant knowledge of the history of prostitution and related policy in an Alaska Native community were interviewed. Interview participants were white, Alaska Native, Black, and Hispanic. They included a transgender person, an undocumented immigrant, formerly homeless youth, and people with graduate degrees. They had from two to 44 years in the sex trade and had worked as independent escorts, street-based workers, exotic dancers, massage parlor workers, and pornography performers and producers. They had worked in Asian massage parlors, and legal brothels. They had worked on a circuit, for pimps and agencies, made pornography, had survival sex as street-involved youth, and been pimped as a minor by a guardian. Four of them had significant experience and/or education in a helping profession. None of them thought of themselves as sex trafficking victims. According to an attorney who works with sex trafficking victims with whom I consulted, three definitely met the federal definition of a sex trafficking victim and one probably did.

Public Records: Indictments, affidavits, court transcripts, press releases, and more were examined to contextualize the experiences shared by participants.

Survey Demographics

- The average age of entry into prostitution was 19 years old (excluding one participant who didn't give a specific answer).
- The majority of participants had spent between 10 and 30 years in the industry.
- All had graduated from high school and 81% had pursued other education, ranging from advanced degrees to vocational schools.
- 48% entered the industry independently. Following entry, 89% went on to work independently in the industry.
- 7% reported being forced and 11% reported being coerced or manipulated when they entered the industry. 30% reported being coerced, manipulated, or forced at some point within the industry.
- 26% listed their age as less than 18 when they entered the industry.

Mobility

Participants reported substantial change in their working conditions in the sex industry. While a little less than half of the participants did not enter the industry working independently, about twice as many went on to work independently. These numbers are very similar to statistics reported in research done at John Jay College with youth in the sex trade, and echoes their conclusion that people in the sex trade have agency and act to change their situations.

Although only 18% entered the industry being forced, coerced, or manipulated, an additional 12% went on to be coerced or manipulated in the industry. Participants reported being unable to go to the police when they were victimized in the industry and believed that lacking access to protection under the law made them vulnerable to

What is sex trafficking?

It depends who you ask! According to popular opinion it might be an eight year old kidnapped and kept chained to a bed, or it might be everyone in the sex industry.

Under federal law, sex trafficking is (a) any minor working in the sex industry in any way or (b) the use of force, fraud, or coercion within the sex industry for financial profit.

Under Alaska state law all prostitution is framed as sex trafficking. In one case, a woman was charged with sex trafficking herself when the state alleged that she "instituted or aided" in her own prostitution.

The people who participated in this research are sex industry experts. None of them identify themselves as victims of sex trafficking. 30% of the survey participants checked boxes that, under federal law, identify them as sex trafficking victims.

Seeking Shelter

The Numbers:

19% of survey participants had sought shelter.

83% of them were denied shelter.

50% of those who met the federal criteria for sex trafficking victims had sought shelter

100% of them were turned away.

Participant's advice for shelters:

"don't discriminate"

"it shouldn't matter what we do for a living or where we met the person we need protection from"

"All people deserve a warm safe place to sleep, whether you approve of their choices or not."

"To educate staff about the realities for people involved in the sex trade. It is not helpful to judge nor to refuse services because you do not approve of other people's choices."

"Let them work"

How do shelters interact with sex workers?

"they let me stay for a while and then I wasn't allowed to come back"

"I decided the streets offered more of a future"

"[They] said I wasn't the right kind of victim"

"[The shelter] wouldn't let me in when it was forty below, wouldn't give me shelter in general."

"I chose the streets over the shelter system, that was a very, very clear choice. I tried the shelters, I realized that I would not be able to maintain a place in that construct and so I chose going back out onto the streets [as a juvenile]."

Why were so many unable to access shelter?

Survey participants did not offer much information about why they were unable to access shelter. Most seemed to feel that some discrimination was involved.

Since 2011 I've been aware of adults and minors (outside of this research) not being able to access shelter in Alaska because: they were underage and wouldn't give their parents' phone number (with good cause), they weren't willing to name the person who had abused them, they didn't have an ID, they were transgender, they were on felony probation, and they were not victims of domestic violence.

The Sex Worker and The Force of Law

Sex workers reported an alarming amount of police violence. When they tried to report being a victim or witness of a crime most of their reports were not taken; some were arrested or threatened with arrest when they had been the victim or witness of a crime. In the interviews, 75% of those who meet the federal definition of a sex trafficking victim reported being assaulted by police before ever becoming involved in the sex industry, compared to 0% of those who did not have trafficking experiences.

The numbers:

52% of participants had tried to report being a victim or witness of a crime while working

The police took 44% of their reports. They arrested 6% of them and threatened 33% with arrest when they were trying to report being the victim or witness of a crime.

80% of participants who had been manipulated or coerced in the industry had tried to report being a victim or witness of a crime. When they did the police took 20% of their reports, threatened 60% with arrest, and arrested 20%.

Firsthand experiences:

"I myself have had them pose as customers and actually complete a sexual act with me and then try to arrest me however I didn't touch the money so they couldn't arrest me and, um... I felt raped after. Completely raped."

"When I was a kid I was in a park with a friend of mine, yeah we were underage and drinking beer in the park which we shouldn't have been doing, but they beat my friend into a coma."

"She came to my house in handcuffs, I helped cut her out of handcuffs. She got away from a policeman who was going – he threatened to throw her in the [river] if she didn't perform oral sex on him."

"They always treat you like you're stupid, that you must have a pimp, you must be on drugs, that you need to get a job. This is my job. Let's see what else... Um, it's never been a good encounter but I've never experienced violence or sexual harassment. Thankfully."

"Just from what I've heard from everybody else, that if something bad was to happen to not trust law enforcement to carry out any justice. You know that's why it's so important these days to communicate with others that are in the field so you can know who the client is. I mean, if I were looking to screen a client I wouldn't look to make sure they're not law enforcement, I'd make sure that they're not, you know, domestic violence, that they haven't racked up a bunch of assaults and robberies, they don't have any weird drug charges or kidnapping charges and make sure that it's a safe environment, because I know that if it wasn't I couldn't just call the police and know that everything would be okay. I couldn't call the police and be treated like a typical public person."

Numbers:

74% of participants had been a victim or witness of a crime that they didn't report because they thought they would be arrested, they didn't think the police would do anything, they didn't want to draw attention to themselves or their coworkers, or other reasons.

26% of participants had been sexually assaulted by an officer.

60% of those who had been coerced or manipulated and 50% of those who had been forced had been sexually assaulted by an officer.

9% of participants had been robbed or beaten by an officer.

40% of those who had been coerced or manipulated in the industry and 50% of those who had been forced had been robbed or beaten by an officer.

Firsthand Experiences:

"I ended up going to a girls home from 13 to 14 and, we were bad kids, we tried to escape, they ended up beating us up and throwing us in solitary confinement until our bruises healed so then nobody could see that and nobody would believe us because we were bad kids."

"It was in the middle of the day. I was walking by the police, I was walking to catch a bus. And because I was in the area that I was in and I had an acid wash miniskirt on and a little tank top, they wanted to see whether or not I was, I was trans. And they ripped my underwear off. One of them put his hand up my skirt and ripped my underwear off. He slammed me down on the car, he injured me. Um, left me with some broken fingertips, broken toes, fractured cheekbone. And they felt perfectly okay with this because there was no law to protect me..."

I mean, when you deny a certain group of people their protections or rights, or say... you're saying that it's okay to abuse these people. I mean, you set a precedent. You know what I'm saying? You set a precedent. I mean, there are plenty of people that hate Black people, but they would never act on it because it's against the law to discriminate and it's against the law to harm them now. So therefore people who would harm them or discriminate against them keep that under wraps because they know there's laws against it and there's consequences. These officers didn't feel like there was any consequences to doing that. They left me there in a 7/11 parking lot. I was bleeding, I had my skirt ripped. I basically looked like a rape victim or an assault victim and people were just mortified because they'd seen a teenage girl get assaulted by a police officer, two police officers. And yeah, these guys didn't feel like there was any consequences."

Trying to Report Sex Trafficking: A Firsthand Account

The use of force to harbor people for commercial sex work is considered sex trafficking under federal law. So is fraud (the bad check).

Supplies: probably things like shampoo, make up, condoms, and food.

According to Wikipedia, NHI “is a dehumanizing police term used to describe or reference crimes committed against such victims as prostitutes...”

80% of those who had been manipulated or coerced in the industry had similar experiences when they tried to report being a victim or witness of a crime to the police.

“[In the 90’s I] went to the FBI in Manhattan and I reported part of a syndicate after I was beaten up and given a bad check from the legal company that was a front for illegal activity. There were some things building to that, but the reason that I was beaten up was because the workers were locked in on a premise and we needed to get supplies because the house was selling our supplies at like 100% markup and all of the workers needed supplies and I was voted as being the person who had the most self-confidence and ability to try to communicate that, and it ended up with me being beaten up and potentially put into it an even more detrimental situation. I had to think about that long and hard because other people supported my doing it. The problem at that point was that it would take hundred calls to vice and in an area of the country each from separate people who all were willing to identify themselves with their full legal name, and until there were 100 complaints put in an investigation could not be opened up. And if anything happened to you at that point in time if you were a hooker or defined as an aberrant of any kind you would get a stamp on your file that said that you were not a human investigation. The NHI stamp was for people who were sex workers, drug pushers, gang people, and if you got offed there was no investigation. So there was a lot there...”

All of my contact with law enforcement has been so ridiculously clearly defined by what their present administrative goal directive is as opposed to what the actual needs of people are that you realize that you have to understand more about what's going on from the national and state perspective politically before you go to the police. It's not about a crime or a moral code or ethics it's about the political framework, the contextual framework, the political structure of the administration that is existent in the time that you are potentially experiencing a problem. That's not how law enforcement is defined to you when you're a child but now I get that. So, you know, if you see something bad happening you have to take into consideration whether or not the time period, the belief of the time period that you're in, is going to wind up understanding the nature of the crime.

I realize now that it wasn't ridiculous that I went to the FBI but it was ridiculous that I would believe that anybody would care if there was no money attached to them caring about something. There has to be like some kind of cookie that they're getting.”

People who've had experiences like this trying to report sex trafficking in the past now fear being charged with trafficking themselves or their coworkers in Alaska.

56% of those who tried to report a crime to the police did not have their reports taken:

"I have a friend that was walking on Spenard a couple years ago and a guy in a truck had raped her and she already knew who it was and she reported it to the police. Other girls had reported the same thing happening and he's still driving around doing what he does... They ignored her. They didn't do anything at all. I don't know the specific details but I know that she was really frustrated about it and she didn't feel safe at all."

It is not illegal in Alaska for police officers to have sex with people before arresting them:

"I knew a couple ladies who went to go see a guy together who turned out to be a police officer. He gave one of the girls that was only 19 at the time alcohol he also received oral sex from one of the ladies and then arrested her and said that he had seen her reviews online and wanted to see for himself what it was all about. She got a prostitution charge."

"I know another lady who went to see someone who was supposed to be a customer who ended up being a police officer and they had sex to completion, he tried to make her take the money but she did not take the money. He told her he was going to arrest her and she informed him that he couldn't because they had not broken any law. He then proceeded to say, 'You're a very wise woman and I'm proud of you,' and proceeded to walk her downstairs where there's two other officers standing there waiting and he shook his head no at them."

Would you call the police if you became a victim of a crime (like rape or sex trafficking) while involved in sex work?

"Oh, you're on your own here, pretty much. You're on your own. No I wouldn't go to the police if I were a victim of a crime."

"Sex trafficking, yes, because there's someone to snitch on basically. Every time I've encountered the cops that's what they really want. They didn't really want me they always wanted someone bigger than me that they can get to give a felony charge to. If I were raped? Jesus Christ it depends on the area honestly like and how it happens. Unfortunately, because of the nature of my work people don't view rape the same way always. I mean if I were absolutely like violently attacked, if someone came in here or I was just walking around someone raped me, yeah. But if someone's in my work space and they forced me to have sex with them. It would be the same emotionally psychologically for me, but legally proving that that's what exactly incurred - or someone saying that actually theft, which is insulting. Because might my work is about consensual sex it's not about nonconsensual sex and so... would I pursue it? Yeah I would, just to see what would happen, honestly. To tell you the truth because I want to make the systems better."

"Not necessarily, no. Because I think that if you were a victim of a crime that's truly a crime at that level you need to deal with politicians, not law enforcement. Like you cannot call 911. At a base level it's bullshit."

74% of survey participants indicated that they had been the victim or witness of a crime they had not reported. 39% didn't believe the police would do anything, and 30% believed they would be arrested if they tried to report.

Force, Manipulation, Underage Work, and Police Violence

I compared the responses of people who reported experiencing force or manipulation within the sex industry and those who reported working underage (the federal standard for sex trafficking) with the general survey results. Those who had experienced force or manipulation within the industry were completely unable to access shelter, and reported a much higher rate of sexual assault, physical assault, and robbery by police officers. There didn't seem to be a difference in their ability to access medical or mental health care. Working underage didn't seem to be related to significant differences.

I compared people who reported having been assaulted by police to those who hadn't, and found some differences.

The 2 people who had been beaten or robbed by an officer:

- Were both white and Alaska Native.
- Both reported entering the industry using sex for survival.
- Neither entered the industry working independently but both went on to work independently.
- Reported that criminal history and lack of job history would have made it difficult for them to leave the industry if they'd wanted to.
- Both had sought emergency shelter, in both cases the shelter was aware of their involvement in the industry, and both were ultimately unable to access shelter.
- Both had tried to report being a victim or witness of a crime, police took one of their reports and threatened both with arrest.
- Both reported having been the victim or witness of a crime they didn't report because they didn't think the police would do anything and they thought they would be arrested.
- Both had been arrested as adults, and both had been detained but not arrested as adults.
 - Both believed police are the primary threat to people in Alaska's sex industry.

Of those who reported being sexually assaulted by an officer:

- Half were Alaska Native and white, the other half were white.
- None entered the industry working independently. Following entry, all went on to work independently.
 - Half had sought emergency shelter, none were able to access it.
 - 93% reported being a victim or witness of a crime they didn't report.
- All but one believed police are the primary threat to people in Alaska's sex industry.

The Sex Trafficking Laws

Alleged prostitutes charged with trafficking: 3

Non- prostitutes charged with trafficking: 3

“Traffickers” charged with hurting prostitutes: 0

“Traffickers” charged with pimping children: 0

When I was first considering doing this research, I made a public records request to find out how the sex trafficking law had been used since its inception. That was at the end of 2013, and at that time only two people had been charged with sex trafficking. Both women were allegedly prostitutes who were charged with sex trafficking in the same case they were charged with prostitution of themselves. In one case the woman was charged with trafficking herself (“facilitating or aiding prostitution”) after she refused to agree to perform a sex act with an undercover police officer for money. In the other case a woman was charged with multiple counts of felony sex trafficking (maintaining a place of prostitution, receiving money from prostitution, etc) for sharing space with other sex workers when she booked a duo for herself and another worker with a police officer. The only people charged with prostitution under state law at that time were those who were also charged with sex trafficking and those who were allegedly victims of sex trafficking.

Since that records request four more people have been charged with sex trafficking. One is a woman who, in the charging documents, is accused of being a prostitute. Another is her husband, who is charged with receiving money from prostitution. The other two are men who are accused of things like maintaining places of prostitution and receiving money from prostitution. There have been no charges of violence, fraud, or coercion in any of the cases. In one case there was originally an allegation of a verbal threat, but that charge was later dropped. In none of the documents I’ve examined since the law’s inception has it been used to benefit a victim.

There is a big gap between the federal definition of sex trafficking, which requires minors or the use of force, fraud, or coercion, and the state definition of sex trafficking, which includes many strategies that sex workers employ to increase their safety, such as working indoors, working together, and facilitating or aiding their own prostitution.

What are the real risks to people in Alaska's sex trade?

"So many at this point. You know we can't, we're not supposed to get together, we're not supposed to talk about how to keep each other safe, we're not supposed to share spaces, we're not supposed to, you know, help with references or anything like that because we're worried about being arrested. So... and then not only that but people know that they can harm you and get away with it because you can't go to the police because you'll be arrested right with them. So you'll be victimized twice."

"You can't really be honest on applications for loans or anything. Mainly, I mean, there is risk when you go to an outcall and what if there's guys hiding in a closet? You can't just finally make it out of there and call the police and say I was raped without questions, "Oh, well she's a prostitute" and then you're labeled, maybe charged, and those guys aren't."

I asked people in Alaska's sex trade what the primary threats that the law should be concerned with protecting them from are. In the survey:

35% named violence or coercion from police

30% mentioned not being able to access equal protection under the law if they were the victim of a crime

15% mentioned arrest or prosecution (things that can result in lifelong discrimination in accessing employment, housing, custody, education, social services, and financial instruments)

What *should* be the definition of sex trafficking?

Overwhelmingly participants thought it should be when someone was forced or coerced against their will to perform acts of prostitution. Many thought that most force, fraud, or coercion that happens in the industry would more properly be described and charged as domestic violence, assault, or labor abuses.

How common is sex trafficking, according to the different definitions?

71% of survey participants thought that sex trafficking, according to their own definition, happens **never or sometimes** (1&2 on a scale of 1-5) in Alaska.

85% thought that sex trafficking, according to federal definitions, happens **never or sometimes** in Alaska.

73% thought that sex trafficking, according to state law, happens **most or all of the time** (4&5 on a scale of 1-5).

What should be the difference between prostitution and sex trafficking?

“When it’s not by choice of the individual. An individual should come forward to you. just as if, there are some like places in the southwest, they’re like, cutting up chickens and stuff. Right, some of these big places. And they kidnap people from like Mexico and Central America and crap. They literally just kidnap them and enslave them and bring them up here to like pick tomatoes or whatever, horrible jobs. and that’s the same thing is taking someone and enslaving them into prostitution. you don’t take someone and force them to do anything that’s not by their choice. That’s slavery. That’s illegal. You don’t do it.

But if I wake up in morning and I make my breakfast and I make myself a beautiful breakfast every morning, I make myself a beautiful paleo diet breakfast, I have a mineral sparkling water and take my phone calls and my emails, and I set up a few appointments with some gentleman that I enjoy spending time with, and they pay me for that time, those two should not be considered the same thing. At all. It needs to stop.”

“The oldest profession in the world is prostitution. Sex trafficking to me is such a vile term, because that’s just sadness, I mean when someone’s being forced to do something that they don’t want to do against their will, that’s just horrible and I would definitely help somebody get out of that situation even if it put me at risk just because we’re human and I wouldn’t wanna see someone treated like that. But, you know I think there’s a big difference between doing it because you want to and doing it because you’re forced to.”

“I think they need to change the definition of sex trafficking, it’s a really bad definition. The whole trafficking definition and discourses is a bad discourse. I mean we don’t talk about labor trafficking in terms of, you know, construction trafficking. We don’t talk about trafficking or exploitation in industries specific to those industries and so singling out, you know, the sex trade when we’re already being exploited by the criminalization laws is an unfair business practice, actually is what it is. They need to remove, um, they need to remove all the sex trafficking laws specifically and they need to instead strengthen labor laws and make them actually enforceable because most of the labor laws on the books are not enforceable. Well the only way that they’re actually enforceable is if you go and have the means to hire your own private attorney to seek damages so... that’s not a fair equitable way to prevent. Laws have to be built around prevention not around prosecution of crimes that already happen after the fact, that’s totally useless.”

“Prostitution is consensual amongst adults. It is a negotiated understanding of time and action to dollar amount so that mutual expectations are satisfied. Trafficking - people in my view are either forced or coerced to work with the terms not being clear with the financial aspects not being fairly negotiated or implemented and their needs, whether that be healthcare or food, not met within the construct of the transaction. And sometimes trafficking can be agreed to because people don’t feel they have other options so it’s not always—like sometimes people agree to things that are beyond their understanding—but basically when you start taking a clear parameter of time, place, service offered, you don’t offer people clean hygienic places to eat, bathe, sleep, and [they don’t] understand what they’re in for.”

What laws would serve people in the sex industry?

Survey participants gave short answers: most people thought that decriminalization is the answer, particularly decriminalizing prostitutes working together, working indoors (in “places of prostitution”), sharing information with each other about clients, and having drivers. Others mentioned things like, “if [sex workers] could go to the police without being arrested,” and “consequences and public shaming for cops who take ad-

“I will say that maybe there is a need for there to be some kind of advocate-liaison that works between sex workers and law enforcement... If you have a sex worker who has been taken into custody either voluntarily or in some kind of a raid or situation, if they are able to have an advocate present—who hasn't just gotten a degree, but truly understands the industry from both an experiential and an academic perspective—to be there to help make sure the situation is correctly, uh transcribed or recorded, or that the rights of the person are clearly, like, that their situation, that their rights are clearly understood or any rights they're giving away are clearly understood. There aren't any lawyers that are sex industry specific and that's a problem. So whether it be having you know, these task forces, find people in the sex industry and pay for them to do you like the combination of a counsel and legal program to then be able to act as these interdisciplinary liaisons, because there's no there's no buffer, there's no objective buffer that I see.”

Interview participants had a lot more to say:

“Oh, decriminalization. Decriminalization would go a long way to doing that [ending violence] because if they are, if these transactions are occurring through legitimate means then clients don't feel like they necessarily... you know, again there's that invisible barrier of, it's the law and if I cross over this barrier and do something I'm not supposed to do there's going to be consequences, whereas when it is a criminal act and this client is feeling like this lady, the lady or gentleman that he's getting services from hasn't any recourse then he might feel a little more okay about doing whatever [to the sex worker].”

“It would be nice for the police not to victimize people that are victimized themselves and just because we're in this business doesn't mean that we're victims. I see myself maybe only made as a victim maybe only if somebody was to do something to me and then as a tax-paying individual because I pay my taxes, that the police don't do anything about it, then I'm a victim on both ends.”

“Oh yeah, I mean in a perfect world, my perfect world, this would be legal and then when there was somebody that was working that felt like they were being mistreated or the guys take all the money they would actually be able to reach out and get out of that situation without being labeled as a prostitute or labeled as a lost cause or drug addict or someone who's just screwed up in the head.”

“Stop pursuing us like hunted animals... If you stop pursuing the criminalization of prostitution, then I can come to you when I’m raped, then I can come to you when I’m robbed, then you can pursue violent crimes.”

“If consensual prostitution amongst adults who are mutually in agreement of wanting to engage in a situation was decriminalized. I think, you know, either [in] a private in-house situation or an outcall situation or combination of, but if consensual adult to adult prostitution was decriminalized then right there, there would be a platform for feeling more secure, with an ability to communicate if you see bad things happening to other people, or if you have a bad experience yourself, whether that be with a client who is violent or aberrated or just really creepy or a house that is not acting ethically.

You are more inclined to also if you are in a decriminalized situation and there is a healthcare clinic that will see people who are in the sex industry just as there are GLBT specific healthcare clinics that have a grant structure to be able to allow people to receive services, treatment, testing treatment, and counsel for behavior related to homosexual relations. If there were something like that for sex workers where you could be honest about whether or not you use condoms for oral sex, vaginal sex, anal sex and wanted to have testing done for STI's HIV, or if you're feeling burnt out and you needed to have just acute counsel or you know, kind of a grounding session so to speak to prevent volatile situations where often people reach out for drugs and alcohol if they don't have people who can help soothe and ground them. If you have places to go where you can communicate honestly without being punished for that sometimes that can prevent an escalation of volatile and negative situations right there. And also that way you can track healthcare issues in an area.

But decriminalization in my mind is definitely starting point for that. the other thing is that that way - there are people who are minors or who are obviously not mentally or physically competent to be working, that those agencies that are support systems to the industry can help get those people out of work situations and get the resources they need. If somebody is obviously [mentally ill] or they are suffering from a drug problem or they're homeless and malnourished and they really shouldn't be working. If you can refer them to places that can help them get some of the resources they need to help get them out of the work environment. That way workers don't have to - actual sex workers don't have to work with people who are not necessarily meant or able to be working.”

Summary of Recommendations

1. Institute immediate outside oversight of all interactions between police and those they believe to be sex workers or sex trafficking victims in order to prevent the sort of police misconduct that participants reported and that their reports are taken when they've been the victim or witness of a crime.
2. Institute regular accountability procedures for shelters and rape crisis centers to ensure that all victims have access to services. As shown in this report, arbitrary selection of who is "deserving" of services negatively impacts the most vulnerable among us.
3. Decriminalize prostitution so that sex workers, sex trafficking victims, and their customers must be able to go to the police and make reports without fear of arrest when they are victims or witnesses of crime.
4. Repeal Alaska's sex trafficking law and consult sex industry experts before making new laws that will affect them to prevent the dangerous effects that participants have reported.
5. Immediately discontinue the use of safety measures as evidence of prostitution or against alleged prostitutes or their clients. Safety measures include condoms, negotiating safer sex, screening, working indoors (in a "place of prostitution"), working together, and hiring someone to do security, screening, or booking. Making sex workers afraid to use condoms or screen clients should not be a goal or effect of prostitution policy.
6. Shelters and other non profits should institute non discrimination policies and seek training from sex workers.
7. Minors should never be turned away from shelter because their situations are too complex or because their parents can't be contacted.
8. Harsh criminal penalties for police who have sexual contact with sex workers or sex trafficking victims.
9. More research is needed to investigate the relationship between police violence and abuse within the sex industry.

Staff Summary of Plenary Meeting
ALASKA CRIMINAL JUSTICE COMMISSION
Thursday, August 25, 2016, 1:00 PM –4:00 PM
East Conference Room, Denali Commission,
510 L St., 4th floor, Anchorage

Commissioners attending: Jeff Jessee, Jahna Lindemuth, Walt Monegan, Greg Razo, Stephanie Rhoades, Kris Sell (phone), Brenda Stanfill, Trevor Stephens, Quinlan Steiner, Dean Williams.

Commissioners absent: John Coghill, Wes Keller, Alex Bryner.

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

BJA Funded TA Provider: Melissa Threadgill, CJI (phone).

Participants: John Skidmore, Kaci Schroeder (Law), Jeff Laughlin (DPS), Diane Casto, Karen Forrest, Randall Burns, Alysa Wooden, Tony Piper (DHSS), Nancy Meade (ACS), Taylor Winston (OVR), Rebecca Brunger, Morgan Jaco, Carrie Belden, Geri Fox (DOC), Jordan Shilling (Sen. Coghill's office, phone), Staff to Rep. Kreiss-Tompkins, (phone), Nikki Haynes (Fairbanks Reentry Coalition, phone), Brad Gillespie and Donald Revels (Department of Labor), Kara Nelson (Haven House, Juneau, phone), Josie Garton, Tracey Wollenberg (PDA), Janet McCabe, Doreen Schenkenberger, Cathleen McLaughlin (Partners), Russ Webb (Board of Directors, Mental Health Trust), Kristy Becker (API).

Meeting called to order, introductions, agenda

Commission Chair Gregory Razo called the meeting to order at 1:02 p.m. He noted that this was a public meeting of the Commission, audio-conferenced, with public comment periods scheduled for later in the meeting. Chairman Razo introduced Attorney General Jahna Lindemuth as a new Commission member, and welcomed Commission members and guests.

The Chair asked for additions to the agenda. Judge Rhoades asked that Mr. Jessee be shown as a co-presenter with her for the Behavioral Health discussion.

Ms. Stanfill asked for a discussion of the time limits for work group meetings.

Judge Rhoades moved to approve the modified agenda. Ms. Stanfill seconded the motion, and members approved it unanimously.

Approval of June 23, 2016 Meeting Summary

The Chair asked for a motion to approve the June 23, 2016 meeting summary. Mr. Jessee so moved, and Judge Rhoades seconded the motion. Members approved it unanimously.

Election of Chair

Chairman Razo said that his term expires in October, and that he would open the floor to nominations for the position of Chair of the Commission. Mr. Jessee nominated Mr. Razo, and Judge Stephens seconded the motion. Mr. Razo said that he had given the matter considerable thought and was willing to serve as chair for another year. Mr. Razo called for further nominations, but there were none. Members voted unanimously to retain Mr. Razo as the Commission's chair for another year.

SB 91 Implementation issues and report

Implementation Grant Funds. Ms. DiPietro said that the state has applied for a federal grant that will provide technical assistance and funding for the first two years of implementation of SB 91. Along with the grant funds, BJA provides technical assistance to states such as Alaska that are implementing criminal justice reform. That technical assistance is being provided in Alaska by Melissa Threadgill of CJI and other CJI staff who will help the Commission complete the grant application process, and will provide technical assistance throughout the grant period. Ms. Threadgill explained that the application and request for initial training funds, as approved by the commission at its last meeting, and had asked for expedited approval of those initial funds.

DOC Implementation. Ms. Threadgill reported that DOC has created two policy groups that have been meeting weekly for the past several months to develop policies and procedures for graduated sanctions and incentives, earned credits, and early release. Once the policies are developed

Threadgill said CJI expects the initial grant funds will be available to pay for training in Alaskan in late September about the pretrial program and services required in SB91. The funds also will be used to fund a two-day training for probation officers about new DOC policies that DOC is creating for earned compliance credits, graduated sanctions for technical probation and parole violations, risk assessments, and other provisions of SB91. Training will focus on how to use the risk/needs assessment tools, and how to interact with probationers and parolees to maximize their success on probation and parole. After the initial round of training is complete, DOC will select a group of employees who will become trainers so that the training and expertise can be ongoing and self-sustaining.

Judge Rhoades suggested that ASAP probation officers could benefit from the same training. Ms. Threadgill agreed, and said that they would work on that. Mr. Piper said that he would discuss the possibilities with Ms. Belden.

Ms. Threadgill welcomed Geri Fox, DOC's new head of pretrial services, who will be responsible for working within DOC and coordinating with other agencies to develop the pretrial services required by SB91.

DHSS implementation. Ms. Forrest described DHSS efforts to comply with both SB91, and with SB74, which calls for DHSS to oversee the expansion of Medicaid programs. She said that the state is now serving 20,000 new people as a result of the expansion.

In addition to expanding Medicaid, DHSS is working to reform behavioral health services, using sixteen workgroups to focus on different aspects of the issues. Where applicable, workgroup members also include representatives from the Alaska Mental Health Trust and DOC. Among these are policies related to working with tribes and tribal organizations, and privatization studies required by SB 74 (including API and four DJJ institutions – Nome, Kenai, Ketchikan and the Mat-Su facility). In general, DHSS has an extensive system of services and payment plans, pieced together over the years. Because this is not a comprehensive system, DHSS is looking for the gaps in services, and ways in which to make the payment plans more consistent and up to date. At the same time, the department's budget has been cut each of the past few years, with further cuts expected. As a result, the department is cutting staff and closing facilities, but looking for ways to do this and maintain and improve services.

Mr. Burns said that the department intends that all changes be cost-neutral, and preferably that they reduce costs. Ways to do this include providing services earlier in a case, finding ways to reduce the use of emergency room care and API, and treating substance abuse problems effectively.

Ms. Casto said the DHSS workgroups are looking at programs to expand reentry coalitions, to enhance by ASAP and the 24/7 program, to train "enrollment navigators" for people who are eligible but not presently covered by Medicaid, and to manage Medicaid enrollment for all people leaving DOC confinement. Commissioner Monegan suggested that another fruitful area of investigation would be finding ways for people to be suspended from Medicaid while they are incarcerated rather than being fully cut off, to speed up the process of returning them to Medicaid coverage. Ms. Casto is chairing a working group specifically on SB91 integration; commission staff are attending these meetings, and any commission member who wishes to attend can contact commission staff or Ms. Casto directly.

Members discussed the need for a DHSS presence in its work. Judge Rhoades moved that the commission should ask the legislature to add a seat to it for DHSS. Mr. Jessee seconded the motion. During the discussion, Mr. Steiner said that it was likely

that the legislature would add two seats to keep an uneven number of commissioners. He said he believed that the Commission was top-heavy with state agency members, and that the Commission was already interacting with DHSS appropriately and sufficiently. After further discussion, members voted yes on the motion, with the exception of Commissioner Williams, Mr. Steiner, and Ms. Stanfill. The motion carried.

Public comment period

Mr. Razo asked for public comment. Retired Senator Fred Dyson asked DHSS if the 5-year limit on welfare assistance continued to be law and policy, and asked how often it was waived. Ms. Casto said that some limits still exist, and that they can be waived. Mr. Dyson said that he was concerned that when people are released into a community that they still have services available to help them remain in the community. There was no other public comment.

Re-entry agreements

Commissioner Williams said that he has been working with Ms. Belden, the director of the Division of Probation and Parole, to reconsider the roles of probation and parole officers. One change that he has made is to reduce funding for community jails, and to consider a place for community jail staff to supervise probationers and parolees in rural communities. He noted that some of the jails may have few or no inmates much of the time, and using the staff to supervise convicted offenders benefits the jails, the communities and the DOC.

He said that the department is looking at ways to clarify the roles and operations of CRCs, to reduce walkaways, and improve services. He plans to eliminate the routine use of CRCs for people in pretrial status because mixing pre- and post-disposition populations has not been working well; he plans to use CRCs more for re-entry programs and services. He said that he would prefer smaller places, more focused on therapeutic environments; Haven House in Juneau was an example. Judge Rhoades noted that attorneys often ask judges to send defendants to CRCs and encouraged communication and consultation among agencies.

Commissioner Williams said that the department is talking with the for-profit private provider, GEO, which runs a number of the state's halfway houses. He said that the state is paying for a number of unused beds, which is not a situation that he wants to continue. He has reduced the GEO payments and is continuing to talk with them about the services that need to be provided, the number of beds, and related matters.

Social impact bonds report

Chairman Razo asked Ms. Dunham, the Commission's staff attorney, to describe the program and the report. Ms. Dunham said that the legislature asked the Commission to explore social impact bonds and report back on their possible

usefulness to address recidivism in Alaska. She said that they are better described as “pay for success.” The idea is a relatively new one and there are no demonstrably successful programs in the U.S. One Head Start program in Utah showed promise, although the evaluation came under scrutiny which threw doubt on the extent of the program’s success. Ms. DiPietro asked commissioners to review the report and have comments ready before the October meeting, so that it can go to the legislature in December. Members concurred that the idea was not yet developed enough to warrant trying it in Alaska.

Mr. Razo called for a ten-minute break.

Behavioral Health Work Group Report

Mr. Jessee said that the group used the Sequential Intercept Model to develop its recommendations, over the course of four meetings. He asked Judge Rhoades to discuss the set of recommendations being presented at this meeting. Judge Rhoades said that the group has many more recommendations, but chose to select only those that needed legislative action so that the Commission could consider them before the December deadline.

BH Recommendation #1

Judge Rhoades presented the first recommendation, which would require a new statute to create a program to divert mentally ill offenders out of the criminal justice system. The proposal is for the program to be administered by the soon-to-be-created pretrial services division of DOC. She said that it was a “best practices approach”; a way to divert people who are inappropriate for the justice system into alternative services. The state benefits by allowing people who are diverted to stay on Medicaid, and not burden DOC institutions that are not equipped to work with them. Part (b) of the recommendation asks DOC to work with tribes and tribal organizations, DPS, DOL, ACS, and DHSS to implement the pretrial behavioral health diversion program. Mr. Jessee said that because this was a committee recommendation, he would move that the Commission adopt it; such a motion does not need a second.

Mr. Razo asked for discussion on the motion. He said that it seemed like a good idea, and wondered whether it needed legislation. Judge Rhoades said that incorporating the program with legislation would give it status, and assure its continuance in future administrations. Ms. DiPietro noted that SB91 requires the DOC to adopt regulations for diversion programs. Ms. Rhoades said that the cooperation of all agencies needed to be built in from the beginning, and providing a statutory mechanism to do this seemed to the work group to be the best way to assure future cooperation. Ms. Forrest said that if the people being diverted were new to the Medicaid program, then yes, this proposal would allow them to be covered 100%. If they are people already receiving Medicaid, the state will be required to absorb some of the costs for them.

Mr. Skidmore said that the Dept. of Law is committed to doing pretrial diversion. He asked what the time frame for implementing the proposed program would be. Judge Rhoades said that it couldn't happen until 2018 when the rest of the Pretrial Services Program is in place. She said that it was preferable to be proactive about the behavioral health diversion program. Commissioner Williams said that he agreed with the work group that people who need behavioral health services when entering DOC present substantial challenges. They don't do well in an incarceration environment. He said that he has talked with Ms. Fox, the new head of the Pretrial Services Program, and providing these kinds of services and diversions is a priority. After further discussion, Attorney General Lindemuth said that she would recommend that it not be in statute, since DOC is already required by statute to adopt regulations for a pretrial diversion program. Mr. Razo agreed that the same outcome could be achieved through regulation rather than statute. Ms. DiPietro said that promulgating regulations will involve a public process and regulations, once adopted, have the force of law.

Ms. Stanfill moved to amend the motion on the floor by directing DOC to consider this proposal, and by adding a victims' rights representative and a public defender representative to the group of stakeholders listed in part (b). Judge Stephens seconded the motion. The proposed amendment was approved unanimously. Mr. Razo called for a vote on the primary motion, as amended. That motion also was approved unanimously.

BH Recommendation #2

Judge Rhoades said that the second recommendation addressed the situation where a person in an assisted living situation who committed a domestic violence offense against another person in that same home or situation (e.g., a care-giver) should be allowed to return to the assisted living as long as the victim agreed, and the safety of all people there could be assured. Mr. Skidmore said that the Dept. of Law would support the recommendation, without the inclusion of the words, "private residences."

Judge Stephens moved to approve the recommendation, with the words "private residence" deleted. Mr. Steiner suggested that a clause could be added to cover situations that included parents, siblings, friends, and so forth who were voluntary caregivers. The motion was approved, with Mr. Steiner voting against it.

Mr. Steiner moved to reconsider. Ms. Stanfill seconded the motion. The vote was taken again, with four "ayes" and four "nays." Because it needed a two-thirds vote to pass, the motion for reconsideration failed.

BH Recommendation #3

Judge Rhoades explained that this recommendation was intended to statutorily mandate a single release form that had to be accepted by all state-funded agencies to release health information. This would assure that non-state organizations receiving state funding would not be able to impose additional requirements before releasing information, and would enable better and prompter services. Judge Stephens moved to adopt the motion, and it was approved unanimously.

BH Recommendation #4

Judge Rhoades said that the Department of Law recommended that statutes and court rules require that presentence reports discuss assessed behavioral health conditions that are amenable to treatment, and make specific recommendations for appropriate treatment in the offender's community. Ms. Carns noted that in most parts of the state, very few cases have presentence reports. Judge Stephens said that the First District orders them for most cases, but they are prepared in Anchorage by people who would not have information about appropriate treatment for a probationer in a Southeast community. Ms. Stanfill said that some probation and parole officers say that the conditions are too general, and they need to go back to court to get specific conditions.

Commissioner Williams said that the requirement for this level of specificity in presentence reports burdens DOC, making it more difficult for officers to do their jobs. Mr. Steiner and Ms. Garton said that from the defense standpoint, recommendations like this could become a point of litigation because of confidentiality issues (with the presentence report findings discussed in the public courtroom setting at sentencing), or appropriateness of the recommendation for treatment, or the potential for the information being used to support a guilty but mentally ill finding.

Mr. Skidmore said that the Department of Law's purpose in making the recommendation was to keep people out of incarceration. Judge Rhodes and Mr. Jessee clarified that the recommendation only called for PSR writers to make note of known assessments (rather than conduct new assessments), so judges can have all the available information. Mr. Jessee called for a vote on the motion. After a brief further discussion, Mr. Razo called for a vote, and the motion was approved, with Mr. Steiner voting no.

The meeting adjourned without addressing the rest of the agenda due to time constraints. The Commission agreed to address the rest of the agenda at the next meeting on October 13, and to meet for a full day at that meeting (9 a.m. to 4:30 p.m). The final meeting of the year will be scheduled after staff send out a Doodle poll.

Staff Summary of Plenary Meeting
ALASKA CRIMINAL JUSTICE COMMISSION
Thursday, June 23, 2016, 9:00 AM – 12:30 PM
East Conference Room, Denali Commission,
510 L St., 4th floor, Anchorage

Audio-teleconference : Dial 1-800-768-2983, then enter 5136755 (Access Code)

Commissioners attending: Greg Razo, Trevor Stephens, Quinlan Steiner, Brenda Stanfill, Alex Bryner, Stephanie Rhoades, Jeff Jessee, Kris Sell, Walt Monegan, John Coghill, Wes Keller.

Commissioners absent: Craig Richards, Dean Williams.

ACJC Staff: Mary Geddes, Susanne DiPietro, Susie Dosik, Brian Brossmer, Giulia Kaufman

BJA Funded TA Providers: Melissa Threadgill, Len Engel.

Participants: John Skidmore (Law), Claire Sullivan (DOC) Nancy Meade (ACS), Barbara Armstrong UAA), Alysa Wooden (DHSS), Tracey Wollenberg (PDA), Rob Henderson (Law), Cathy Hansen and Taylor Winston (OVT) , Rebecca Brunger (DOC), Araceli Valle and Brad Myrstol (UAA- AJIC), Jordan Shilling, Tony Piper (DHSS), Carrie Belden (DOC), Nikki Haynes (Fairbanks Reentry Coalition), Donna Thomson and Stephanie Staveland (Priceless), Brad Gillespie and Donald Revels (Department of Labor), Ken Truitt (Rep. Keller's office), Kara Nelson (Haven House, Juneau), Kaci Schroder (Law), Michael Baldwin (Trust).

Meeting Materials Distributed:

Results First Power Point

Intro to JRI Phase II Power Point

Pase Two Seed Funding FAQ

Executive Summary – Alaska Behavioral Health Systems Assessment

1. The meeting was called to order at 10:35. This meeting was audio conferenced. Commission Chair Gregory Razo welcomed the Commission and guests. An agenda finalized this morning was approved by unanimous vote.
2. During this meeting, Chair Razo's selection as a White House Champion of Change and Comr. Sell's receipt of the Juneau community-policing award in Juneau were applauded. Commission members acknowledged Senator Coghill 's exceptional leadership and perseverance and Jordan Shilling's extraordinary efforts in advancing the Commission's recommendations. Recognition was also given to those Commissioners and their staff who spent so very much time this legislative session explaining 2015 Commission process and recommendations. Commissioners Sell, Stanfill and Razo who took time away from work were especially appreciated.
3. Overview of Results First implementation, through the Alaska Justice Information Center (AJIC) Dr. Brad Myrstol, UAA). Dr. Myrstol provided a PowerPoint and overview of the implementation of the Results First model in Alaska. Dr. Araceli Valle is the key researcher/evaluator.

Step One began started with an inventory of 300 programs. 53 programs which receive state funding or are in state facilities were ultimately identified for evaluation by Results First measures. The purpose is to identify for state policy makers those programs that are effective in reducing recidivism. This model involves a computation of cost based on avoided criminal conduct.

Comr. Jessee noted that this appears to be a small pool of programs for evaluation. Comr. Rhoades expressed concern that the model might not work well in evaluating something like the therapeutic courts because the effectiveness of the program may actually be in the linkages the program provides to other services. Dr. Myrstol responded that AJIC had identified programs by a committee process, and that there was input from many agencies. Certainly, AJIC wants feedback as to whether if they have captured the universe of programs. If we don't produce analyses that people believe, not worthwhile. AJIC is trying to evaluate the state investment in the program not the total program cost. It is about evaluating the efficiency of state dollars. We are looking at state appropriations that are itemized by program services. Agencies told us their budget and program expenditures. The model shows a return on investment (ROI).

Step Two involves matching the Alaska programs to a national database of evidence based programs. AJIC has determined that 89.8% of funds allocated to criminal justice programs were matched in evidence base. 58.5% of Alaska programs matched to interventions that have been scientifically evaluated. Step Three of AJIC is to populate and run model (see slide 6 of the PowerPoint). This allows AJIC to estimate resource use and cost parameters. They use a 7 year recidivism window, look at effect size, compute avoided CJ costs and victims cost, essentially calculating the cost of avoided victimization. The benefits are avoided costs for every dollar, what is the return, = avoided cost-benefits. The different cohorts analyzed for recidivism are : the prison adult prison population which spent 20 days or more in jail;, the community supervision felony cohort; sex offenders; Domestic violence offenders; DUI offenders. Of these cohorts the 2007 – 2014 DV cohort has been the hardest to capture. Recidivism information should be available in October. AJIC will have other future applications outside of the criminal justice: Juvenile Justice; medical care; K – 12.

Comr. Bryner asked how broad or specific are your definitions of “programs”? For example, can you evaluate the effectiveness of housing programs which service released prisoners. Myrstol said that the model could evaluate but program components would have to be first identified. Bryner noted that the Commission had heard a lot previously about the costs of transportation of rural defendants to and from court and DOC facilities. Is that the kind of thing that could be evaluated? Myrstol said it is possible.

Comr. Keller asked if the only factor of evaluation is the recidivism rate. Myrstol said AJIC evaluates for avoided victimization rate and real costs of putting someone through the system. There are 5 parameters but recidivism rate is crucial. Comr. Rhoades asked about the match of Alaska programs to programs in the database. Myrstol said that AJIC asks the program to give it the operational details. It's the operational details that are matched. This is not an audit, or program evaluation as such, and of course there always is some slippage in terms of what's reported and what's not. It's never a perfect match between the programs in the national database and local programs but we have confidence matches.

Comr. Stanfill said she was concerned that the true value of a state-funded program for victim advocacy might not be reflected purely in recidivism statistics. Stories are sometimes a measure for us, may not be reflected in the numbers. Susanne DiPietro noted that the AJIC steering committee is providing guidance and ensuring that results aren't misunderstood or used for snap decision-making. AJIC “is a tool, not a rule” for making funding decisions.

4. Senator Coghill, ACJC Commissioner, next reported on SB91. He noted that he had spoken with the Governor and that he believes the Governor will sign it. He reported that the governor is planning to introduce an item in the special session to delete some very limited but confusing language. This item does not concern the JRI and Commission recommendations. He noted that the Legislature wasn't ready

for some discussions, such as those on citations. There were some incongruent sections of the bill that had to do with how late in the session he got a decent draft. Certainly the work of the Commission and the workgroup will need to provide oversight. There are issues we may have to revisit down the road after implementation.

Comr. Sell noted that there were common misunderstandings about SB 91. Coghill noted that staff had prepared some cheat sheets which could help explain away some of the misconceptions about this bill. Nancy Mead is doing informational presentations for various groups including “Coffee for a Cop” at Kaladi’s and will be in Juneau on Friday doing a 90-minute presentation.

5. Overview of proposed Phase II of the Justice Reinvestment Process: Implementation. Melissa Threadgill, Senior Associate at Crime and Justice Institute at Community Resources For Justice and Len Engel, reintroduced themselves as the expected technical assistance providers for “Phase Two Implementation” of JRI reforms, assuming the Governor signs SB91 and the State then invites the TA. Stanfill had a PowerPoint which has been provided to the Commission for an overview.

In addition to funding for technical assistance providers, the Bureau of Justice Assistance provides seed funding to states to cover implementation costs, but not the cost of services; costs like training / travel, upgrades to data/computers. Some states use extra funding for a program coordinator. She noted that in addition to a letter inviting the TA, there also needs to be application submitted for the seed grant money. The total available is up to \$400,000, and the money can be applied up in increments. As TA provider, Stanfill can prepare the grant applications. With respect to that money, she would recommend that approximately \$75,000 of seed money be expended to assist DOC with transportation costs for training related to the implementation of graduated sanctions.

The first order of business with implementation is to identify the workgroup – typically agency heads or deputy commissioners who are operationally oriented – which will collect and coordinate data – and report to the Commission. The TA providers will work directly with the entity that will oversee the reforms. In Utah, there was a task force set up which became very good with problem-solving; it met monthly.

6. Overview of new, SB91 directives to Alaska Criminal Justice Commission was provided by Susanne DiPietro, Executive Director, Alaska Judicial Council. She noted the change in the ACJC sunset to 6/30/2021, and an increase in staffing. The staff attorney’s position will change from a part-time to a full-time position, the research analyst’s hours will be increased from 20-29 hours per week, and there will now be some administrative support (one day a week). [Mary Geddes and Giulia Kaufman will leave their positions in July, and hiring is underway for their replacements.]

DiPietro reviewed the directives in SB91 to the Commission. It’s to form a working group to review and analyze implementation of JRI and ACJC recommendation, to collect data, and to track and assess outcomes of reforms. It’s to coordinate with DHSS in providing for programs that have rehabilitation and reduction of recidivism for probationers, parolees and recent DOC releasees. It’s to report annually by Nov 1 with any recommendations. Also special reports are required: Offenses of DUI, Refusal, DVOL by December 1; Implementation of financial recovery and victim’s restitution program by December 1; and the potential of social impact bonds by December 15. It’s also to recommend how savings should be spent to reduce recidivism, and explore possible agreements between state and regional nonprofits to provide pretrial, probation and parole services needed in underserved areas.

DiPietro said that the first question is whether the Criminal Justice Working Group be the implementation workgroup. SB91 says that the workgroup is to review and analyze the implementation of the recommendations made in the Justice Reinvestment Report in December 2015, and other recommendations issued by the commission, and regularly report to the commission on the status of the implementation.” She proposes the CJWG because by statute Judicial Council provides staffing for both groups, plus the CJWG has historically been that operationally oriented group. It’s been inactive over the legislative session but this mission is right up its alley. It was noted that the ACJC membership has overlap with the CJWG participants (Trust, DOC, DPS, Law, PD) Comr. Monegan liked the overlap between the groups, John Skidmore said that the workgroup has been informal but focused, Steiner suggested that the oversight function might subsume other interests of the CJWG but he agree it makes sense. Bryner agreed it was a good idea and better to use an existing organization than create a new one. Comr. Rhoades expressed concern that the CJWG might not be the right group and might not have enough staffing. DiPietro noted that the Legislature funds the AJC to provide support and the BJA TA providers will also be assisting. Bryner and Chair Razo recommended that Comr. Rhoades be designated as the liaison between the two organizations.

DiPietro also suggested that three ACJC members review all future requests for expenditure of the BJA seed money, given that there will be a maximum of \$400,000 over the next 2 years. Threadgill clarified that it is up to the Commission to make these decisions although the money will not ‘flow’ through the Commission itself.

IT WAS MOVED by Jessee with a second by Rhoades that the ACJC invite Phase II Implementation technical assistance is and when SB91 is enacted. The motion passed unanimously.

IT WAS MOVED by Jessee with a second by Sell the Criminal Justice Working Group be designated as the implementation “working group” which reports to the ACJC and which is required by SB91. The motion passed unanimously.

IT WAS MOVED by Monegan and seconded by Sell that Comr. Rhoades de designated as ACJC representative to the Criminal Justice Working Group relating to its function as the implementation workgroup. The motion passed unanimously.

IT WAS MOVED by Jessee and seconded by Stanfill that the ACJC apply for \$75,000 of seed money from the BJA to cover DOC’s transportation costs associated with regarding the implementation of the graduated sanctions program. The motion passed unanimously.

[It is noted for that the DOC Commission was not present and did not vote.]

IT WAS MOVED by Rhoades and seconded by Sell that the ACJC designate Commissioners Greg Razo, Jeff Jessee and Brenda Stanfill to review and recommend to ACJC future expenditures of the BJA seed money. The motion passed unanimously.

7. Future plenary Commission meeting dates were then approved in light of the deadlines in SB91.

Thursday, August 25, 1-4 PM: (Elect chair as term expires 10-15)

Thursday, October 13, 9-2 PM: (Approve annual, restitution and DUI reports, report on implementation of reforms and forward any additional recommendations to legislature for reforms)

Wednesday, Dec. 14, 1-4 PM (Approve social bonds report)

8. Workgroups: Staff Mary Geddes reported briefly that proposals could be expected from all four current workgroups¹ by the August meeting, as the Workgroups are attempted to wrap up their business. [Chair Razo would like to encourage the workgroups to forward any recommendations by the beginning of August, in order to be considered at the August 265 meeting.

She also reported that the restitution group would be soon convened and staff research had gotten underway.

Geddes wondered if the sex offenses group should be convened after the restitution group because many of the same individuals are likely to be involved and the sex offenses workgroup does not have a deadline. Comr. Stanfill urged Commission staff to convene a group soon because there is so much interest. She had heard that Rep. Kreiss-Tompkins may have already convened a group.

Geddes asked Commissioners to identify themselves if interested in joining a workgroup on restitution or a workgroup sex offenses. The same four individuals raised their hands for both groups: Steiner, Stanfill, Bryner and Skidmore.

Finally, Geddes noted that Brian Brossmer is working on a report on the potential of social impact bonding, as it was directed by SB91. Comr. Jessee is interested in the topic and will consult with Brian on a report. Melissa Threadgill also indicated she has information about other states' experiences.

9. Rob Henderson, head of the Special Prosecutions Unit, chairs the Controlled Substances Committee (CSAC). Rob noted that the CSAC will meet again in late summer or fall and that he expects the ACJC staff to continue attending the meetings. The organizations have overlapping directives concerning the scheduling of controlled substances, and that the Committee been provided with some information about model drug schedules. One question is whether schedules should be the subject of statutes or regulations. The statutory framework is less flexible and lacks the ability to respond when new drugs are created. The question will be re-visited in the fall.

10. Alyssa Wooden reported. Under SB64, DOC and DHSS were given authority to fund programs. These contracts have been finalized for FY2017. Under SB91, however, there is a shift. The DHSS Commissioner, in cooperation with the Criminal Justice Commission may provide for programs by contract that have, as a primary focus, rehabilitation and reduction of recidivism for persons on probation or parole or incarcerated for offenses and recently released from correctional facilities. If SB91 passes, this language will be the subject of a future meeting.

11. Public comment was solicited at the close of the meeting but no additional comments were offered.²

The meeting ended at 12:35 PM.

¹ Behavioral Health; Presumptive Sentencing; Barriers to Reentry; and Title 28.

² Public comment may also submitted in writing either at the time of or in advance of the meeting. Please send to mgeddes@ajc.state.ak.us.

ALASKA CRIMINAL JUSTICE COMMISSION
Plenary Session
Thursday, April 7, 10:30 -11:30 AM
Jury Assembly Room, Diamond Courthouse, Juneau
(also audio-conferenced)

Commissioners attending: Greg Razo, Trevor Stephens, Quinlan Steiner, Brenda Stanfill, Alex Bryner, Stephanie Rhoades, Jeff Jessee, Kris Sell, Gary Folger.

Commissioners absent: Craig Richards, Dean Williams, John Coghill, Wes Keller.

ACJC Staff: Mary Geddes, Teri Carns, Susie Dosik, Brian Brossmer, Abby Walsh (Pew).

Participants: John Skidmore, Nancy Meade, Barbara Armstrong, Alysa Wooden, Karen Forrest, Tracey Vollenberg, Denali Daniels.

Introduction

The meeting was called to order at 10:35. This meeting was audio conferenced.

Greg Razo, the chair, made opening remarks, noting it had been an incredibly busy few weeks. He said that some Commissioners in particular (Stanfill, Jessee, Steiner) had been frequently called on by the Legislature to explain the premise of Justice Reinvestment Initiative (JRI) and other Commission recommendations. [These recommendations have been incorporated into SB91 and HB 205.] Razo noted that Commissioners had been scrupulous in their function, explaining the recommendations with respect to the evidence and the research, and as individuals they had been greatly generous with their time.

[Razo later acknowledged the sponsors of SB91 and HB205, Senator Coghill and Representative Millett, and their respective staffs for their great attention to Commission findings and their diligence.]

Agenda

Chair Razo reviewed the tentative agenda. He noted that there had been a request from the Department of Law to add an item: requesting that someone from the Court system report on the new pretrial order issued this week by the presiding judges and the relationship of that order to SB91. All agreed to add the item.

Following the end of this meeting, Commissioners are encourage to attend a legislative ‘lunch and learn’ sponsored by Commissioner Coghill and Representative Millett at the Butrovich Room in the Capitol. Chair Razo and Commissioner Stanfill will review the Commission process and some of its recommendations.

DHSS Proposed Regulations and the Workgroup Proposal¹

In a written memo, the Barriers to Reentry Workgroup had urged the Commission to file a comment in a DHSS regulatory process open until April 25. Currently the requirements for a criminal history check and bars to employment in 7AAC 10.900-.990, as written, applies only to “barrier crimes.” The proposed DHSS regulations as crafted appear to significantly expand barriers to employment by including “civil conditions” and “findings” registered in some specified but other unidentified civil databases as among

¹ DHSS was represented at this meeting by Deputy Commissioner Karen Forrest, but she did not engage in this discussion.

those events which can presumptively bar individuals from employment. Staff Susie Dosik said that the proposed language seems both broad and vague, allowing checks for conduct without respect to time limits and in contexts where much less due process has been afforded.

Commissioner Stephens asked for an example. An unspecified database could include Courtview. Dosik mentioned other civil findings which could presumptively bar substantively- and temporally- unrelated employment such as a potential Medicaid fraud not arising to the level of a crime, or a nurse unable to renew a license because of a finding of patient abuse.

Commissioner Rhoades asked for clarification, stating that she didn't understand how these findings could come into play. She did have a recent experience at the Court System when unbeknownst to her HR 'screened out' a person from employment consideration due to some history.

Commissioner Stanfill said that these 'checks' undermine employability and deter hiring. DHSS is effectively deciding for contractors if a job applicant is suitable. Commissioner Bryner asked whether such findings could be disputed. Dosik said that in these hiring contexts it is on the employer to seek a variance of the barrier in order to employ the job applicant.

Chair Razo clarified that the Workgroup's concern was that the proposed regulations are vague about what databases are involved and what constitutes a "finding" leading to a barrier, and that there is no length of time specified for the relevance of those conditions or findings.

Comr. Jessee noted this proposal shows the importance of engaging with DHSS. Even now, it is really hard to get timely variances from DHSS; this expansion adds burdens.

Commissioner Jessee moved, and Stanfill seconded, that the Commission recommended that DHSS withdraw such proposed regulations unless there is some exigency of which the Commission was unaware. Commission members voted unanimously to make that recommendation to DHSS. Members expressed a strong desire to work closely with DHSS on the question of how to reform the regulations.

Legislative Process and Reinvestment Plans

Abby Walsh from Pew discussed the status of SB91 and HB205. As of right now OMB was totaling the amount of reinvestment at \$86.5 million. The majority of the reinvestment will go to DOC: for treatment inside DOC institutions, for institution of pretrial services, for increasing the capacity of the parole board. However, there will also be monies for reentry services and supports for victims of domestic violence. The projects show true savings over the next five years. There is also an expectation of a new funding stream, with half of the new marijuana revenues going to preventive and rehabilitation programs.

Senate Finance has just finished its work on amendments and consideration of SB91 fiscal notes, and will take it up at 5:00 PM. The expectation is that Finance will vote it out today, a second bill reading will take place on Friday and the third (and final) reading will take place on Saturday. SB91 would then be referred to House Judiciary which still has HB205. House Judiciary will be looking at both bills and there will be efforts to reconcile the differing versions of the bills.

Commissioner Stanfill asked what happens if and when SB91/HB205 passes? Does Pew remain involved? Ms. Walsh said that Alaska would, as a JRI state, become eligible for another level of formal technical assistance of two years' duration from the Bureau of Justice Assistance. Melissa Threadgill and Len Engel are part of that team, so would continue their involvement for the purpose of implementing and

monitoring the reforms. 'Team Pew' itself would be available in the next legislative session because, invariably, there will need to be tweaks and updates to the original JRI package.

Staff Mary Geddes stated that SB91 contains many provisions which directly impact the Commission: its tenure is extended by four years to 2021; staffing would be increased (part-time attorney and research positions become full-time; and adding part-time administrative support); annual reports would be due in November; special directions given for research on restitution, sexual offenses; barrier crimes, and expungement; data collection, monitoring, and reporting responsibilities regarding the implementation of SB91 reforms; and collaboration with the Department of Corrections regarding the award of certain grants.

Commissioner Jessee asked about the relationship of Results First implementation through the Criminal Justice Information Center with the directive to the ACJC of future monitoring of JRI-related reforms. The RF 'tool' should be available this summer. Is there overlap? Some clarification was provided by Teri Carns who is involved with the CJIC, but because of the limited time today, there was agreement that we will hear again from Brad Myrstol and Results First at the next Commission meeting (to be set for June).

A question arose as to whether SB91 contains any provision expanding the membership of the Commission, given the past expressed interest in getting DHSS a seat on the Commission. Commissioner Jessee moved that a request for amendment be made to House Finance; Commissioner Rhoades seconded, stating that the Commission has been handicapped by lack of consistent DHSS input. In discussion, Commission Steiner noted that there always has to be an addition of two seats so as to avoid split votes. Geddes noted that there had also been interest in having a former offender participate. Commissioner Stanfill noted that changes to membership may open up a Pandora's Box. Nancy Meade noted that any amendment to add Commissioners would invariably require another fiscal note. Members agreed that another fiscal note would impede the progress of the bill, which is not desirable. Consequently Commissioner Jessee withdrew his motion.

DHSS Deputy Commissioner Karen Forrest asked for an opportunity to comment. She agreed that DHSS should be closely involved with the Commission, and she pledged a closer relationship in the future. She also noted that what is being planned for the adult criminal system may mirror the changes in the juvenile system which were so profound, transformative, and positive.

Added Agenda Item: New Pretrial Order from Presiding Judges

Commissioner Stephens was asked to comment on the new order from the Court System's Presiding Judges changing bail schedules and practice. Judge Stephens, one of the signatories, stated that these changes had been under discussion a long time and that Judge MacDonald really want to get the changes underway sooner rather than later. (Nancy Meade noted that most SB91 bail and pretrial-directed changes won't be effective until January 1, 2018.) Judge Stephens stated that the PJ's had been aware that defendants in different districts were being treated differently vis a vis bail schedules, even when they had been charged with the same offense. So the order is intended to change that. He noted that felonies and DV Assaults are not on the bail schedules, so the changes only impact non DV misdemeanors. Basically, the order directs non-monetary release in many misdemeanors, but if the officer believes there is a need for bail, he or she is to call the judge.

Future Planning

Staff was directed to note that Commissioners want to hear on Results First implementation at the next Commission meeting and to once again discuss whether an expansion of Commission membership is desirable.

Public Comment

Chair Razo asked for any additional public comment. There was none.

The meeting was adjourned at approximately 11:43 AM.

Staff Notes and Meeting Summary
ALASKA CRIMINAL JUSTICE COMMISSION

Thursday, February 18, 2016

10:30 -11:45 AM

Location: Atwood Building, 550 W. 7th Avenue, Rooms 102 and 104

Commissioners Attending: Greg Razo, Alex Bryner, Jeff Jessee, Brenda Stanfill, Kris Sell, Trevor Stephens, Stephanie Rhoades, Gary Folger, Dean Williams, Wes Keller, Craig Richards.

Commissioners Absent: John Coghill, Quinlan Steiner.

Staff: Mary Geddes, Susanne DiPietro, Giulia Kaufman, Teri Carns, Susie Dosik

Also attending: Barbara Armstrong, Brad Myrstol, Stanford Turner, Taylor Winston, Alys Wooden, Janet McCabe.

ACJC Chair Greg Razo called the meeting to order at 10:33 AM.

Legislative Update on 2015 ACJC Recommendations. Sen. Coghill was not present at this time. Mary Geddes noted that SB 91 was still in State Senate Affairs Committee. Commissioners Razo and Stanfill had testified on Saturday, as had many others in this public hearing. The hearing on the bill continued to this morning and included invited testimony from OVR and the Court system. Comr. Stanfill noted that OVR had suggested there were constitutional issues. It seems that there is some misinformation out there and some fear, but there has been some dialogue, too. In the hearing this morning, Senator McGuire underlined the importance of providing treatment for people in jail.

Staff Proposal for Revised ACJC Organization and Workplan Referring to a handout and proposal, Mary said that staff were taking a figurative page from the Pew process. A fewer number of simultaneous ACJC workgroups with shorter terms (two months) and hard-and-fast deadlines may be more efficacious than the current structure. The Title 28 and the Barriers to Reentry workgroups are the first two workgroups out of the blocks, as they are already well-established. Comr. Rhoades asked if the review of the UNLV report would be subsumed into the Behavioral Health workgroup. Hearing no objection, Comr. Razo said that it seemed to make sense and that the BH workgroup would review the report. Comr. Rhoades indicated that the Behavioral Health workgroup should convene no sooner than May due to the legislative session. An early motion from Comr. Stanfill seconded by Kris Sell (to accept the workplan as written) was withdrawn as Commissioners seemed divided on the necessity to restrict workgroup time to the two-month time blocks proposed by staff. The chair suggested that the staff-proposed workplan could be a guide for now and that the Commission could finalize its plan at its next meeting. Comr. Bryner moved and Comr. Rhoades seconded Chair Razo's suggestion. The Commission will finalize its plan at its next meeting.

By this time (11:00), the meeting had been joined by Comr. Folger, Comr. Williams, and Taylor Winston. Discussion resumed on the status of the ACJC recommendations in SB91. Comr. Folger noted that the bill has a far ranging impact, but that the first draft of the bill exceeded expectations

in capturing the ACJC recommendations, but that as always the devil is in the details. Comr. Razo welcomed DOC Commissioner Dean Williams to the ACJC membership. Comr. Williams thanked the Commission for its work as it is hugely important to the State and to DOC.

Upcoming Commission Sunset Review by Division of Legislative Audit. Mary explained that as the Commission is due to sunset on June 30, 2017, she and Susanne and Greg had been contacted by a legislative audit team which has the specific responsibility of recommending whether the term Commission should be extended. Other members of the Commission may also be contacted.

Presentation: the Alaska Results First project (Brad Myrstol and Stanford Turner). The Pew-MacArthur Foundation Results First project has partnered with the Alaska Justice Information Center (AJIC). Alaska is the 19th state to join. AJIC is not directly related to JRI, but can build on its momentum. AJIC like all RF states begins with a focus on adult criminal justice. The idea is provide a toolkit to policy makers. The project has evolved since last October. Brad is director although he wears other hats. There are 2 FTEs devoted exclusively to RF (Areli Valle and Karin Thomas).

Our first job is to delineate the contours of the adult CJ landscape; we are 85% there in terms of creating and inventorying program descriptions. This includes therapeutic courts, batterers intervention programs, IIDs, EM. The idea is to vet through the AJIC Steering Committee. Pew has a clearinghouse of meta-analyses. The idea is to match AK based programming to existing evidence base. One of our first products will provide a score as to which programs are evidence based. This is a cost-benefits model – the monetizing is complex and challenging. The idea is to reduce the complexity and provided benefit cost rationales for all programs funded by the state. We look at avoided costs too because recidivism (avoiding it) is at the core. The benefits are derived from recidivism reduction. We will be plugging in Alaska specific information. We will ask which programming has an evidence base, what are the effects, what is the return. We are not evaluating and auditing programs. We will not be making recommendations to the programs themselves as to how to better themselves. Nor is this a tool for cuts. But everyone has access to the Pew Clearinghouse to look at the ratings that programs have received.

Brad noted that RF/AJIC is here to stay. In the first phase, reports will be generated in the spring or the summer. It will reflect the initial program inventory. National resources can identified which programs are evidence based. The more feedback, the more customizable it becomes. In the future, the model itself will live in the Cloud. Any designee, if trained, they can access and use it. Comr. Rhoades asked if agencies have refused to give AJIC data. Brad said that we have had difficulty only because of a lack of capacity to provide data, not a lack of will. Budget data in particular requires a significant agency investment of time. When staff 'bandwidth' is limited we try to alleviate. The Steering Committee for AJIC is Susanne DiPietro John Skidmore, Steve Williams, Dean Williams. It's important that the model be useful; these folks evaluate its utility.

Janet McCabe asked about WSIPP, and the model it provided to ISER in 2009. Brad noted that WSIPP is a partner with Pew. There have been such advances in analytics that the 2009 model used by ISER to calculate the cost of crime is no longer useful.

Review of ACJC Calendar and meeting locations. In light of the work to be accomplished by the Title 28 and Barriers workgroups, staff recommended that the Commission skip its March meeting but maintain the previously set meeting date for Thursday, April 7, in Juneau. Comr. Sell asked if Commissioners might consider a different date as she would be out of state. She did indicate that she could attend telephonically on April 7 but would hate to miss an ACJC meeting in Juneau. She suggested the 14th. Comr. Stephens indicated that he had reserved the 7th. Comr. Razo indicated that there would be little value in setting a Commission meeting in Juneau after or so close to the end of the session. The session ends on April 17. Although staff will explore the availability of other dates to accommodate Comr. Sell, **Comr. Razo asked all Commissioners to keep April 7 date available for the next Commission meeting.** There are a number of agenda items which will need to be addressed in April.

Miscellaneous items: Comr. Stanfill asked if the Commission would be having further contact with the Pew researchers. Susanne explained that Alaska is slated to receive additional technical assistance in the future for the implementation of any JRI reforms but that the TA providers will be Crime and Justice Institute (Melissa Threadgill and Len Engle).

There was no additional public comment.

The meeting adjourned at approximately 12:00 PM.

ALASKA CRIMINAL JUSTICE COMMISSION
Meeting Notes from Monday, January 25, 2016, 9:00 AM -12 PM
Sealaska Heritage Institute, 105 S. Seward Street, Juneau, Alaska

Commissioners present: Greg Razo, Stephanie Rhoades, Walt Monegan, Jeff Jessee, Wes Keller, Trevor Stephens, Gary Folger, Alex Bryner (telephone), Brenda Stanfill, John Coghill, Quinlan Steiner, Kris Sell.

Commissioners absent: Craig Richards.

Staff: Susanne DiPietro, Mary Geddes, Giulia Kaufman, Susie Dosik, Teri Carns.

Participants: John Skidmore, Dean Williams, Jacob Wilson, Joshua Wilson, Josie Garton, Alyssa Wooden, Kaci Schroeder, Ingrid Johnson, Barbara Armstrong, Nancy Meade, Jordan Schilling, Ken Truitt, Janet McCabe, Lacy Wilcox, Denali Daniels, Josie Garton.

Materials received prior to the Commission meeting:

- Meeting summaries from December 8 and December 10
- Draft ACJC Annual Report to the Legislature
- UNLV Review of Alaska Mental Health Statutes and Responses
- Problem Statement re: mental health statutes (from DiPietro, Jessee and Williams)

Materials circulated at the Commission meeting:¹

- Barriers to Reentry/Title 28 Subgroup Proposal
- Partners for Progress Proposal
- Staff report on January 6 CSAC meeting

Approved Actions:

- Annual Report is approved with corrections; no further review will be required.
- 2016 organization and work plan will be referenced in the Annual Report.
- The request by the Criminal Justice Working Group (CJWG) to review the UNLV report and recommendations on the state's mental health statutes is accepted. A workgroup will be convened for an initial review of the UNLV report and will recommend whether and how to proceed.
- Immediate priorities for 2016 will be reflected in revised workgroup structure. The Workgroups will be Title 28; Behavioral Health (throughout the continuum of care); Presumptive Sentencing (to include review of three-judge panel law); Barriers to Reentry; and, Restorative Justice and Restitution. The Employment Subgroup will be reincorporated back into the Barriers to Reentry Workgroup.
- In light of recent travel-related directive and discussions with Governor's staff, staff in consultation with the Chair will decide whether to keep February meeting on the schedule, and if so, whether to change its location from Juneau to Anchorage and when the workgroups will meet.

¹ Those materials are attached to this summary.

Welcome and Introductions (Razo)

The meeting began at 9:05 am. Cmr and Chair Razo began the meeting by thanking the Tlingit people for the welcome to Juneau and the Alaska Heritage Institute for its use of its beautiful new building. Given our recent earthquake experience, he noted measures for earthquake preparedness.

1. Legislative Update

Senator Coghill and Representative Keller were asked for an update. Senator Coghill reported that the bill intended to include the JRI recommendations (SB 91) is still in draft form. It's a big bill requiring a lot of legal work and it is competing with work on budget issues. With the help of legislative counsel, Senator Coghill is working to resolve some remaining questions like providing sufficient due process for class B reduced misdemeanors. Because there have been questions raised by some victim advocates, he and his staff (and Cmr Stanfill) have been in lots of meetings and doing their best to answer all the questions. Senator Coghill reported that he trying to stay on target with the recommendations and bed impacts. The first committee referral will be State Affairs. Senator Coghill also reported that he has been asked to put the ACJC's Food Stamps recommendation in a separate bill and he may do that.

Representative Keller reported that he feels as if his perspective has been broadened as a result of his participation in this process, and its has been very helpful to have the Commission's written product(s). He looks forward to the ongoing input and support by the Commission members and is optimistic for a good outcome this session.

2. Review of Annual Report

Prior to the meeting, a draft of the annual report was distributed for the Commission's review. Senator Coghill liked the format of the report. Commissioners caught one typo ("2014"), suggested a heading change (from "Products") and wanted additional information about judicial officer training and some format changes. It was also agreed that the "Outcome[s]" should indicate that Commission recommendations had been forwarded to the Legislature. Senator Coghill suggested one re-write to make it more clear that the recommendations to advance victims' priorities are directed to specific state agencies and do not require statutory reforms.

There was some discussion as to whether the annual report should include a work plan. A number of Commissioners were strongly in favor of identifying immediate Commission priorities (1) so that they could be referenced in the annual report, and (2) so that the work to advance those priorities could get underway. The Commission agreed to address priorities for the missing "work plan" section of the report later in this meeting.

The motion to accept the report with changes to be made by Geddes was offered by Cmr Monegan and seconded by Cmr Jessee. All approved.

3. Request from the Criminal Justice Working Group

Prior to the meeting, staff had distributed a PDF containing a review of the state's mental health statutes (and written responses). Commissioners had also received a "Problem Statement" from Susanne DiPietro, Jeff Jessee and Steve Williams; this memo explained the impetus for the review.

Cmr Jessee explained that the discussion had actually begun in 2011 on the issues of competency and civil commitments at the Criminal Justice Working Group (CJWG). [The CJWG is an interagency, operations-focused committee staffed by the Judicial Council.] The CJWG formed a committee and recommended a study be commissioned to better inform the committee work. The study was funded by the Mental Health Trust. It was jointly conducted by professors at the University of Nevada Las Vegas, from the Schools of Law and Medicine. The CJWG had forwarded the UNLV report and recommendations to the Commission for its consideration since the CJWG is not in the position of making recommendations to the legislature.

Cmr Jessee hoped that the ACJC would include its consideration of the report in its work plan for 2016 so that any recommendations for statutory changes could be forwarded to the next Legislature. He suggested that the first ACJC task would be to determine if all issues were within its legislative charge, and then if the ACJC wants to make any recommendations. Since 2011, the problems have gotten worse. He noted that Trust beneficiaries are staying in jail for weeks just waiting to get evaluated. For people who aren't competent and are not restorable there is no way to respond. They get released, come back, and go through the whole process again.

Cmr Jessee noted that there would be a benefit to having ACJC look at the report because its membership has some diverse perspectives. Acknowledging that the ACJC is a criminal justice commission and the report concerns among things civil commitments, Cmr Jessee stated that there is an overlap and relationship between criminal and civil law when it comes to the mentally ill, and he felt confident the ACJC could look at the situations holistically. Cmr Rhoades noted that one of the most significant problems with the existing law is that there are no experts in the state qualified to do the forensic evaluations required by law.

Cmr Bryner recommended that the ACJC should consider the report and recommendations. Cmr Monegan suggested that API be invited to any workgroup. Cmr Rhoades stated she had been part of the committee process. She thought that the review should be done by the entire Commission and be made part of the ACJC work plan. The Chair called for public comment, but there was none. It was agreed that the Commission would accept the request from the CJWG.

5. ACJC Workgroups and a Workgroup Proposal

Staffer Geddes reported that there was a modest proposal for a discrete statutory 'fix' of Title 28 which had been forwarded to the Commission from the Barriers to Reentry Workgroup. The Workgroup had approved the proposal that morning (January 25). The proposal originated with the Title 28 subgroup, and was endorsed by the DMV representatives. The request was to ease one of the statutory prerequisites for DL reinstatement after the minimum ten-year revocation period. Commissioners did not then immediately take up the recommendation but proceeded to a discussion of the ACJC workgroup structure.

Cmr Rhoades asked for a review of the original workgroup structure and current activity. Cmr Stanfill reported that there are two Barriers to Reentry *Subgroups*: on Title 28 and on Employment. The Chair reported that the Title 28 Subgroup is large and knowledgeable. The Employment Subgroup has been working on Ban the Box and Title 47 barrier crimes, the thought being to have a package of employment related reforms ready for next year's legislative session.

Cmr Rhoades suggested that the Title 28 group be made a stand-alone Workgroup responsible for responding to all of the Title 28 related questions asked by the legislature.

Janet McCabe asked to be heard. She spoke to a second Title 28 proposal that Partners for Progress has already forwarded to Senator Coghill's office, independent of the ACJC process. A summary of this proposal was circulated at this meeting to the Commissioners present in Juneau.

Cmr Stanfill urged the Commission to consider the Subgroup proposal (approved by the Barriers Workgroup earlier that morning) as it had been thoroughly discussed, vetted by the Barriers Workgroup and was supported by DMV. Cmr Rhoades felt she hadn't had sufficient time to review the proposal. She also stated that she would prefer to have a comprehensive, not piecemeal, approach to Title 28 reform. Cmr Bryner agreed that he needed more time to review. Cmr Sell stated that she wanted the matter to go back to committee for more careful vetting. Cmr Keller asked his fellow Commissioner to not put the proposal on the shelf while acknowledging that it would be good to have the broader context.

The Chair asked if the Title 28 Subgroup be elevated to Workgroup status. Cmr Rhoades so moved. She also asked that a deadline be set for the report to the legislature. There was a second by _____. All agreed.

Commissioners then discussed which group of issues should have priority in the organizational structure. Cmr Stephens moved that the revised workgroup structure reflect ACJC priorities; he named Barriers to Reentry, Presumptive Sentencing (including the three judge panel), Title 28 and Mental Health.

Cmr Sell reiterated an earlier statement that the Commission should closely track the JRI related recommendations to see if they are enacted, and if not, to press again in the next legislative

session. She wondered if a Workgroup should be formed for that purpose. Cmr Jessee noted that the JRI report had recommended an oversight committee for implementation. After the break, Susanne DiPietro referred the Commission to Recommendation 19. She noted that the Alaska Judicial Council would offer to staff any oversight committee. Cmr Sell clarified that she wasn't referring to implementation but the follow-through if the legislation doesn't pass. After further discussion of the possible oversight committee, it was agreed that the Commission would take these two questions up in April. The two questions are: which body would be the best oversight committee? How will the Commission follow through if the JRI legislation does not pass?

The discussion returned to the existing work group structure. It was felt that the issues identified by the Pre and Post Trial Laws and processes had been sufficiently addressed by the JRI process.

Cmr Monegan thought that attention should be given to post trial follow-up with respect to ensuring a continuum of care to MH beneficiaries to avoid recidivism. Cmr Rhoades thereafter moved to change the "Mental Health" Workgroup to "Behavioral Health Continuum of Care." Cmr Rhoades also thought that diversion mechanisms for the mentally ill should also be addressed by this group. Cmr Sell wanted to include Corrections-provided treatment in this continuum. Cmr Jessee thought that DHSS should also be engaged. The Chair agreed that this group needed to include all stakeholders.

Cmr Steiner asked if the Rural Justice Workgroup shouldn't be continued. The Chair noted that the critical importance of addressing rural needs and challenges should be made clear in every workgroup, and that a stand alone Rural Justice group was perhaps not needed at present. Cmr Monegan noted that laws tend to be urban-centric; e.g., in rural areas, people need guns to hunt and to subsist. Therefore he hoped for strong rural input. The Chair said that he was reminded of our presence in Tlingit territory, and of his recent experience attending a sex offender group at the Partners Reentry Center. All of the men in the group were apparently Alaska Natives from rural areas. One man from Brevig Mission said he had been released and had to navigate job prospects with the city bus system. Because he didn't know how to successfully negotiate the bus schedule, he was late returning to the CRC and was revoked and reincarcerated for 4 months. Cmr Rhoades asked that we ensure that rural perspectives are represented on every committee. Cmr Stanfill asked if the topic of restorative justice should be addressed in a (new) workgroup. RJ includes alternative and less costly mechanisms which may work well in rural areas. Cmr Rhoades moved to create a workgroup on restorative justice and restitution. The Chair noted former Senator Dyson's interest in restitution. The motion was seconded and all agreed to add a Restorative Justice and Restitution Workgroup.

Cmr Bryner stated that there was no need to reconvene the Classification Workgroup as such, given the JRI process and the workgroup on Presumptive Sentencing.

The original Data workgroup has not met for a long time, but the Alaska Criminal Justice Information Center is collecting data now and will soon be able to report on all CJ programs. Brad Mrystol is the head of the program, according to Barbara Armstrong, speaking on the phone. There are broader data needs than what will be accomplished by Results First, according to Teri Carns, also on the phone. Cmr Steiner hopes that the ACJIC will eventually mature to be more like the WSIPP. It is agreed that the Commission will revisit this topic in April.

Staffer Geddes noted that a review of drug schedules is still on the Commission's "to do" list. The Chair says this item will be on the Commission's April agenda.

It was agreed that the Commission's 2016 immediate priorities will be reflected in revised Workgroup Structure: Barriers to Reentry, Title 28, Behavioral Health Continuum of Care; Presumptive Sentencing (including three judge panel); and Restorative Justice and Restitution.

6. Commission Travel and Meeting Schedules

AJC ED DiPietro reported that the ACJC had received a communication from the Governor's Office asking that such groups as this one limit travel for in-person meetings to one time a year. Because the Commission has such a short term, meeting plans will remain within the Commission's discretion. We do have to report travel expenditures twice yearly and monitor our expenses regardless. DiPietro has told the Governor's office that the Commission has tried to use videoconferencing at state facilities but it hasn't always been successful. Cmr Stanfill said that it is very difficult to attend and meaningfully participate in meetings by phone. Anchorage is easiest for her. Juneau is easiest for Cmr Sell and Stephens. Cmr Rhoades would prefer fewer, longer meetings. The Chair offered to find out if CIRI could 'share' its videoconferencing system. Cmr Rhoades suggested that having three meetings in Juneau is probably too much unless there are also independently scheduled meetings with legislators. The Chair promised to consult with staff and to be in touch about any rescheduling of meetings.

The Chair asked for public comment at the close of the meeting. There was none and the meeting was adjourned shortly after 12:00 PM.

PROPOSAL A: Proposing an amendment to AS 28.35.030(o).¹

This particular subsection concerns the circumstances under which the *termination* of a felony DUI revocation can occur. Under the current statute, a revocation may be ended by DMV only if (1) 10 years have elapsed, AND (2) if the person has not had any criminal convictions since the license was revoked.

The proposed amendment does not alter the 10-year revocation period. But it does substantially change the second prerequisite. This amendment would:

- limit the lookback to driving-related criminal offenses,² not any kind of criminal offense;
- limit the lookback for a prior conviction to five years;
- change the relevant date for the lookback from the date of application for termination, not from the date a license was revoked.

This amendment is recommended by DMV and is unanimously endorsed by the rest of the Subgroup.

It is prompted by DMV's experience with a number of applicants who are seeking termination of the revocation. Many applicants don't qualify for the termination of revocation, usually because the lookback may include a minor offense conviction for conduct entirely unrelated to driving or because a person was convicted of DWLS conviction shortly after revocation. In the view of the Subgroup, a five-year lookback immediately prior to the application date is a reasonable enough period of scrutiny, and further limiting that lookback to driving-related offenses also makes the scrutiny relevant to the underlying offense conduct.

Finally, the subgroup (and DMV) propose that an amendment clarify that the lookback dates from the time of application (for termination of revocation), and not from the date of revocation since the application may be more than ten years after revocation.

¹ The statute as amended would read, in pertinent part:

Sec. 28.35.030. Operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance...

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.032(p) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of (u)(4) of this section apply. Upon conviction, the court

...

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

...

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and may restore the driver's license if

(1) the license has been revoked for a period of at least 10 years;

(2) the person has not been convicted of a driving related criminal offense ~~since the license was revoked in the 5 years preceding the date of application for termination of revocation;~~ and

(3) the person provides proof of financial responsibility.

² It should be noted that this section would not give relief to anyone who is convicted of a subsequent felony DUI within the first five years of revocation, since they would be dealing with an additional 10-year revocation period.

From: Fillymcc@aol.com
To: [Mary Geddes](#)
Cc: [D Schenk](#); billydianehouser@outlook.com; [Susanne DiPietro](#)
Subject: for Friday's Title 28 meeting
Date: Wednesday, January 13, 2016 9:38:17 PM

Hi Mary,

Thank you for sending all the information! At Friday morning's Title 28 meeting, Partners for Progress will be represented by Doreen Schenkenberger and Board Member, Billy Houser. I'll be at the afternoon's Barriers to Reentry meeting.

As you know, our organization has long advocated legislation that would give those who complete the 18-month therapeutic court program a fast track to driving legally, with a successful term on limited license leading to a full license. Partners for Progress started working with Senator Coghill and Jordon Shilling on this subject before SB 64 was formulated.

Here are our main points:

- We see the provisions for therapeutic court graduates in SB 91 as a test drive (forgive me) of similar provisions relating to the larger population of DUI offenders.
- We recommend that DHSS's cumbersome and very expensive contractor-managed 24/7 monitoring system be replaced by a nationally-proven monitoring system managed by DOC Electronic Monitoring. Staff in DOC's Electronic Monitoring division are professionals in this field, and they now have access to new technology that travels with the participant, can be used wherever there is cell phone connectivity, and can be set to test as frequently as required to ensure sobriety - more than twice a day or less as needed by the individual person.
- Data shows that the likelihood of relapse declines with length of sobriety. Ensuring all-day, every day sobriety is the best way to protect public from drunk drivers and reduce recidivism and its many associated costs.
- On a practical level, with a more reliable way to test and ensure all-day/everyday sobriety, the subsection setting requirements for ignition interlock is unnecessary. If someone is sober all the time, they are sober while driving.
- Wherever possible, without compromising the basic purpose of the limited license, we should reduce roadblocks to compliance. Meeting both

requirements – sobriety monitoring and ignition interlock – would be expensive and cumbersome.

- The requirements of the new federal highway act should be carefully analyzed to determine specific effects on Alaska's eligibility for federal funds. There are different requirements for states falling into different levels/categories. An exception for the small group of therapeutic court graduates, may not affect Alaska's eligibility.
- For therapeutic court graduates who have had no subsequent DUI offenses we recommend making the possibility of regaining the privilege to drive retroactive.
- Solving the problem of dual jurisdiction. This is addressed in SB 91. The bill should be strong and clear that the courts have the authority to grant or revoke limited licenses and DMV should take prompt administrative action to implement court actions.

Thanks again for all your hard work, Mary. I would appreciate your forwarding it to the subgroup so they can see it before the meeting.

Janet

Janet McCabe
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AS § 47.38.020

§ 47.38.020. Alcohol and substance abuse monitoring program

(a) The (COMMISSIONER, IN COOPERATION WITH THE) commissioner of corrections, shall establish a program for certain persons with release conditions ordered as provided under AS 12.30, or offenders with conditions of probation, that include not consuming controlled substances or alcoholic beverages.

(b) The commissioner shall adopt regulations to implement the program.

(c) The commissioner shall include in the program

(1) A requirement for (TWICE A DAY TESTING, IN PERSON IF PRACTICABLE,)

random testing at least twice a day at sufficient frequencies to assure abstinence from alcoholic beverage use and random testing for controlled substances **as needed**;

(2) a means to provide the probation officer, prosecutor's office, or local law enforcement agency with notice within 24 hours, so that a complaint may be filed alleging a violation of AS 11.56.757, a petition may be filed with the court seeking appropriate sanctions and may be scheduled by the court for a prompt hearing, or an arrest warrant may be issued for the person on release or offender with conditions of probation provided in this subsection, if the person or offender

(A) fails to appear for an appointment (AS) **if** required by the program requirements; or

(B) tests positive for the use of controlled substances or alcoholic beverages; and

(3) a requirement that the person or offender pay, based on the person's or offender's ability under financial guidelines established by the commissioner **of corrections**, for the cost of participating in the program.

(d) The department **of corrections** shall provide or conduct the testing required under (c) of this section.

In conjunction with this change, amend Sec.18. AS 28 .15.201 as currently set forth in SB 91 to delete Sec. 18. (g) (4) in its entirety and renumber the remaining subsections accordingly. **This deletes the requirement for ignition interlock, which is redundant, and unnecessary in combination with the amendment to strengthen AS 47.38.020 as proposed above.**

From: Filymcc@aol.com
To: [Jordan Shilling](#)
Cc: sloan@kasloan.com; billydiane houser@outlook.com; [D Schenk](#); [Mary Geddes](#); [Susanne DiPietro](#); susanne.dipietro@gmail.com; ismar.geddes1@gmail.com
Subject: language for limited licenses
Date: Friday, January 22, 2016 8:56:43 AM
Attachments: [AS 47.38.020-proposed changes 1.18.16.docx](#)

Hi Jorden,

As we discussed last night, I had another look at the language and want to confirm our request that they be included in the first round of SB 91 revisions.

These small wording changes to SB 91 are necessary to switch from the current contractor-managed 24/7 system under DHSS to DOC Electronic Monitoring using new technology that can provide random testing wherever there is cell phone availability, and do it more frequently than twice a day if needed. The testing device travels with the person who needs to be monitored and has an accurate system for verifying identity.

This would be a big improvement over DHSS current "show up and blow" contractor-administered system system, with its limited reach and compliance difficulties.

With a better system of monitoring for all-day sobriety, ignition interlock would be unnecessary.

These changes are essential to implement Recommendation 3 of the Pew report. The introduction to Recommendation 3 states the problem well:

Currently, judges have few options for pretrial supervision, and the options that are available are typically handled by non-state agencies and contingent upon the defendant's ability to pay monitoring fees, including the ordering of a private third-party custodian, the services of a private electronic-monitoring company, and the 24/7 sobriety program. The Commission heard from many judges and magistrates who said they would release more defendants from jail pretrial if there were more options for meaningful supervision in the community to reduce the defendants' risk of committing new crimes or failing to appear for court. (page 17)

In developing this proposal, we had the help of Fred Sloan, the attorney who handles many DUI cases in Anchorage and our board member, Billy Houser, who founded DOC's EM system and managed it until his retirement last summer.

TO: Alaska Criminal Justice Commission
FROM: Mary Geddes, Staff Attorney
DATE: January 23, 2016
RE: Summary of Controlled Substance Advisory Commission discussion on January 6, 2016

ACJC Chair Greg Razo, Commissioner Alex Bryner, Susanne DiPietro and Mary Geddes attended the Controlled Substances Advisory Committee meeting on January 6, 2016.

They spoke regarding ACJC-JRI recommendations in general and in particular Recommendation 6.b., which proposes aligning penalties for commercial heroin offenses with penalties for commercial methamphetamine and cocaine offenses. Currently the distribution of heroin (and other opioids in schedule IA) is a class A felony and the distribution of either methamphetamine or cocaine is a class B felony. The recommendation asks that distribution offenses be similarly classified.

ACJC representatives gave reasons why the current classification should be changed:

- Classifications determine maximums and sentencing ranges.
- Basing felony classifications solely on the drug can result in radically-different sentencing outcomes for extremely similar acts of distribution. E.g., the current presumptive sentencing range is 5-8 years for a *first-time* class A felony offender compared to 1-3 years for class B *first-time* offenders. The mean sentence imposed was 73 months to serve for all class A drug offenders, compared to 31 months for all class B drug felony offenders.
- Classifications based solely on the drug do not reflect the relative harms involved. Thus the distribution of a tiny amount of heroin (class A felony) is subject to much greater penalties than the distribution of a large quantity of cocaine or meth (class B felony). Notably, most (68%) class A distribution offenses in Alaska between 2012-2013 involved only small quantities of drugs.
- Research shows that lengthy jail sentences for drug offenders who are also drug users are not effective in either the future deterrence of the individual nor in reducing crime. 80% of the sentenced class A felony offenders in Alaska had a documented substance abuse problem.
- Research also shows that lengthy jail sentences for first-offenders are not effective in either the future deterrence of the individual nor in reducing crime. 42% of the class A drug offenders sentenced in Alaska in 2012-2013 first-time felony offenders.
- Realignment is a means of using our limited correctional resources effectively.

Additional recommendation on creating a tiered classification for distributions based on weight. ACJC representatives also explained that, in a separate recommendation relating to drug distribution offenses, the Commission has urged tying the felony classification to weight, with the intention of better distinguishing the seriousness of the distribution offenses. Thus, quantities of heroin/cocaine/meth which are higher than a threshold amount (2.5g was unanimously recommended as the threshold) would warrant the felony B classification; lower quantities would result in a class C felony. The realignment in

the classifications will reflect then both the past prosecutorial practice of ‘adjusting’ a classification for less serious distributions and the courts’ experience in having to mitigate drug distribution sentences. Realignment thus promotes proportionality and transparency in the charging and sentencing process.

The CSAC considered how its own statutory duties of the CSAC relate to the ACJC recommendations.

The CSAC has six duties as described by statute. Its duties expressly include “the need to add, delete, or reschedule substances in the schedules in AS 11.71.140 - 11.71.190.” It was noted that the ACJC had not recommended any change in the scheduling of controlled substances. CSAC members decided that it would not take any position on the ACJC-JRI recommendations.

Speaking only as individuals, and not in their capacity as the CSAC, those present asked if they could ask questions and express concerns to share with the ACJC. These questions and comments were encouraged and are listed below:

Skip Coile (public MEMBER): Isn’t aligning and effectively reducing the penalties for heroin distribution the wrong message at this time, given the spike in usage and the potential for fatalities? Keeping fairly high penalties provides an incentive to individuals to plead and leverage for law enforcement.

Dennis Casanovas (DPS): I have a problem with the idea of re-classifying heroin distribution but not some of the other class IA drugs. For example, someone who hands off a tab of hydrocodone versus someone who is distributing heroin; the carve out doesn’t seem right.

I am also concerned about the [breakpoint] for smaller-quantity distributions. Cocaine and meth doses are typically 0.5g. Heroin doses can be 0.1g although you can also build up your tolerance to higher doses. So, with 2.5g, we could be talking about 25 distributions. Also heroin can be cut with other substances for a greater number of distributions.

In my view, using weight cut-offs is an additional burden for law enforcement. Now because of marijuana law changes, my folks must carry around a scale with them to measure 1 ounce of marijuana.

Jay Butler (MD, Director of Public Health): I do understand and share the concerns expressed. The question is what will be done instead (of incarcerating people). Really, addiction is a public health problem. That should be the emphasis, otherwise by reducing jail stays we may just be speeding up the cycle of recidivism. Right now jail is the only structured response out there. Once people leave prison, how are their social/treatment needs being addressed?

Alexander Van Hafften (psychiatrist): My biggest concern is - will there be reinvestment, and will it be sustained? Trying the approach of comprehensive treatment for this population is definitely the way to go. But implementing systems change requires resources up front. Will those resources be committed and sustained? In five years from now, are we going to be better off?

We know that there must be prompt, immediate responses to drug misconduct. And there must be consequence, otherwise people don’t learn. Otherwise we do increase the risk to public safety. I am familiar with capital cases, mentally-ill people who have been high risk, had predatory behaviors but were not well supervised on release by DOC and the various community players. All I mean to say is, more funds are needed for real community supervision if we are going that route.

(Van Hafften, cont.) There are members of the Legislature that were there in past years, 2004, 2007, and 2008; they will recognize that if we don’t provide resources, we don’t move forward. All these past efforts

to get people out of institutions – closing Morningside, Bring the Kids Home etc. - fail unless there are resources awaiting for them.

Larry Stinson, M.D: These are tough questions. I am aware from personal experience, from the experience of a family member, how hard parole officers work and how frustrating the work is. If [only] 15-20% of drug offenders are rehabilitated, it counts as a wildly successful outcome. If parole and probation are overwhelmed [with their supervision responsibilities], I am not sure that community-based approaches will be any more successful. I am interested in other states' experiences. What are the outcomes if they are known?

CJ Kim: (pharmacist): I would be concerned if drug distribution is not a felony.

ACJC representatives responded:

Drug distribution will remain a felony. Only simple possession would become a misdemeanor.

Certainly, heroin and other scheduled IA substances are extremely dangerous to individuals. State and local law enforcement need adequate funding in order to move swiftly and curtail their availability. The idea here is to target the most serious offenders, the commercial distributors.

But felonizing simple possession by drug users and/or mandating lengthy jail terms for low-level smaller-quantity distributors are measures not shown to have a deterrent effect, not generally nor individually, according to the research and the national experience.

The lengthy jail terms approved by legislators in the 80's did not end or even reduce the recidivism of drug abusers. And the availability and use of illegal drugs has increased in the general population even as tens of thousands of drug offenders served lengthy terms in state and federal prisons.

(Responding to the need for treatment) These reforms only work if there is reinvestment. Treatment needs to be available to drug abusers when they need it, not weeks or months later after they seek help. Reinvestment priorities include treatment.

ALASKA CRIMINAL JUSTICE COMMISSION
Meeting Notes from Thursday, December 10, 2015, 10:00– 11:00 AM
Endeavor Room, Hotel Captain Cook, Anchorage

Commissioners present:

Greg Razo, Stephanie Rhoades, Walt Monegan, Jeff Jessee, Trevor Stephens, Gary Folger, Wes Keller, Alex Bryner, Brenda Stanfill, John Coghill, Quinlan Steiner, Craig Richards, Kris Sell (telephonic)

Staff:

Susanne DiPietro, Mary Geddes, Giulia Kaufman (telephonic), Susie Dosik, Teri Carns, Brian Brossmer, Terry Schuster (PEW), Emily Levett (PEW), Len Engel (PEW), Melissa Threadgill (PEW), Abigail Walsh (PEW)

Public:

Nancy Meade, Carmen Gutierrez, Karin Thomas, Araceli Valle, Jordan Schilling, John Skidmore, Doreen Schenkenberger, Janet McCabe, Denali Daniels, Daryl Gardner and others not identified

1. Welcome and Remarks (Razo)

Commission Chair Greg Razo opened the meeting at 10:00 a.m. and welcomed all attending.

2. Action on the Draft JRI related Report and Recommendations

Chair Razo noted that the Commission had before it the final draft report and set of recommendations compiled by Pew under the Justice Reinvestment Initiative. If the package of 21 consensus recommendations were approved by the Commission and enacted by the Legislature, it could reduce prison population by 21% and save 424 million dollars over the next decade. The recommendations as drafted, follow the best research in the field, allow for safely releasing more pretrial defendants, diverting more low level and nonviolent offenders away from the prison sentences, and imposing swift certain and proportionate sanctions on violators. The proposals are reforms are in line with the reform efforts made by other states.

The report compiles the proposals forwarded to the full Commission by its JRI Subgroups (Sentencing, Community Supervision and Pretrial), as revised by the full Commission in plenary session on December 8. The report distributed in person at this meeting can also be accessed on the ACJC public website.

A motion was made by Commissioner Jessee to approve the proposed package of reforms as reflected in the final draft report circulated on December 9. The motion was seconded by Commissioner Monegan.

Chair Razo called for discussion. Commissioner Jessee urged the Commission to unanimously approve the package. Commissioner Coghill noted that public safety had been the paramount concern during the review of possible reforms. He had learned a great deal through the process and thanked his fellow Commissioners for their work. Commissioner Monegan stated that he was impressed with the successful effort to come together and agree, and that he was pleased to serve on the Commission. Commissioner Sell agreed with the sentiments expressed. Commissioner Bryner said that he wanted to thank the legislative nonvoting members of the commission for their initiative. He also wanted to thank staff for their assistance in locating authorities and research. Commissioner Rhoades wanted to thank legislators, the two chairs of the Commission, staff, and Pew and their “top-drawer team.” She has

learned a lot about our system and although it could have been very adversarial, it was instead cooperative, focusing on the needs of Alaskans. She was impressed that everyone involved in the effort was entirely committed to resolving the problems with the justice system. Commissioner Stanfill was honored to be involved and had learned a lot. One of the key aspects to the process had been bringing in the victims' perspectives through a statewide meeting in Fairbanks and a local meeting in Bethel. She was glad to offer the victims' perspective and appreciated that the focus had always been how do we make our communities health and safe. Senator (and former Commissioner) Dyson who was present was recognized for his support and work. Commissioner Stephens agreed with much of what had been said and would not repeat it. He did want to particularly former Chief Justice Fabe for appointing him to the Commission as it had been a very enjoyable process. He also appreciated the very considerable efforts of Commissioners Richards, Folger and now Monegan – who were not original members of the Commission – to quickly engage and contribute in the JRI process. He especially appreciated the efforts of the Department of Law in this regard as that staff had fully engaged in the process. Commissioner Keller stated that it had been an honor to serve alongside Senator Coghill and the other members of the Commission, and that he had been impressed how everyone had been able to get away from their 'silos' and come together. He noted that the process would be a continuing one and he looked forward to the support of the individual Commission members in the 'vetting' (legislative) process ahead. Commissioner Folger noted that the process and the report involved a paradigm shift. He was impressed with the process and struck by the commitment involved.

Chair Razo invited members of the public to offer their comments, and said that the public comment and input had been important. One change recommended to the report's language was submitted in advance in writing by Janet McCabe. She recommended that the reference to "24/7" monitoring be changed to provide a more generic reference to all day, every day monitoring.

The question was called. All voting members of the Commission stated "Aye."

3. Other Business

Chair Razo noted that at 12:00 PM a press conference involving the Governor and legislative leadership was planned for the purpose of publicizing the Commission's action and recommendations. Commissioners were asked to attend.

Commissioner Coghill noted that it was his intention to incorporate the ACJC-JRI Recommendations into Senate 91. He noted the historic nature of the bi-partisan process that had resulted in the JRI report and he credited Senators Ellis, French and Dyson with co-initiating the process. He noted that it would be lift to get the package through in 12 week, because of the number of committee referrals but that it could be done. It is significant to have the support of all three branches of government going into this process. The reforms will make Alaska safer and he will promote it.

Chair Razo thanked Senator Coghill and Representative Keller and their impressive staffs for their assistance throughout.

Former Senator Dyson asked to speak. He asked that the Commission work alongside the Controlled Substance Advisory Committee and that he hoped to see more work on restorative justice issues because restorative justice principles are traditional and consistent with pre-contact societal values, i.e. focusing on not just the restoration of material goods but the restoration of relationships.

Chair Razo noted that the Commission would be resuming work on non-JRI issues such as tribal justice and the expanded use of electronic monitoring, and that the Criminal Justice Working Group had asked the Commission to consider proposed reforms to the state's competency and commitment statutes. Commissioner Jessee said that those issues had been made more exigent by recent events. Chair Razo said that the Commission could begin to consider those issues in January. Interest in those subjects was expressed by Commissioners Jessee and Rhoades.

At the close of this discussion, Commissioner Rhoades moved for adjournment. Commissioner Monegan seconded. All were in favor.

The meeting closed at 10:50 AM.

ALASKA CRIMINAL JUSTICE COMMISSION
Meeting Notes from Tuesday, December 8, 2015, 4:00-5:25 PM
East Conference Room, Denali Commission, 510 L Street, Anchorage

Commissioners attending: Greg Razo, Stephanie Rhoades, Walt Monegan, Alex Bryner, Brenda Stanfill, John Coghill, Quinlan Steiner, Craig Richards

Commissioners on the phone: Jeff Jessee, Trevor Stephens, Gary Folger, Brenda Stanfill, Kris Sell

AJC Staff: Susanne DiPietro, Mary Geddes, Giulia Kaufman (ph), Teri Carns

Pew Staff: Terry Schuster, Emily Levett, Len Engel, Melissa Threadgill, Abby Walsh (PEW)

Public: Barbara Armstrong (ph), Nancy Meade, Carmen Gutierrez (ph), John Skidmore, Jordan Schilling, Dunnington Babb, other unidentified persons

Welcome and Remarks (Razo)

The meeting convened at 5:00 PM. Commission Chair Greg Razo, the Commission chair, noting a quorum was present, thanked everyone for making time both during the JRI process and for this special meeting. The meeting was necessary because of the previously-announced timeframe for the release of its final JRI recommendations to the Governor and Legislature on Thursday, December 10, and because not all proposed recommendations brought to the Commission by the Subgroups as yet had consensus. Razo emphasized that it was important to identify all matters on which the Commission could agree so that its report and recommendations could be most effective.

Subgroup Recommendations and Commission Resolutions

Pew and AJC staff, in advance of the meeting, had prepared and circulated a document. The document listed nine specific subgroup recommendations. Prior to this meeting, individual Commissioners had identified those recommendations which would require further discussion.

#1.¹ Resolution/Clarification: Commissioner Richards agreed that the Commission's recommendation would not be contingent on the approval of the Controlled Substances Advisory Committee. The ACJC will forward its report and recommendations to the CSAC.

#2.² DOL Criminal Division Director Skidmore indicated that it was important to keep disorderly conduct (DC) a misdemeanor so that officers could arrest, because it allows for a 24-hour de-escalation. Geddes asked if a jailable violation could be proposed as it would be constitutionally permissible, albeit requiring a statutory fix. Commissioner Bryner said that the ACJC should think it through the two options. A misdemeanor does have collateral consequences. Commissioner Rhoades noted that keeping DC a "B" still requires the appointment of counsel; consider the debacle of Minor Consuming. Commissioner Steiner agreed that a "B" requires the appointment of counsel, and the violation does not. Commissioner Stanfill noted that the DC statute is helpful for LE intervening in DV cases, and she urged sticking with the "B." Chair Razo suggested a 24-hour maximum punishment for DC. DiPietro suggested that the recommendation could leave it up to the drafters with a 24-hour hold as the maximum.

Resolution: The (voting) Commissioners unanimously agree to recommend that there be arrest

¹ Subgroup recommendation: Bringing penalties for heroin into alignment with penalties for methamphetamine and cocaine, and forwarding this recommendation to the Controlled Substances Advisory Committee for its review and consideration.

² Subgroup recommendation: Reclassifying Misdemeanor B offenses, the lowest-level misdemeanor class in terms of severity, as violations, punishable by up to \$1,000 fine, excluding theft offenses.

authority for disorderly conduct but no more than a 24-hour hold or sentence. Drafters will determine if this should be violation or misdemeanor.

3.³ With respect to the commercial sale of heroin, cocaine and methamphetamine, the Department of Law has asked that the threshold amount for a class B felony be 2.5g, rather than 5.0g. Commissioner Bryner asked for more information. Commissioner Sell indicated that she agrees with Law and supports the lower threshold; in her experience, dealers are typically carrying 2-3 bags. She also said that with respect to _____, in her experience, the heaviest user is doing only a gram a day. Commissioner Steiner said meth and cocaine quantities consumed are typically higher, and that the feds perceive 5 grams and lower quantity sales as mitigated offenses. Consequently, he would like to stick with the higher quantity threshold. Commissioner Monegan said that the quantity seized in a bust doesn't always reflect the amount sellers began (a chase) with. Emily Levett of Pew was asked about the relationship between the threshold and the bed impacts of the JRI recommendation. Emily said that there are a lot of inmates in the 2-3 grams range. It was suggested that the threshold could be 3 grams instead. Commissioner Coghill noted he was looking forward to hearing any data regarding the quantities involved in (Alaska) commercial sale offenses.

Resolution: All (voting) Commission members agreed to the classification of commercial sale offenses involving less than 2.5 grams of heroin, meth and cocaine as class C offenses. The more aggressive measure making the threshold quantity less than 5.0 grams would also be reported out, as the consensus recommendation.

4.⁴ Commissioner Richards reported that Law had requested raising the maximum probation length for a non-sex felony from 2 years to 3 years. This concern was prompted by the proposal for earned credit on probation, and the realization that we could be talking about a relatively short probationary term for an extremely serious offense, such as murder. Commissioner Steiner proposed an alternative, which would raise the maximum probation length to 5 years for only unclassified felonies, since Law's concern is with the more serious offenders. Emily Levett was asked about bed impacts. She indicated that the change/increase could have a bed impact but that it hadn't been determined. She did note that 90% of the offenders who recidivate do so within 2 years, that was the rationale for the proposal. Both Commissioners Richards and Sell proposed that both options be forwarded to the Legislature.

Resolution: The (voting) Commissioners agreed: Both options would be forwarded to the Legislature and identified as alternatives.

5.⁵ Law proposed an exception for DV-related 4th-degree assault, i.e. broadening one of the two circumstances in which an offender can be sentenced outside of a zero to thirty day range for a class A misdemeanor. Commissioner Steiner thought that the broadened circumstance had not been well defined. Commissioner Sell thought the exception was important because DV is so hard to prosecute and victims can become uncooperative. Commissioner Stanfill agreed.

Resolution: The (voting) Commissioners unanimously accepted Law's proposal. In DV 4th degree

³ Subgroup recommendation: Create a tiered commercial drug statute whereby sale of more than 5g of heroin, methamphetamine, and cocaine is a more serious offense (Felony B) than sale of less than 5g of heroin, methamphetamine, and cocaine (Felony C).

⁴ Subgroup recommendation: Capping maximum probation terms at a maximum of 5 years for felony sex offenders; a maximum of 2 years for all other felony offenders; a maximum of 2 years for 2nd DUI and DV assault misdemeanor offenders; and a maximum of 1 year for all other misdemeanor offenders.

⁵ Subgroup recommendation: Presumptively setting a zero to thirty day sentencing range for misdemeanor A's, unless the prosecutor can show that the offender had past similar criminal convictions or the conduct was among the most serious constituting the offense.

assault cases, court can rely on circumstance of past similar criminal history, not just convictions, to exceed 0-30 day presumptive sentencing range.

6.⁶ The subgroup recommendation was to limit the offense categories for which courts would be authorized to refer to ASAP to those mandated by statute, i.e. DUI, refusal, and habitual Minor Consuming. The purpose was to preserve limited ASAP resources so it can be effective; this is necessary because an ASAP referral has become almost automatic and ASAP cannot handle the current number of cases.

Mr. Skidmore, asked to speak on behalf of Commissioner Richards on this point, said that while he agreed with the goal – not to undermine the effectiveness of this limited resource – he couldn't necessarily agree that 1st time DUIs do need ASAP and that 4th Assaults don't. Law's counter-proposal was to change the categories that would be authorized to refer to ASAP to be limited to second-time DUI and refusal, and also for alcohol related Assault 4s.

Commissioner Sell asked whether Law thought (all) 1st time assaults needed ASAP referrals. Skidmore said that the courts can't track whether assaults are alcohol-related related in the same way it can track (past) DVs. Commissioner Bryner suggested a limitation to Law's proposal, i.e. that any second-time assault conviction could made kept eligible.

Commissioner Rhoades responded with a number of observations: ASAP is the only form of misdemeanor probation supervision now available, and it is a limited resource. ASAP was initially created and funded with federal highway money for the purpose of responding to DUI cases. But the cost of 'mission creep' has been enormous, she said, and expressed the opinion that DA's often resolve cases by specifically negotiating/demanding ASAP referrals. Just the driving cases provide enough work for existing ASAP programs. And the program is designed for 1st time DUIs, to offer early intervention. This is not to disagree that there are a lot of alcohol related person misdemeanors, and that a lot of them are DV related. But its not a good idea to resolve DV cases with an alcohol referral.

At this point, Commissioner Stanfill also strongly agreed that DV cases should not be resolved by referrals to ASAP because alcoholism has nothing to do with DV. Its better to create/maintain DV-specific resources. She supports keeping the Subgroup recommendation as is.

Commissioner Richards stated a potential compromise: that while he has no problem with allowing ASAP to maintain services for 1st time DUIs, his department still believes that referrals for assaults should be allowed.

Commissioner Steiner suggested that ASAP referrals aren't necessarily appropriate for first DUI's but are for 2nd DUIs, and there should be [or there is?] a special agency for reviewing alcohol related assaults.

Resolution: Chair Razo suggested that both recommendations be forwarded as additional or majority recommendations because of the lack of consensus with respect to the specifics. The (voting) Commissioners unanimously agreed. However, it will be noted that there was consensus that ASAP services are stretched too thin, and that the Commission is concerned about the lack of resources.

⁶ Subgroup recommendation: Limiting the offense categories that courts would be authorized to refer to ASAP to those currently mandated by statute (DUI, refusal to submit to a chemical test, and habitual minor consuming)

7.⁷ Commissioner Richards asked that both recommendations from the Subgroup be identified as “additional recommendations” and not as the subject of consensus because for legislative consideration” section. However, in response to the concern which motivates these recommendation, he would recommend that funding should be provided for treatment of indigent defendants whenever such treatment has been ordered.

Commissioner Razo stated that rural defendants are particularly negatively impacted by court orders requiring their participation in treatment as such programs are often not available in their home communities and/or are not affordable. He would assent to Commissioner Richards’ additional recommendation (for more funding).

Commissioner Rhoades noted that the 2nd recommendation (under “7”) relates to how PTRP’s are handled. PTRP’s are haphazardly dealt with in the misdemeanor context. A court will put off an adjudication of a PTRP in order to allow a defendant to go get treatment but a court doesn’t want to do that a second time.

Resolution: The (voting) Commissioners unanimously agreed that all three recommendations will be made. The two Subgroup recommendations would be identified as “additional” (majority) rather than consensus recommendations.

8.⁸ The Commission considered the Parole Board request that the cap on technical revocation time be raised to 30 days for absconders. Absconding had been defined by the Subgroup as failing to report within five working days after the initial release to supervision or if the supervisee fails to report for two consecutive reporting periods.

Chair Razo noted that this request was not vetted through the Subgroup process. Commissioner Richards stated that as this is the only (negative) response made by the Parole Board and the Commission should be responsive to this request. Commissioner Steiner disagreed with the substance of the request because inasmuch as these parole revocation recommendations are an effort to line up with PACE guidelines for technical violations the cap should be 5 days, not 30. Commissioner Sell noted that there are some people who immediately flee when they get out of jail, and that lack of compliance within 5 days is a very good indicator of their intention. Commissioner Bryner asked for the pertinent mental state. Commissioner Stephens noted that only a maximum of 30 days was being requested, and that it was unlikely to result in arbitrary enforcement. He supported the Parole Board’s request. Commissioner Steiner said that PTRPs are filed very quickly for the initial failure to report.

Emily Levett explained that, because the Parole Board alternatively defined abscond as a failure to report for 2 “reporting periods” and different risk levels result in widely varying reporting periods, any approved recommendation should instead specify a concrete time such as 30 days or 60 days.

Resolution: Commissioner Rhoades suggested and it was unanimously agreed by the Commission’s voting members that the maximum time permitted as a sanction for absconding would be thirty days, with absconding identified as failure to report within 5 days or during 30 days of prescribed contact.

⁷ Subgroup recommendation: Stipulating that jail time cannot be imposed because a person failed to complete treatment if, despite having made a good faith effort, they were unable to afford treatment. Additionally, requiring that if a court opts to use jail as a sanction for a misdemeanor who fails to participate in programming, that requirement is subsequently no longer a condition of probation for which an offender can be revoked to prison a second time.

⁸ Subgroup recommendation: For offenders not participating in the PACE program, limiting revocations to prison as a potential sanction of probation and parole to up to 3 days for a first revocation, up to 5 days for a second violation, up to 10 days for third revocation, and up to 10 days and a referral to the PACE program for a fourth and subsequent revocation.

9.⁹ Commissioner Steiner stated that while it is imperative to get rid of dual (parole/probation) supervision, closer scrutiny of the proposal finalized by the Subgroup has led to the conclusion on the part of the PD that the new proposal will likely result in increasing the amount of time revoked offenders spend in prison. Consequently he proposes a fix not discussed in the Subgroup: When an offender is revoked on dual supervision, the offender will automatically get a concurrent reduced period of time removed from the suspended sentence.

Commissioner Stephens said that he agrees that the Parole Board should have the primary supervision, and is unpersuaded as to the need for the fix. Commissioner Sell said that the fix is confusing because it suggests a benefit for revoked offenders.

Resolution: Chair Razo suggested and Commissioners unanimously agreed that Subgroup recommendation be withdrawn as its original proponent was not convinced it would achieve the desired outcome.

Public Comment and Adjournment

At 5:20 PM, public comment was requested as to any JRI related recommendation. None was offered. Commissioner Monegan then moved for adjournment, and Commissioner Bryner seconded. As to discussion, Emily Levett noted that she would be forwarding a revised draft report to the Commission for its final approval on Thursday. This report would include the anticipated jail bed impacts. Commissioner Bryner thanked the Pew staff for its hard work, and the Chair for his leadership. The Commissioners voted to adjourn.

⁹ Subgroup recommendation: For offenders who are on parole and probation at the same time, granting the Parole Board primacy when it comes to setting conditions of release and issuing sanctions.

Proposed JRI Recommendations for Discussion

From the Department of Law

1. Current recommendation: Bringing penalties for heroin into alignment with penalties for methamphetamine and cocaine, and forwarding this recommendation to the Controlled Substances Advisory Committee for its review and consideration.
 - a. Law's proposed change: Only forwarding a recommendation regarding bringing penalties for heroin into alignment with penalties for methamphetamine and cocaine if that recommendation is approved by the Controlled Substances Advisory Committee.
2. Current recommendation: Reclassifying Misdemeanor B offenses, the lowest-level misdemeanor class in terms of severity, as violations, punishable by up to \$1,000 fine, excluding theft offenses.
 - a. Law's proposed change: Provide an additional carve-out for disorderly conduct, which would be an arrestable and jailable violation, punishable by up to 24 hours in prison.
3. Current recommendation: Create a tiered commercial drug statute whereby sale of more than 5g of heroin, methamphetamine, and cocaine is a more serious offense (Felony B) than sale of less than 5g of heroin, methamphetamine, and cocaine (Felony C).
 - a. Law's proposed change: Lower the weight threshold differentiating more serious from less serious commercial drug offenses to 2.5 grams.
4. Current recommendation: Capping maximum probation terms at a maximum of 5 years for felony sex offenders; a maximum of 2 years for all other felony offenders; a maximum of 2 years for 2nd DUI and DV assault misdemeanor offenders; and a maximum of 1 year for all other misdemeanor offenders.
 - a. Law's proposed change: Raise the maximum probation length for a non-sex felony from 2 years to 3 years.
 - b. (PD's alternative proposed change: Raise the maximum probation length for Unclassified felonies to 5 years.)
5. Current recommendation: Presumptively setting a zero to thirty day sentencing range for misdemeanor A's, unless the prosecutor can show that the offender had past similar criminal convictions or the conduct was among the most serious constituting the offense.
 - a. Law's proposed change: For DV-related Assault 4's only, changing the circumstances in which an offender can be sentenced outside of a zero to thirty day range when the prosecutor can show that the offender had past similar criminal *history* (as opposed to convictions) or the conduct was among the most serious constituting the offense.

6. Current recommendation: Limiting the offense categories that courts would be authorized to refer to ASAP to those currently mandated by statute (DUI, refusal to submit to a chemical test, and habitual minor consuming).
 - a. Law's proposed change: Changing the categories that would be authorized to refer to ASAP to be limited to second-time DUI and refusal to submit to a chemical test and alcohol-related Assault 4 offenses.
7. Current recommendation: Stipulating that jail time cannot be imposed because a person failed to complete treatment if, despite having made a good faith effort, they were unable to afford treatment. Additionally, requiring that if a court opts to use jail as a sanction for a misdemeanor who fails to participate in programming, that requirement is subsequently no longer a condition of probation for which an offender can be revoked to prison a second time.
 - a. Law's proposed change: Removing both of these recommendations from the "consensus recommendation" section and placing them in the "additional recommendations for legislative consideration" section.

From the Parole Board

8. Current recommendation: For offenders not participating in the PACE program, limiting revocations to prison as a potential sanction of probation and parole to up to 3 days for a first revocation, up to 5 days for a second violation, up to 10 days for third revocation, and up to 10 days and a referral to the PACE program for a fourth and subsequent revocation.
 - a. Parole Board's proposed change: Raise the cap on technical revocation time for absconders to 30 days. (Absconding defined as failing to report within five working days after release to supervision or if the supervisee fails to report for two consecutive reporting periods.)

From the Public Defender

9. Current recommendation: For offenders who are on parole and probation at the same time, granting the Parole Board primacy when it comes to setting conditions of release and issuing sanctions.
 - a. PD's proposed change: When an offender is revoked on dual supervision, the offender will automatically get a concurrent reduced period of time removed from the suspended sentence.

ALASKA CRIMINAL JUSTICE COMMISSION
Meeting Notes from Thursday, November 19, 2015, 1:00– 4:00 PM
Atwood Conference Center, Room 102, 550 Seventh Avenue, Anchorage

Commissioners present:

Greg Razo, Stephanie Rhoades, Walt Monegan, Jeff Jessee, Trevor Stephens, Gary Folger, Alex Bryner, Brenda Stanfill, John Coghill, Quinlan Steiner, Craig Richards, Kris Sell (part of meeting)

Commissioners absent:

Wes Keller

Staff:

Susanne DiPietro (AJC), Mary Geddes (AJC), Giulia Kaufman (AJC), Susie Dosik (AJC), Teri Carns (AJC), Brian Brossmer, Terry Schuster (PEW), Emily Levett (PEW), Len Engel (PEW), Melissa Threadgill (PEW), Sam Packard (PEW), Abby Walsh (PEW), Zoe Towns (PEW)

Public:

Nancy Meade, Carmen Gutierrez, Taylor Winston, Seneca Theno, Karin Thomas, Araceli Valle, Jordan Schilling, John Skidmore, Doreen Schenkenberger, Janet McCabe, Remond Henderson, Chris Provost, Laci Wilcox, Denali Daniels, Jordan Shilling, Remond Henderson.

1. Welcome and Introductions (Razo)

Commission Chair Greg Razo opened the meeting at 1:00 p.m. and welcomed everybody. He welcomed DOC Acting Commissioner Walt Monegan and reviewed the agenda for the meeting.

Razo said this was his first meeting as chair and that he wanted to begin by making some observations. He values the diversity of perspectives and expertise on the Commission, and the great benefits can accrue from the group (Commission) process. So far, the group had examined data, reviewed the research to improve outcomes, and spent many hours together and in subgroups developing priorities and policy ideas, learning what other states have done, and about those efforts that are already underway and working well here. The Commission has also benefitted from its outreach, holding public hearings around the state and talking with citizens, judges, attorneys, law enforcement, crime victims, treatment providers, prisoners across the state.

Razo noted that state leaders have reached out to the Commission, that the Commission has been asked for options that are good for public safety, make offenders accountable but that also cuts the prison population, on the order of 15% and 25% reductions. He thanked the Commissioners for their hard work and but noted that there will have to be an extra effort over the next two weeks because the Commission should achieve general consensus on the entire package of reforms in order to have its recommendations timely submitted to the Legislature.

2. Pretrial Subgroup Policies (Schuster)¹

Schuster pointed out the drivers of the pretrial population in Alaska's prison system (i.e., non-violent misdemeanor admissions, inability to meet pretrial release conditions), reviewed the evidence based policy options the pretrial subgroup had identified, and identified any remaining areas of non-consensus.

Coghill voiced concerns about securing funding for the establishment of a new agency or division. Richards agreed and stated that it might be a more cost effective option to provide different services within different divisions (e.g., pretrial risk assessment within DOL, pretrial supervision within DOC). The question that remained was if judges would release defendants without monetary bail without the

¹ For more detailed information on the proposed policies please refer to the meeting agenda, the subgroup meeting notes, and the subgroup meeting materials

availability of monitoring services. Commissioners pointed out that most of the policies out of the pretrial subgroup are dependent on the creation of a pretrial services office.

Jessee and Rhoades pointed out the importance of reinvestment with regards to mental health and recidivism.

3. Sentencing Subgroup Policies (Levett)²

Levett pointed out the drivers of the sentenced population in Alaska's prison system (i.e., high number of non-violent misdemeanants, significant increase in felony offender length of stay), reviewed the evidence based policy options the sentencing subgroup had identified. She pointed out that the group had set an additional meeting to discuss any remaining discrepancies.

Rhoades inquired about differences between state and municipal law; Levett informed the group that the thought is that these policies would also apply to misdemeanor A and B offenses in municipal code. Rhoades also inquired about DWLS offenses and mentioned that she had concern about not addressing the underlying issues. Levett stated that the policies proposed by the sentencing subgroup are focused on post-plea/verdict policies rather than on preventative policies.

Another topic that was discussed was the felony level theft threshold. Razo pointed out that in rural Alaska, offenders more often face felony theft charges because the goods in rural Alaska are so much more expensive than in urban areas. Stephens and Steiner also expressed concern about other property crimes, such as criminal mischief. Steiner stated that he had been under the impression that the policy would extend to all low-level property crimes, not just Theft 2 offenses. Coghill pointed out that raising the felony level theft threshold might be difficult to get through the Legislature.

Coghill also stated that proposals suggesting any leniency for sex offenders would be difficult to pass in the Legislature. Richards asked Coghill on his opinion about the possibility for sex offenders to earn good time if completing treatment while incarcerated. Coghill responded that he personally believes that people should have the opportunity to change, especially if it is based on evidence based treatment, but that that just reflects his personal opinion. He would not know if that would make a difference to the Legislature and that it could likely be a tough sell.

Stephens voiced concerns about statewide treatment availabilities.

4. Community Supervision Subgroup Policies (Threadgill)³

Threadgill pointed out the drivers of the supervision violator population in Alaska's prison system (i.e., a high number of probation/parole violators), reviewed the evidence based policy options the community supervision subgroup had identified, and identified any remaining areas of non-consensus.

Jessee pointed out that the resources for treatment should be expanded. One way of doing that would be to enroll everybody who is eligible for treatment in Medicaid and ensure that private providers can provide Medicaid services without grant funding as currently specified in statute.

Another topic concerned expanding discretionary parole. Any change to this policy would have to allow for a review hearing first if the victim requested it.

5. Full Commission Policies⁴

Schuster reviewed the policies for the full Commission to consider. There are three priorities the Commission needs to keep in mind: reinvestment priorities, victim priorities, and oversight and sustainability options.

² Ibid.

³ Ibid.

⁴ For more detailed information on the proposed policies please refer to the meeting agenda.

Jessee stated that reinvestment is an iterative process and that data will need to be collected right away, so that policy makers can make adjustments based on programs evaluations; Steiner agreed. Schuster posed the question what sustainable reinvestment could look like.

DiPietro distributed and discussed a draft document, which proposed different oversight/monitoring concepts for the implementation of the proposed policies and for future justice reinvestment. Razo asked how this has played out in other jurisdictions. Engel responded that some jurisdictions have extended the life of a body like the ACJC or have implemented another body; he stressed the fact that ultimately the implementation has to be overseen by an entity which involves the current level of leadership.

6. Public Comment

Janet McCabe from Partner for Progress distributed the organizations latest data and reminded Commissioners that in order for people to successfully reenter society, they need resources, such as stable housing and employment.

Taylor Winston, from the Office of Victims' Rights, expressed concerns about the effects of the reforms on victims and urged Commissioners keep victims' rights and public safety concerns in mind.

7. Next Steps

Schuster informed the group that the goal is to have a report ready for distribution by December 4, 2015; that report should have all the bed impacts. That will give the Commissioners only a few days to review the package. This is because, on December 10th at the next Commission meeting, there is going to be very little discussion, only a final vote, a formal hand-off of the report to the Governor and Legislative leaders, and a press conference to announce the recommendations and the projected impact.

Jessee voiced concern about the quickly- approaching deadline; other Commissioners said they shared the concern. It was therefore agreed that all three subgroup materials and the final policy options would be circulated to Commissioners as quickly as possible, so that all had a chance to review them. Commissioners should immediately review any materials sent to them, and call with their questions to either Pew or ACJC staff. This is because on December 10th, there is going to be very little discussion, only a final vote, a formal hand-off of our report to the Governor and Legislative leaders, and a press conference to announce the recommendations and the projected impact.

Richards pointed out that there will always be differences and that individual stakeholders should identify the policies that they could not support under any circumstances.

Razo encouraged Commissioners and said that although the timeline is tight, he believed that there was plenty of talent and ambition in the room to meet the deadline.

Geddes thanked Jessee and the Board of Trustees for the fantastic opportunity to go to Nome and Kotzebue which provided Commissioners with a better understanding of rural criminal justice issues. The Trust hosted: Commissioners Razo, Bryner, Folger, Taylor, Sell, AJC staffers Geddes and Dosik, and Pew staffers Levett and Threadgill.

The next Commission meetings are:

JRI/Commission meeting	Thursday, December 10, 10:00-1:30 PM	Anchorage
Commission meeting	Thursday, January 7, 10:00 AM - 12:00 PM	Anchorage
Commission meeting	Thursday, February 18, 10:30 AM - 12:30 PM	Juneau
Commission meeting	Thursday, March 3, 10:30 AM - 12:30 PM	Juneau
Commission meeting	Thursday, April 7, 10:30 AM - 12:30 PM	Juneau

The meeting adjourned at 4:05 p.m.

ALASKA CRIMINAL JUSTICE COMMISSION
Meeting Summary and Staff Notes from Thursday, October 15, 2015, 12:30– 2:30 PM

Atwood Conference Center, Room 102, 550 Seventh Avenue, Anchorage
Teleconference: 1-800-768-2983 Access Code: 5136755

1. WELCOME and INTRODUCTIONS --- Vice Co-Chair Jeff Jessee (5 minutes)

DiPietro opened the meeting at 12:30 pm; Jessee chaired the meeting.

COMMISSIONERS PRESENT:

Jeff Jessee, Trevor Stephens, Brenda Stanfill, Ron Taylor, Stephanie Rhoades, Quinlan Steiner, Greg Razo, Craig Richards, Wes Keller, Kris Sell, John Coghill (phone)

COMMISSIONERS ABSENT:

Alex Bryner, Gary Folger (replacing Terry Vrabec)

STAFF:

Susanne DiPietro (AJC), Susie Dosik (AJC), Teri Carns (AJC), Giulia Kaufman (AJC- Notetaker), Terry Schuster (PEW), Emily Levett (PEW), Rachel Brushett (PEW), Melissa Threadgill (PEW), Sam Packard (PEW), Abby Walsh (PEW)

PUBLIC:

Carmen Gutierrez, Nancy Meade, Tony Piper, Ken Truitt, Jordan Schilling, Doreen Schenkenberger, Janet McCabe, Lacey Wilcox, Denali Daniels, John Skidmore, Tony Piper, Andre Rosay, Barbara Armstrong, (woman from Fairbanks)

2. NOMINATIONS AND ELECTION OF NEW CHAIR (5 minutes)

Bryner's term having expired in September, Sell put forward a motion to elect Razo as chair. The motion was seconded by Steiner. Richards stated that he feels the group needs strong leadership and encouraged Razo to provide that, especially considering the tight timeline; Razo agreed. The motion was brought to a vote. All present voting Commission members voted in favor (absent: Bryner, Folger). Razo thanked Commissioners and accepted the chairmanship. Jessee will continue to serve as vice chair.

3. JUSTICE REINVESTMENT INITIATIVE PROCESS –Pew PSPP Team (60 minutes)

a. "A"- SENTENCING (Razo):

Chair Bryner was absent. Razo gave a brief update about the group's last meeting (for more details please refer to meeting agenda/notes). Taylor pointed out that the chair of the parole board should be involved in the discussion, especially with regards to resumptive probation/parole. Stephens commented that he would like a status update on the Controlled Substances Advisory Committee by the next meeting. Jesse pointed out that it is important to get all stakeholders involved, especially with the tight timeline.

b. "B" -PRE-TRIAL (Chair Stephens):

Stephens provided the group with a brief update with the status on the pre-trial group (for more details please refer to meeting agenda/notes). Rhoades pointed out the importance of an effective pre-trial program around the state. She said establishing a good pre-trial program will involve money. Jesse stated that the Commission in cooperation with Pew will have to figure out how much it will cost to implement a statewide pre-trial program. Taylor expressed his concerns about the responsibilities and resources that will be put on DOC, if a pre-trial program is implemented, especially considering the 37,000 yearly admissions. Rhoades stated that there will be a layering effect of all the reforms implemented; as a result the total number of admissions should go down. Keller said it is important to know the price tag. Jessee stated that it is important to hash out as many details as possible in the subgroups before policy options are brought to the full Commission. He said that if details are unknown, proposals will be held up in the Commission and eventually in the Legislature. Further, he pointed out that the tighter a proposal is, the more support it can get and the more likely it is to pass. Richards expressed his

concerns about the tight meeting schedule for the pre-trial group and stated that he believes it is unrealistic. He suggested the group should potentially consider scheduling an additional meeting.

c. "C" COMMUNITY SUPERVISION (Chair Taylor):

Taylor provided a quick update on the community supervision group (for more details please refer to meeting agenda/notes). Among comments made, Taylor stressed the importance of the involvement of the parole board.

d. REPORT FROM VICTIMS ROUND-TABLE (Stanfill)

Stanfill referred to the victim round table report that was sent out by PEW (please see ATTACHED report for more details) summarizing concerns identified by victims round table discussions in Fairbanks and Bethel. It should be noted that many statewide victim advocacy organizations were invited to and present in Fairbanks. Stanfill said common concerns included the importance of prevention, the availability of victim services in rural areas (e.g., availability of rape kits), and the involvement of victims in the justice process. She stated that victims often feel ignored and that they would like see more sympathy from DOC. Taylor responded that they are trying to be sensitive to victims but there is also a public relations/media issue (he referred to the current EM coverage). Taylor pointed out that moving forward with the JRI process and the budget situation, it is important to develop a media strategy and to educate the public. Brenda continued and stated that victims have recognized criminalizing behavior is not the key to solving social issues; victims would like to see opportunities for behavioral change for offenders. Rhoades pointed out the importance of victim education, in tandem with Taylor's proposal for public education.

e. REINVESTMENT RECOMMENDATION (Schuster)

Schuster stated that Pew will help prepare the Commission's recommendations for release in December; the package of reforms will hopefully pass during the session. For any recommended reform, there has to be a plan for oversight and data collection and a plan for how a reform would be implemented. He referred to Threadgill who provided a brief overview of how the PEW policy package that recently passed in Utah is currently being implemented. Schuster reiterated that said that the Commission has to include a recommendation on how to implement new policies. He stated that one option would be to either implement a new body which would have oversight or to extend the life of the Commission as it currently stands. Rhoades said it would seem self-serving to recommend the continuation of the Commission. Richards stated he would like to see how effective and fruitful the work product of the group is before thinking about extending its life. Sell suggested leaving the decision up to the legislature. Jesse pointed out that the Commission could make a recommendation about the function and membership of the group that will have oversight over the implementation of the new policies rather than recommending the extension of the life of the Commission.

4. NEW BUSINESS

a. PROPOSAL FOR COMMISSION RECOMMENDATION FROM SENTENCING ALTERNATIVES WORKGROUP:

Skidmore presented the proposal and stated that there is consensus among Commission members, including DOL, on the new proposal. The new proposal states that the defendant is put on pre-conviction probation and if s/he successfully completes it, the conviction is never entered and the case is dismissed. The only remaining question is the issue of retroactivity and its associated costs. Rhoades said that according to ACS administration, it would be more cost-effective if defendants could file a request rather than a petition. Meade stated that ACS does not take a position on the recommended policy but pointed that, although requests would be cheaper than petitions, there would still be a fiscal impact on ACS. Because of unresolved concerns about costs related to and the benefits of including a retroactivity provision Commissioners decided that the question of retroactivity should be left to the Legislature. Stephens put forward the motion to forward the recommendation to the Legislature with the

addendum that the group is not in consensus about the issue of retroactivity and decided to leave it up to the Legislature to decide this issue; Stanfill seconded the motion. The motion was brought to a vote; all present voting Commission members voted in favor (absent: Bryner, Folger).

b. ANY OTHER NEW BUSINESS:

Taylor pointed out the importance of public education and outreach. Razo agreed and stated that he would like to see the Commission come up with a media strategy as there have been requests to go on the radio. DiPietro suggested that staff will schedule a meeting with Taylor and Razo to discuss how to move forward.

c. PUBLIC COMMENT:

n/a

5. ADJOURNMENT AT 2:30 PM

Jessee adjourned the meeting at 2:25 pm.

ALASKA CRIMINAL JUSTICE COMMISSION

Staff Notes and Meeting Summary August 3, 2015, 10:00 AM to 2:00 PM

At the Atwood Conference Center, 550 W. 7th Avenue, 1st floor conference rooms, Anchorage

Commissioners present: Alex Bryner (chair), Ron Taylor, Craig Richards, Greg Razo, Trevor Stephens, Quinlan Steiner, Wes Keller, Brenda Stanfill, John Coghill, Kris Sell, Jeff Jessee, Terry Vrabec (phone)

Commissioner absent: Stephanie Rhoades

Participants present: John Skidmore, Holly Spoth-Torres, Troy Buckner (phone), Lisa Fitzpatrick, Carmen Gutierrez, Janet McCabe, Carrie Belden, Rebecca Brunger, Michael Elkridge, Seneca Theno, Jody Davis, Natasha Pineda, Kevin Thayer, Brad Gillespie, Mary Hiloski, Dunnington Babb, Ken Truitt, Gail Sorenson (phone), Alysa Wooden, Phil Cole, Al Wall (phone), Doreen Schenkenberger, Jordan Shilling, Amory Lelake, Joshua Sopko, Kaci Schroeder (phone), Karen Forrest, Cathleen McLaughlin, Steve Williams (phone).

Pew/JRI Staff present: Terry Schuster, Rachel Brushett, Emily Levett, Melissa Threadgill.

AJC Staff present: Susanne DiPietro, Mary Geddes, Susie Dosik, Teri Carns, Brian Brossmer, Giulia Kaufman (phone)

Future Meetings: Thursday, October 15, at 10:00 AM - 2:00 PM

The meeting began at 10:00 AM. After introductions and an explanation of the Commission's partnership with Pew Charitable Trusts on Justice Reinvestment, Chair Alex Bryner invited Terry Schuster and Rachel Brushett of Pew Charitable Trusts to begin the Justice Reinvestment presentation.

Pew/JRI: Presentation on Alaska Systems Assessment and Prison Growth and Costs

The slides from this presentation are on the ACJC website, [here](#).

Terry Schuster noted that this would be the last major presentation before the formation of the (JRI) Subgroups. More data will be presented today, along with information as to how current Alaska practices match up with evidence based practices elsewhere.

The presentation first focused on national pretrial research looking at the impact of various bail measures on defendants classified as high, medium and low risk of appearance and compliance.¹ Ordinarily criminal recidivism is a relatively long term measure. But the measures for success during the pretrial phase are different. The desired outcomes for this phase of criminal justice are twofold: defendants showing up for court when they are supposed to, and not getting arrested during the period of pretrial release.

Nationally, risk assessment tools have been used in the pretrial context (by Kentucky² e.g.) with success to guide decisions about release conditions, e.g. 3rd party, EM, drug testing,

¹ The audience wondered about the designations used in the research of defendants as high risk versus low risk. Comr. Bryner asked if the defendants were made aware of how assessment tools had evaluated their risk of non-appearance and non-compliance, and whether they might have internalized these labels.

² Comr. Keller asked if the tool took into consideration the nature of the offense charged. The Kentucky instrument does use criminal history and crime type in determining risk score. Comr. Sell asked if drug addiction was factored into the risk. It was not known to what extent substance abuse information was factored in.

etc. Kentucky pretrial assessment does utilize a defendant interview.³ Research indicates that money bonds are not the most effective tool to protect the public during the pretrial period, as the ability to make bail does not equate with low-risk to the public. Also, the use of third party custodians is helpful for high risk but not low risk defendants. According to a Colorado study, with respect to low and medium risk defendants, unsecured bonds are as effective as secured bonds in securing court appearance.⁴ With respect to high risk defendants, secured bonds are more effective, as 53% do appear with secured bonds and only 43% appear with unsecured bonds.

The use of pretrial detention for any length of time (longer than 24 hours) can lead to worse outcomes, particularly for low-risk defendants. By worse outcomes, we mean they are thereafter less likely to appear in court and more likely to recidivate during pretrial and post disposition phases of criminal cases. Court appearance rates do improve with certain accommodations such as court date reminders, night court, and allowing remote appearance by teleconference. The summary is that pretrial risk assessment can help predict the risk of failure on release. Secured bonds can increase detention. Pretrial detention can lead to worse outcomes.

Alaska DOC has seen fewer admissions but longer stays during the pretrial stage. Statewide there has been a growth of 81% in the pretrial population in Alaska over the last 10 years. 75% of all pretrial admissions are misdemeanors and many are nonviolent. Less serious cases are not prioritized for trial or early disposition. Although there is a speedy trial rule, there is no statute that compels speedy trial.

Pew and the Judicial Council have recently sampled 400 cases throughout the state (Anchorage, Bethel, Nome, Fairbanks and Juneau) for review of pretrial status. There is no pretrial assessment instrument used in Alaska. Given that the bail statute provides for a presumption of release on personal recognizance, it is notable that few (12%) defendants were released “OR” or on an unsecured bond (10%). Two-thirds of the defendants were required to post a money bond. 41% of the cases in which bail was set required a secured bond in the amount of \$2500 or more. Third-party custodians were required in 23% of the cases. In all cases in which third-party custodians were ordered, a money bond was also required. Only 25% of the defendants were able to be released in cases where a third-party custodian had been required, either because they couldn’t find a third-party or they couldn’t post the money bail or both.⁵ There was no measure made of the use of EM. There were no measures made of criminal history in this survey because the information was not uniformly available.

It was noted that in Alaska, some courts do give reminders to defendants, but there is no consistent system. Also, teleconference can be permitted in some cases.

With respect to future policy questions, Alaska could consider whether and how to increase the use of citations instead of arrest, the use of pretrial risk tools, more accommodations to improve appearance rates, and a streamlining of court processes to reduce pretrial time.

³ It was not known at what point in the process the interview took place.

⁴ A secured bond is a kind of cash bond typically.

⁵ It was noted that the cases sampled did not include EM release as a form of third-party custodianship. EM has been available through private companies but has not been utilized across the board because of the expense and because there have been only a few locations in which it has been available. [Because of the passage of HB 15 this past session, effective 8/12, which granted credit for time spent on EM pretrial, the numbers should change on this.]

With respect to post-trial (sentenced) populations, Emily Levett presented. (See slides) This population did not include the petition to revoke population. There is an increase in the number of incarcerated nonviolent felons in the last ten years. While therapeutic courts – one alternative – may be more effective in reducing recidivism, they are underutilized in Alaska. Substance abuse courts are utilized at a rate of 67%, and mental health courts at 88%. They are also limited to just a few urban locations in the state with one substance abuse court in Bethel. Regarding the relationship of incarceration to recidivism, incarceration is not more effective than alternative measures in reducing recidivism.

With respect to Community Supervision, Melissa Threadgill presented. The good news is that Alaska is now using the LSI-R and is doing individualized case planning (Offender Management Plans). It has great challenges in terms of distances between supervision locations and supervisees.

She noted that there have been huge increases in community supervision numbers. There are approximately 4,000 people on probation. Halfway houses, usually expected as a resource for transitioning population, have instead a mixed population of 70% sentenced population and 30% pretrial.

With respect to the probation-parole population, 39% or 1,602 are low-risk. (There are 382 classified as high risk.) The Commission could consider whether the resources currently devoted to supervising the low-risk population could be more appropriately used for higher risk groups.

The SCP (Swift, Certain and Proportional sanctions) program PACE is intended for high risk defendants, and only applies to a small proportion of offenders. PACE is expensive- it's okay to only have it apply to few. For example, it shouldn't be used for low-risk population. However, the current practice with respect to PTRPs is at odds with SCP model. Right now, the average length of time to disposition is 33 days. A PACE model uses incremental sanctions for most violations, imposing at most 7 days. A probationer with a PTRP or a parolee may be spending time in custody that is far in excess of the amount of time that would be the appropriate sanction for a high-risk offender.

The use of rewards and incentives was also discussed. Threadgill said that the list includes reduced sentences and reduced fines, but rewards can be more minor. Alaska offers good time credit for institutional status but no structured statutory incentives for community supervision success. There can be early termination of supervision. If incentives are given, but vary between regions and officers, rewards lose their motivational power.

The JRI Process: What Comes Next

Over the next few months, specifically September-October-November, each Commissioner will be assigned to a JRI subgroup. The assignments are as follows:

<i>Subgroup A Sentencing</i>	<i>Subgroup B Community Supervision</i>	<i>Subgroup C Pretrial</i>
Alex Bryner (chair) Craig Richards Quinlan Steiner Wes Keller Greg Razo	Ron Taylor (chair) Kris Sell Jeff Jessee Stephanie Rhoades	Trevor Stephens (chair) Terry Vrabec John Coghill Brenda Stanfill

Terry Schuster explained that Pew itself does not make recommendations, but it will assist the subgroups and then the Commission in identifying priorities for reforms where needed. Pew's job is to provide and analyze local data and provide the same from other states. The focus will be on statutory recommendations. By November, the subgroups and Commission will achieve consensus as to which reforms would be most productive. By December, based on these agreements, there will be a draft for the Commission to consider approving.

Commissioner Stanfill expressed concern that non-JRI proposals would stagnate during the JRI process. It was agreed that some of the ACJC Workgroups would soldier on, independent of the JRI process. Proposals that have been in progress should not fall by the wayside, i.e. Ban the Box, the SIS Substitute, etc. Members of three groups - Barriers to Reentry, Sentencing Alternatives, and Pre and Post trial Laws and Processes – have proposals-in-progress and want to keep going. It was agreed that the September Commission meeting could be skipped but that prior to October 1 any workgroup proposals would be circulated to the Commission as a whole for comment and changes before expected action in October.

The meeting adjourned at 1:50 PM.

Notes by Teri Carns and Mary Geddes

ALASKA CRIMINAL JUSTICE COMMISSION

Staff Notes and Meeting Summary July 8, 2015, 11:45 AM to 1:15 PM PM

At the Atwood Conference Center, 550 W. 7th Avenue, 1st floor conference rooms, Anchorage

Commissioners present: Alex Bryner (chair), Ron Taylor, Craig Richards,¹ Stephanie Rhoades, Trevor Stephens, Quinlan Steiner, Wes Keller, Brenda Stanfill, John Coghill,
Commissioners on teleconference (t):² Kris Sell, Terry Vrabec, Jeff Jessee
Commissioners absent: Greg Razo
Participants present: John Skidmore, Dunnington Babb, Ken Truitt, Gail Sorenson (t), Tony Piper, Alysa Wooden, Phil Cole, Al Wall (t), Billy Houser, Dennis Schranz, Doreen Schenkenberger, Cathleen McLaughlin, Jordan Shilling, Leslie Hiebert, Pat Balardi, Kaci Schroeder (t), Andre Rosay, Brad Myrstol, Nancy Meade, Fred Dyson, Nora Morse, Steve Williams.
Pew/JRI Staff present: Terry Schuster, Rachel Brushett, Leonard Engel, Emily Levett, Melissa Threadgill, Zoe Townes
AJC Staff Present: Susanne DiPietro, Mary Geddes, Giulia Kaufman, Susie Dosik, Teri Carns, Brian Brossmer (new AJC staff member)

**Future Meetings: Monday, August 3 at 10:00 AM - 2:00 PM
Atwood Conference Center, 1st floor.**

The meeting began at 12:00 PM. Staff attorney Mary Geddes introduced the Commissioners present. Chair Alex Bryner invited Terry Schuster and Rachel Brushett of Pew Charitable Trusts to begin the Justice Reinvestment presentation.

Materials Provided: See Mary Geddes's email sent out 7/2/2015 (with agenda, prior meeting summary, Employment Subgroup summary and Ban the Box memo).

Presentation (PEW Charitable Trust):

The meeting opened at 11:45 AM. Commissioner Alexander Bryner chaired the meeting. He welcomed Pew presenters Terry Schuster and Dr. Rachel Brushett. The PEW presentation [is linked here](#). Brushett reviewed the Pew findings so far with respect to who occupies DOC beds. She indicated that they are still in the process of collecting and analyzing the CRC (halfway house) and EM populations but should be able to discuss those populations next time. Pew has not collected information as yet on community jails contracted by DOC in which inmates are housed in the short term. Commissioner Taylor is agreeable to providing that information.

¹ Attorney General Craig Richards has replaced Deputy Attorney General Rick Svobodny as a Commissioner.

² Unfortunately, this and other ACJC meetings on July 8 were plagued by technical difficulties with video and audio conferencing. Our apologies to remote attendees who were unable to hear or participate.

Schuster's presentation covered the national research concerning the relationship between crime and incarceration, the risk-needs-responsivity approach to offender assessment and rehabilitation; and how evidence based practices can reduce recidivism. Among the many topics was the successful substitution of 'rewards' (e.g. reduction of fines, earned credits) for compliance rather than sanctions for non-compliance. He mentioned Arizona which in 2008 allowed successful probationers 'credit' (allowing for the reduction of probation time).

Commissioner Taylor noted that the substance of the latter presentation was redundant of past research, analysis and efforts already underway in Alaska. Even so, the population was still growing. Commissioner Stanfill said she thought that 'getting the larger picture' about the relationship between crime rates and incarceration was useful. She did wonder about the reputed efficacy of community based supervision (as opposed to incarceration) in deterring some offenders such as drug dealers. Zoe Townes responded that there are many reasons for incarcerating, including incapacitation, but they do know that removing drug dealers as individuals from the market has zero impact on crime rates because other dealers simply step in, making things the same or worse. Schuster said that sanctioning individual offenders in the community may be more effective for them as individuals.

Susie Dosik noted that a lot of the evidence based strategies discussed in the presentation were post-sentence programs. Can sentencing be made more evidence based and therefore more effective? Len Engle from Pew agreed that a key element of the evidence based programming is the use of risk-needs assessment in determining appropriate levels and elements of supervision, but that a different set of factors have historically applied to sentencing. There are some courts that utilize assessment tools at sentencing, e.g. drug courts, but data pertains to successes on supervision not really the impact of sentencing. Melissa Threadgill from Pew noted that future research about finding 'the sweet spot' in sentencing length will transform the discussion as to the appropriate length of a sentence.

Commissioner Taylor noted that during his days at the Parole Board they acted to reform their own parole-setting process. They had too many parole conditions: 56 total! Technical assistance helped them reduce the number of standard conditions dramatically and the rest were individualized based on the LSI-R.

Commissioner Rhoades noted that Alaska needs ideas about what to do with our 'recycling' misdemeanor population.

Commissioner Stephens asked for the list of evidence based programs, especially for substance abuse. He noted a lack of community based programming in Ketchikan.

Public Comment or Questions: There were no public comments offered.

Close of Meeting:

Chair Byner, noting that the meeting had gone beyond the stated end time, ended the meeting at 1:21 PM.

Alaska Criminal Justice Commission
Staff Notes and Meeting Summary June 18th, 2015, 10:00 AM to 2:00 PM
 At the Snowden Training Center, 820W 4th Ave, Anchorage

Commissioners attending: Alexander Bryner (Chair), Brenda Stanfill, Greg Razo, Jeff Jessee, John Coghill, Wes Keller, Trevor Stephens, Ron Taylor, Terry Vrabec, Craig Richards, Quinlan Steiner, Stephanie Rhoades

Absent: Kris Sell

PEW Charitable Trusts: Terry Schuster, Abbey Walsh, Rachel Brushett, Melissa Threadgill, Emily Levett

Staff Present: Susanne DiPietro, Mary Geddes, Susie Dosik, Giulia Kaufman (note-taker)

Identified Participants: Billy Houser (DOC), Bob Linton (DOL), Carmen Gutierrez (Trust), Janet McCabe (Partners for Progress), Doreen Schenkenberger (ditto), Barbara Armstrong (UAA Justice Ctr.), Phil Cole (DOC), Amory LeLake (Sen. Ellis), Jordan Shilling (Sen. Coghill), Erin Shine (Sen. MacKinnon), Genevieve Wojtusik (Sen. McGuire), Alysa Wooden (ASAP), Natasha Pineda (The Trust), Rick Allen (OPA), Dunnington Babb, Jocilyn Gilleland (PD), Nancy Meade (Courts), John Skidmore (DOL), Joel Bolger, John Lohff, Greg Miller, Kalyssa Maile (Sen. Wielechowski), Leslie Hiebert, Nora Morse (transition team for Mayor Berkowitz), Albert Wall (DBH), Ken Truitt (Rep. Keller), Leslie Dixon, Diane Casto (DOC).

Future Meetings: **Wednesday, July 8, TBD, Atwood Conference Center**
Monday, August 3, TBD, Atwood Conference Center

Materials Provided:

- [PEW PPT Presentation](#)
- Nome Trip Notes (attached)
- See Geddes's emails sent out 4/22/15 and 4/27/15

The meeting opened at 10:10 A.M., Alexander Bryner chaired the meeting.

Welcome and Introductions:

Chair Bryner welcomed everybody and thanked PEW for providing free technical assistance to Alaska.

Presentation (PEW Charitable Trust):

For more detailed information on the PEW presentation please click [here](#). PEW analyzed data from the Alaska DOC and national data and determined the factors that are driving Alaska's prison population.

Alaska's prison population has grown 27% in the last decade and cannot solely be attributed to population growth. The pretrial inmate population has increased 81% during that time frame; half of those defendants are detained on nonviolent charges. Interestingly, fewer defendants are admitted but they are staying longer. The sentenced inmate population has increased 14%; the number of violent as well as nonviolent felony offenders has increased. Overall, felony offenders are staying for longer periods of time. The supervision violator population has grown 15%. More defendants are admitted for

supervision violations but they are staying for shorter periods of time. On average, supervision violators are incarcerated 33 days unsentenced and 106 after sentencing.

Break from 11:30 A.M. to 11:45 A.M.

Sentencing Alternatives Workgroup Proposal on Pretrial Diversion and Deferred Disposition ([link here](#))

Public Testimony on the current SIS statute (witness wishes to remain anonymous):

The witness said that she was born and raised in Fairbanks. She stated that at the age of 18, in 1994 she was identified in a property crime and after legal advice entered a plea and received an SIS which she successfully completed. She was advised that an SIS would mean the conviction “would go away.” After she finished college and began looking for employment and housing, she found out that she had, in fact, a criminal record. Since then her SIS conviction has made it difficult for her to find work. She stated that there are a lot of people like her who are trying to get their lives back together but are hindered by the SIS conviction, even if they received a set-aside. She thanked the Commission for their time. Commissioners thanked her for her courage to share her story.

Rhoades pointed out that the witness’s story is a great illustration of the type of problems an SIS creates for the individual. Its not what the SIS was intended to do. She said that the witness’s story is the perfect example why the SIS statute needs revision.

Commissioners Richards’s response to the Workgroup proposal

Richards said that he had now reviewed the Workgroup proposals.

With regards to PTD: Since 1994 it has been the Departments policy to not offer PTD unless specifically authorized by the Deputy AG or the Director of the Criminal Division. He said that after internal discussions, the Department has reached a conclusion that it should use PTD as a too. DOL will authorize local DA’s to offer PTD beginning as early as this summer. With respect to statewide programming, however, funding would be essential, so DOL is exploring the means by which to fund such a program. He said he will update the group about the Department’s policy changes during the next meeting.

With regards to the proposal to replace the SIS statute with a Deferred Disposition statute: While there has been no policy against deferred dispositions, DOL has not previously embraced it. DOL now recognizes it should be used. DOL intends to develop a statewide policy, and so DOL is currently considering what crimes are appropriate for Deferred Disposition. Its planning may be informed by the data developed through JRI. With respect to the specific workgroup proposal to substitute the DIS for the SIS, DOL has some concerns with the proposed language.

The Commission decided that the Workgroup proposals will go back to the Sentencing Alternatives Workgroup for input by DOL. DOL will send someone with decision-making authority to the workgroup. Following that workgroup meeting or meetings(s), the proposal will be taken up again by the full Commission.

Lunch from 12:10 P.M. to 12:30 P.M.

November ACJC Outreach Trip to Nome/Bering Strait Region and Kotzebue:

After a brief discussion, Razo filed a motion for the Commission as a whole to travel to the Nome/Bering Strait region and to Kotzebue for the first week of November; the motion was seconded by Vrabec. The motion passed unanimously. The Commission is very grateful to the Mental Health Trust for offering to underwrite the costs of this trip as the Commission has no budget for this important – and mandated- process of outreach.

Nome and Kawerak Listening Sessions (Bryner, Razo, Geddes)

Kawerak invited Razo and Bryner, both members of the Rural Justice workgroup, to give a presentation at the annual Rural Providers conference in Nome. The Commissioners also held a public informational session at the Nome Courthouse to reach out to and educate the public about the Commission's work. For more detailed information about the trip, please refer to Geddes's Nome Trip notes.

Razo reported that it was a very helpful trip and that they had the chance to talk to a lot of people. He reported that the local community is very interested in making Nome a better place. He believes, it is very important for the Commission to do outreach work and talk to community members across the state. He was most struck with the testimony of one elder who said she was spending her senior years caring for grandchildren because their parent was incarcerated.

Geddes thanked Kawerak and Tracey Buie Area Court Administrator for their help. She said that while the larger public hearings were very helpful, one-on-one conversations provided lots more specifics and should also be scheduled for future trips.

Statewide Reentry Council Formation (Razo, Jessee, Taylor) & Other DOC Developments (Taylor)

Razo reported that the Governor and the Lt. Governor chair the recently formed Steering Council. The goal of the Council is to combat recidivism and establish resources for re-enterers. Jesse reported that the Trust is funding the Council with \$500,000 and that the Trustees have made it a priority to secure funding for the Council in the future. One of the priorities of the Council is to identify and address barriers that are hindering a successful re-entry process.

Taylor thanked Carmen Gutierrez on her work of recidivism during her time as Deputy Commissioner and said that he is continuing the work she began. The current struggle the DOC faces is how to operationalize the new programs within the department. He pointed out that there is some disconnect between some of the community based programs and DOC programs which they are trying to overcome. Taylor informed the group that they are currently trying to reinforce their policy procedures and ensure that everybody is following them. He also informed the group that the probation/parole success has increased from 45% to 66%. In addition, he pointed out that the Department has recently hired some correction and probation officers. However, the Department is about 40% short staffed with regards to their administrative staff. He pointed out that the Department is doing an amazing job considering. He said that the Department currently has tremendous momentum and it is important to keep it going.

Overview of Reentry Reform Groups (DiPietro)

DiPietro distributed a draft for comment of an overview of all of the criminal justice groups in Alaska. Thus far, the groups included are: Alaska Criminal Justice Commission, Criminal Justice Working Group, Recidivism Reduction Implementation Group, and the Alaska Criminal Justice Information Center. Other groups which will be added include the Controlled Substance Advisory Committee, the Disability Justice Group, and the Multi-Agency Justice Integration Consortium. Senator Coghill added that it would be very helpful if action items were included in the chart.

Legislator's Report (Keller, Coghill)

Keller encouraged the Commission to submit a legislative package and offered his help to the Commission with regards on how to pass it through the Legislature. Coghill agreed with Keller and pointed out that one concern regarding criminal justice reform is public safety: "How can we do this without compromising public safety?" He also said that barriers to reentry are a big concern for him as well as are tribal courts and their impact on recidivism. He also encouraged the Commission to get ready for December.

Agenda for NASC Conference (DiPietro)

DiPietro distributed a draft of the NASC agenda and encouraged people to attend as this conference will bring together the country's leaders in criminal justice policy, sentencing, and reform.

Public Comment or Questions:

Gutierrez commented that in terms of identifying barriers to reentry, the SMEs of the different regulations and statutes within the different departments could review and identify them. She pointed out that that would require executive branch leadership to do this review. She stated that Jeb Bush did this when he was the governor of Florida.

Moving Forward:

The next Commission meeting is scheduled for Wednesday, July 8. PEW will present release cohort data during this meeting. In the meantime, the Sentencing Alternatives and the Barrier to Reentry Workgroups will reconvene.

**STAFF NOTES FROM ACJC
'LISTENING SESSIONS'
AT KAWERAK CONFERENCE
AND COURTHOUSE
NOME, JUNE 3, 2015**

**‘LISTENING SESSION’ HELD BY COMMISSIONERS ALEX BRYNER AND GREG RAZO
OF THE ALASKA CRIMINAL JUSTICE COMMISSION,
ON JUNE 3, 2015, IN NOME,
AT ANNUAL RURAL PROVIDERS CONFERENCE SPONSORED BY KAWERAK**

Background: Razo and Bryner, both members of the ACJC Rural Workgroup, had been invited to Nome by Kawerak for the purpose of presenting information on the ACJC to the annual Rural Providers conference. The ACJC presentation was one of five workshops on the Criminal Justice ‘Track.’ There were 27 attendees.¹

Meeting content: Following a PP presentation by staff attorney Mary Geddes, and remarks from Commissioners Bryner and Razo, the attendees asked questions and made comments.

- Irene, speaker #1: I like the discussion about reentry, bringing people back in the village. We should deal with this on a tribal level. Lets have a judge in town. People who come out of jail need to get well in the head again, they need direction from elders. We can’t afford to be with our loved ones at court. They get arrested, get released in the city. They can be homeless.
- Speaker #2: I hope your group is looking at state barrier crimes. People can’t get jobs.
- Speaker #3: There should be an evaluation of for-profit services used in criminal justice and behavioral health.
- Rene, ANJC, speaker #4: Alaska Native underage females who are consuming alcohol, and getting MCAs, are being victimized by people trying to take advantage of them. The young lady gets charged for MCA and assault, the real perpetrator gets away with it. We need law enforcement and prosecutors and judges understanding this. These girls are the victims. Its wrong that Courtview shows Minor Consuming when the kids were under age 18. They should fix this retroactively.
- Marie, speaker #5: I thought my future would be a good one. Now I see my future is feeding my grandkids because their daddies are in jail. The whole world is changed for me. They [the daddies] should be out hunting and fishing. But it takes a while, 40 years for a man to be successful at that. If you separate them from their communities and incarcerate them, they can’t learn, they can’t succeed. It is falling on the families the impact of incarceration. I want to give you an experience of the helplessness we feel. There is no water hauled, no wood, no fresh meat. What are we supposed to eat? Not a loaf of bread at \$7a loaf, not a little thing of eggs at \$8.95. Now you want us to do the bail for a “probation violation.” A little thing and they go back [to jail]. But the bail is too high. I am trying to feed us when water is \$140 a month, electricity is \$112 a month, and I have \$200 worth of food stamps. I have nothing for traps, gas and nothing for retirement. You have imprisoned ME has a human being. Now I have grandchildren taken away, at Northstar. They have mischief in them. When they come back they are welcomed, not shunned, but now they got that record. I am not sure what is going to happen to them.
- Keith Morrison, speaker #6: I don’t agree with looking at “codes, cops and courts.” These are models from colonization. They are part of the problem. The old ways are now lost. I have worked for 6 years in this region in youth and adult services. The problem for reentry is that the model in use is not indigenous, structured for employment not subsistence lifestyles. Our approach has to allow for

¹ “Tribal Courts” and “Tribal Jurisdiction,” two other Criminal Justice Track programs, had the same number;

“Family Law and ICWA” and “OVC and FBI” each had 39 attendees.

people to heal at a foundational level. You can invest at the front end [of people's lives] or pay on the back end, in incarceration. There has to be a reallocation of money used for prison for treatment.

- Woman in orange, speaker #7: The problem with changing priorities is that it will be expensive for a while- you pay at both ends during a transition, i.e. prison and behavioral treatment.
- Woman in blue, speaker #8: Men don't have places to go to when there is a problem. Women have women's shelters. Women sometimes lie and the men get put in jail. Then men are labelled and can't get jobs.
- Tribal leader from Koyuk, speaker #9: I invite the Commission to come to villages to learn more about our life.
- Keith Morrison, Speaker #6: I recommend you go to a village with a high rate of incarceration or recidivism.
- Speaker #10: the state is having a hard time balancing the budget. Only Alaska-born residents should get the PFD. Only Alaska-born residents should be in the legislature. In Juneau they don't talk to us. There is too much distance between tribes and the state of Alaska.

**‘LISTENING SESSION’ HELD BY COMMISSIONERS ALEX BRYNER AND GREG RAZO
OF THE ALASKA CRIMINAL JUSTICE COMMISSION,
ON JUNE 3, 2015, AT NOME COURTHOUSE.**

Staff Notes

Background: Razo and Bryner, both members of the ACJC Rural Workgroup, had been invited to Nome by Kawerak for the purpose of presenting information on the ACJC to the annual Rural Providers conference. They seized the opportunity to broaden the scope of the visit by holding a public informational session. The session was publicized by email invitations to local CJ ‘stakeholders,’¹ by flyers posted around town, by staff’s appearance on KNOM radio program, and by phone calls by staff on the day of the session. It was also publicized on the State’s online notice site.

Attendees at the Courthouse: There were approximately 30-40 in the audience, and some attendees on the phone. The following participants either identified themselves or were known to staff.

ADA Tom Jamgochian;
APD James Ferguson;
APD Nicole Frank;
Anvil Mountain Correctional Center Superintendent Sandra Martinson
DOC Correctional Officer Sgt. Devin Bodine;
DOC PO Michael Dunham;
AST Sgt. Charles Cross;
Gina Appolloni , Supervisor of VPSO Program, Kawerak;
John Bioff, General Counsel, Kawerak;
Rob Wood, Deputy Director of Juvenile Justice, DHSS;
2nd Judicial District Presiding Judge, Superior Court Judge Paul Roetman;
Nome Superior Court Judge Timothy Dooley;
Nome Magistrate Judge Robert Lewis;
Unalakleet Magistrate Judge Heidi Erickson;
Judge Pro Tem Ben Esch;
Area Court Administrator Tracey Buie;
Sherry Trigg, Rural Court Training Assistant;
Fawn White, PO, Division of Juvenile Justice;
Matthew Smith, KNOM News Director;
Kirsten Bey; and
Keith Morrison.

Meeting content: Following a PP presentation by staff attorney Mary Geddes, Commissioners Bryner and Razo invited comment and questions. *AST Sgt. Cross* asked what kinds of issues and ideas had the Commission thus far considered. Commissioners and staff attorney gave examples of issues under consideration.

¹ Invited was Denise Barengo, ED, Nome Eskimo Community; Lance Johnson, Norton Sound Health Corporation Behavioral Health; John Earthman and Tom Jamgoochian of the DA’s, Margaret Thomas, AAG, Nicole Frank and James Ferguson of the PD’s; Melanie Bahnke and John Bioff of Kawerak; Charles Cross of the Troopers; Chief Papasodora of the Nome Police Department; Mike Dunham of the Nome Police Department ; Anvil Mtn Superintendent; Theron Powell, Nome Youth Facility; Bob Weston, CRC, Seaside Center; Christine Agloinga (formerly with DJJ, now with Kawerak.

Assistant Public Defender Nicole Frank:

- From jail, clients can't call families in remote villages to arrange bail or make other arrangements. The [jail] policy is that you can't make a long distance call.
- It is hard to get assessments of clients done while they are at the jail. Clients need assessments in order to get into programs. Therapeutic courts in Anchorage can't take TBI issues [?] .

Judge Ben Esch: several concerns.

- In each village, there should be a TV/VCR, so that they can show the advisement tape. They can do this on the North Slope; why not here. After showing the tape, then judges could release them OR, thus avoiding the need to transport.
- Rural defendants sometimes experience disparate treatment. There was a defendant who was convicted of a theft in Nome, and received 90 days to serve. He arranged to travel to Anchorage in order to serve his sentence on electronic monitoring. EM is not available in Nome. Why can't EM work in all of the villages? If they had it and SCRAM we could dramatically reduce the numbers of people in jail. That would make a difference in terms of how sentences are served.
- Persons convicted of misdemeanor offenses are released on [informal 'court'] probation but with no real supervision or all. Some have a need for supervision. There should be a way to watch misdemeanor probationers. This points to the possibility of working with village councils and courts. When defendants come back to their communities and they start acting up, village [entities] could warn them so they don't go back into custody for new conduct.

Assistant Public Defender James Ferguson: several concerns.

- There are no options for rehabilitation in rural villages. There are no programs available. We could make the greatest [impact] is [by providing] rehabilitation at every phase of the process. Those people sitting on ice in jail awaiting sentencing get no programming.
- There is a statutory sentencing mitigator for rehabilitation, e.g. if a defendant completes a wellness court program. But I have never seen anyone get a mitigator because our communities don't have that program.
- I agree with Judge Esch about electronic monitoring. It should not be the privilege of urban dwellers.
- I also agree there is a need for some form of intermediate supervision. If there were village supervision, [defendants might get] needed intervention before a new charge.
- We could use a mental health court. We have several [special needs] populations – e.g., FASD, TBI. Is there a possibility for a statewide mental health court? Like telephonic? Can we have that possibility, i.e. specialty courts?
- There is a mitigator for TBI, for FASD, but even the statutory mitigators carve out exceptions. There are exclusions for 11.41 offenses, and that is exactly the type of conduct where these disabilities come into play. Courts should have the ability to consider those disabilities.

Fawn White, Juvenile Probation Officer, asked if there is connection between the work of the ACJC and juvenile justice. *Commissioner Bryner* mentioned automatic waiver might be such a topic.

Tom Jamgochian, Assistant District Attorney: Noted that he had been in Nome 4 years, but had practiced elsewhere in AK.

- One local practice that doesn't seem fair. Can't pay bail with credit card. Can pay in Fairbanks.
- I practiced in Bethel previously, and participated in one 'Circle Sentencing.' I would note that it was an expensive process, but totally productive and successful.
- I observe lots of people do plead guilty while in the village, having never seen their attorneys. Pretrial diversion could be an option. Villages should have input into its availability, and villages could waive in.
- Electronic Monitoring. It can be done in Anchorage, and should be available here.

Bryner: EM might be available but we need to figure out how village communities would respond to someone who violates EM. We should partner on this; the challenges are not insurmountable.

Razo: The idea of Justice Reinvestment is a good one; it means that we target our limited resources in a more productive way.

Sgt. Bodine, at Anvil Mountain Center: Responding to others' statements.

- Re EM. Our PO is working hard to get EM available for this area.
- Re defendants not getting phone calls. They do get one phone call at booking. But they sometimes do have problems getting in contact with people.
- We do have classes for pretrial inmates. However, it often happens that not enough people sign up for a class to run. Some classes are structured for 20 but only 3-4 people sign up.
- Re bail, there is an issue there. Inmates do fly in with money, post the bail that is set, then they fly back. Villages [VPSOs?] need ability to [accept] bail in villages rather than having the State pick up the costs of hotels and the trip back.
- RE substance abuse counseling at Anvil Mountain, there is only one counselor and she does her best.

Sandy Martinson: Anvil Mtn. Superintendent

- We do have a four-week substance abuse treatment program that is culturally appropriate, called ANSAT.
- The state DOC is going to go to a new substance abuse treatment curriculum that will be available in all institutions, for unsentenced and sentenced and serve larger numbers of people.
- DOC does offers early release programs, like furlough.
- In setting bail, the courts should consider that a lot of folks can only be seasonably employed. A lot of inmates do not have jobs, nor opportunities because of felony records.
- DOC has started an EM pilot program in Nome.

Sgt. Cross, AST:

- I am comparing the [bail-setting] process here in Nome to Anchorage. Anchorage feels streamlined. Before we even bring an arrestee to the Anchorage Jail for processing, I can get on the phone with a committing magistrate who can pretty immediately set the bail. The magistrate then tells me to write her name on the bail-related documents. The court proceeding is all recorded. Then I bring the bail paperwork along with the arrestee to the Jail. Here, I just take them to jail and the bail is not set. If I bring them in before 11 AM and assuming they are sober, they will be arraigned and have bail set at 1:30 PM. Otherwise they will go to court the next morning, and have their bail set then. So it's a slower process in Nome. I recognize there is a big volume in Anchorage. I also recognize that we are talking about different judicial districts, but still it's a big contrast.
- We have spent close to \$1500 in transportation costs for the court appearance of a person who is then released on a \$200 bail.

Keith Morrison. I would like [to contest?] the idea that there are successful treatment programs. There are dismal success rates, like 30% are successful.

- It is my belief that the programs need to be more culturally appropriate in order to be effective.

Bryner and Razo – people and communities should participate with the ACJC , please note our website and attend meetings by telephone if not in person.

Heidi Erickson- I am the magistrate judge in Unalakleet.

- Our court system can be so impersonal because of the distances. We can have conversations over the phone, but never actually see the defendant or parties in court. Anyway, we can do better. Our schools are highly technically savvy, with videoconferencing facilities, so we know the infrastructure is out there. It makes a difference to be able to see each other.
- With respect to the question of who provides [OPA] conflict counsel for the Nome region, conflict counsel is a Fairbanks firm.

Nicole Frank: Responding to comment about distances and telephonic representation.

- [The PD in Nome] represents people in Unalakleet [among other places]. We are representing defendants sometimes only telephonically. Language is a barrier. Sometimes individuals have English as a second language, or have a low education level and lack literacy. It's a real concern that defendants might not understand advisements of rights, especially if there is TBI, or FASD.

Bryner: Informing group that the Criminal Justice Working Group is expecting to propose a new standard for mental competency. Razo: Informing group that there is a great deal of interest in developing tribal courts.

Young woman, unidentified: You [ACJC] should set up a Facebook page for people to contact you.

**Additional Comments Made to ACJC Staff
Following Listening Sessions in Nome, June 2-3**

Discussion with Gina Appoloinni, Kawerak Supervisor of VPSO at Kawerak Conference (6/3)

- Some laws that have distance (feet, yards) restrictions are really difficult to enforce in a village and maybe should be looked at.
- FAA is restricting VPSO ability to travel with tasers during prisoner transport, and are therefore limited to baton and OC spray. The VPSO program has asked FAA to remove restriction. (While VPSO's now may be authorized to carry firearms, only 2 in the state are certified at present.)

Discussion with Rob Wood, DHSS/DJJ at Kawerak Conference (6/3)

- Will the Commission look into automatic waiver of juveniles? I don't think [auto waiver] is workable. The adult (DOC) system doesn't want 16-17 year olds. DJJ would like an opportunity to assess them prior to any decision on waiver.

Discussion with Chris Agloinga, formerly of DHSS/DJJ, now with Kawerak, at Kawerak Conference (6/3)

- For JJ probation purposes, we have been exploring the use of EM. I put a unit on and wore it for a while. EM works in all of the villages! GCI is the carrier.

Discussion with Winfred Olanna, VPSO, Brevig Mission, at Kawerak Conference (6/3)

- VPSO's have no authority to release a person in the village even on a bail schedule because we can't take bail. So we must fly into Nome.
- I think sentences are too short.

**Additional Comment by AST Sgt. Cross and Superior Court Judge Roetman (6/3)
At the Nome Courthouse**

- There are only 12 beds in the city jail facility in Kotzebue.
- It costs \$2900 roundtrip to move someone back and forth between Kotzebue and Nome. There are a minimum of 2 trips a week. Yearly pretrial transport costs are about \$330,000 per year.
- The court is working getting videoconferencing capacity between Kotzebue and Anvil Mountain.

Additional Comment by Heidi Erickson: Unalakleet Magistrate-Judge (6/3)

- Its okay to order short-term bail conditions that allow for a 'cooling off period', e.g. you cannot make any contact with this person for two weeks. This often avoids problems in a small community.

**Additional Comments by AST Sgt. Cross (6/11) –
Telephone Follow up by MG on comments from public session**

- If they are in village, they might get telephonically arraigned or they might be brought in. Sometimes transport depends on whether the individual is intoxicated and therefore not competent to enter a plea.
- There is no way for bail to be paid from the village, not even in cash, because no one can or is willing to be responsible for transporting cash. We can't store cash in the village as we can't secure it.

ALASKA CRIMINAL JUSTICE COMMISSION
STAFF NOTES AND MEETING SUMMARY APRIL 24TH, 2015, 9:00 AM TO 1:00 PM
At the Atwood Center, Room 1270, Anchorage

Commissioners attending: Alexander Bryner, Brenda Stanfill, Jeff Jessee, Stephanie Rhoades, Quinlan Steiner, Trevor Stephens, Greg Razo, Ron Taylor, Kris Sell (part of the meeting)

Absent: Terry Vrabec, Wes Keller, John Coghill, Rick Svobodny

Staff Present: Susanne DiPietro, Mary Geddes, Susie Dosik, Teri Carns, Giulia Kaufman (note-taker)

Participants: AG Craig Richards, John Skidmore, Janet McCabe, Carmen Gutierrez, Nancy Meade, Fred Dyson, Pat Balardi, Regan Williams, Billy Houser, Phil Cole, Ken Truitt, Jordan Shilling, Sarah Heath, Kelvin Lee, Darrel Gardner.

Future Meetings: Thursday, June 18, 10:00 A.M. – 1:30 P.M.¹

Wednesday, July 8, 10:00 A.M. – 1:30 P.M.²

Monday, August 3, 10:00 A.M. – 1:30 P.M.³

Materials Provided:

- See Geddes's emails sent out 4/22/15 and 4/27/15

The meeting opened at 9:09 A.M., Jeff Jessee chaired the first part of the meeting until Justice Bryner arrived at 9:26 A.M.

Legislators' Report:

The Legislature had been called into session, so Commissioners Keller and Coghill were not able to attend. Jordan Shilling, Sen. Coghill's aide, was able to provide a quick update on several bills. HB 15, which would enable defendants to receive credit for time served on EM, was passed. HB 11, which restricted the court's online publication on Courtview of certain non-conviction records, remains in committee, as does SB 117. SB 117, sponsored by Sen. Coghill, would allow for a tribal court diversion program for certain offenses. Finally, the omnibus crime bill SB91 is currently in Senate Affairs and will most likely be revised during the interim.

Jesse also reported that the UAA Justice Center received matching funds from the Legislature and the Mental Health Trust for the purpose of establishing the Criminal Justice Information System.

Discussion on Commission Goals

Jessee suggested the Commission could identify an overarching goal (e.g., closing a facility) for its efforts. DiPietro suggested a data-driven approach and noted that one possible goal is to reallocate resources to redesign the system to reduce the prison population and the recidivism rate. Stephens stated that the overarching goal is to reduce crime and implement evidence-based practices. DiPietro

¹Attorney General's Offices: Anchorage, Fairbanks and Juneau.

² Atwood Conference Center, Room 102 in Anchorage

³ Ibid.

asked if the Commission should wait on Pews' report and the data that JRI will develop and then identify one to three measurable goals. Taylor also suggested to wait for PEW's report and their guidance; Richards agreed.

DiPietro also pointed out that Jesse has a very strong grasp on how things work in Juneau and how people think and the Commission could use this to start a dialogue.

Presentation (Billy Houser on EM)

Please refer to previous meeting notes for a detailed overview over the program.

Houser talked about the infrastructure and technologies needed to implement the EM program across the state. To provide EM statewide, DOC would have to contract with two providers who provide EM equipment and software. (Right now they have only one contract). That is because some lines of equipment use Verizon technology, and some use AT &T.

He also noted that even though certain technologies are more expensive (e.g., SCRAM), EM is still roughly 1/6th of the cost of incarceration, according to estimates for Lower 48 states.

With respect to the current Alaska EM program (serving only sentenced offenders) Houser said noted that the screening process to determine eligibility takes about 45 to 60 min to screen one person. Houser took several questions about the DOC's capacity for expansion to pretrial inmates. Stanfill asked if homeless people could participate in EM as well. Houser responded said it was possible though not ideal. Rhoades pointed out that expanding the EM program would not address all problems, but it would solve a significant amount. Houser reported that one probation officer can monitor up to 45 people; however, if the pretrial population was included and monitored by correctional officers (not probation officers) one person could monitor up to 60 people. Houser assumes that pretrial inmates require a less program based type of supervision.

Break from 9:57 A.M. to 10:03 A.M.

Presentation (Doug Berman, PhD)

Professor Berman is an expert in sentencing law and author of the blog [Sentencing Law and Policy](#).

He noted that the Alaska sentencing structure utilizes presumptive sentencing. Elsewhere presumptive sentencing makes it easier, over time, for judges to impose longer sentences, even when alternatives are encouraged. He said that this has had a variety of consequences, which we are finally seeing. He also said that presumptive structures emphasize criminal history, increase remands to prison, and provide very little structure for reentry.

He pointed out that substance abuse and mental health issues are the main underlying causes of crime. While these are national problems and trends, sentencing and correction is ultimately a local story. He did note that as a result of the war on crime, crime rates are down but incarceration rates are up. He said that the issue is how to effectively reform an unpredictable, dynamic system. He pointed out that some of the biggest things states are doing is to build in more flexibility, particularly in the back end of the system by providing different means to aid reentry. He also said that at the front end reform measures include reducing mandatory minimums.

Berman also briefly discussed the Ohio sentencing reform. In Ohio, researchers found that law changes allowing judges considerable discretion in sentencing had resulted in increasingly lengthier

sentences, and that reform efforts there required shortening statutory terms. He referred the Commission to the [VERA Institute](#) and the [Sentencing Project](#) as valuable resources.

Jessee asked about the pretrial population; Berman responded research shows that people's criminogenic risk increases, if they are incarcerated for any period of time because it disrupts their lives and they are influenced by their environment. He referred the Commission to the VERA report [Incarceration's Front Door](#).

Work Group Updates and Discussion of Any Proposals:

Workgroup meeting summaries were distributed to the Commissioners via emails before the meeting.

Commissioner Rhoades presented the Sentencing Alternatives Workgroup proposal regarding pretrial diversion and deferred disposition.⁴ With regards to exclusions of any offenders from diversion alternatives, the Workgroup would defer to the Commission and/or to the Legislature.

After some discussion, Commissioner Razo made a motion to accept the proposal. Attorney General Richards indicated that he would like more time to review the materials, and asked that the matter be tabled until the next meeting. The Commissioners agreed to table the discussion until the next meeting and Commissioner Razo withdrew his motion.

It was also agreed generally that all Commissioners should seek input from their various constituencies with respect to this and any other proposal.

Staff agreed that in the future workgroup proposals would be posted prominently on the website so as to provide better notice to any and all.

Lunch from 12:00 P.M. to 12:20 P.M.

Miscellaneous:

- **Public Comment**

Pat Balardi asked for more opportunities for sharing people's experiences with probation and the courts. The group agreed to let meeting attendees know at the outset that public comment will be allowed, and provide earlier opportunities in the course of meetings for that input.

- **Recommendation on Judicial Education**

Geddes reported that Bryner has received a letter from Chief Justice Fabe [attached] thanking the Commission for its recommendation to provide judicial education on evidence based pre-trial practices. Fabe informed the group that this topic will be addressed at the judicial conference in October.

- **Progress on Results First Initiatives and JRI (DiPietro)**

With regards to Results First, DiPietro reported that the Pew group is finalizing their plan for acquiring data; next, they will need to develop and execute MOAs with the different agencies.

With regards to JRI, DiPietro reported that the first JRI-Commission meeting is set for June 18.th It is expected that JRI will present the data gathered and analyzed from different state agencies at that time. Jessee asked if it is possible to receive the information before the meeting,

⁴ For more detailed information on this topic please refer to the proposal and previous workgroup meeting notes.

so Commissioners will have time to familiarize themselves with the data; DiPietro agreed to follow up on that request.

- Conference planning for the NASC conference (DiPietro and Carns)

DiPietro urged people to buy airplane tickets now, if they are planning to attend, and to contact her if there are any questions about funding or travel arrangements.

- Rural Outreach Trip (Jessee)

Jessee asked if people are still interested in the Trust's annual rural outreach trip. Some Commissioners said they would like to go. To avoid conflicts, the Trust will plan the trip for November.

DiPietro reported that PEW JRI personnel plan to travel to Bethel and a village with Commissioner Davidson, as part of its own research and outreach efforts.

- Status of Controlled Substances Advisory Committee (DOL)

Richards reported that the Controlled Substances Advisory Committee is scheduled to meet on May 18th, 2015 from 1:00 P.M. to 4:00 P.M. [The meeting will be held at the AG's office in Anchorage].

- Receipt of Proposal for Establishing Restitution Priority from Former Senator Dyson (ACJC staff)

The Commission briefly reviewed Dyson's proposal and agreed that, for now, it will be added to the to-do-list of the Pre and Post-Trial Law and Processes Workgroup.

- Receipt of Question Regarding Potential Benefit of Having Sentenced individuals fulfill CWS and ASAP Programming Requirements While Incarcerated (ACJC staff)

During a brief discussion of this email, Taylor reported that the DOC is working with community based programs to unify their requirements and make them transferable.

Public Comment or Questions:

Carmen Gutierrez, a contractor for the Mental Health Trust, pointed out that national studies done on Alaska's prison population often only focus on sentenced offenders and neglect the pre-trial population, so that some of the reports cited by Professor Berman on Alaska were misleading. She said it is very important to keep that in mind, as this results in underreporting of the actual inmate population in Alaska's correctional facilities.

Regan Williams, a defense attorney, relayed a letter from one of his clients. The client believes that mandatory parole should be removed and more programs should be available to inmates. The letter also stated that mandatory parole is so restrictive that people will fail; Rhoades agreed. Carns reported that some states, such as NC, GA, and CT have introduced graduated probation violation sanctions which has reduced the prison population, overall recidivism, and decreased disparity for minorities.

Kelvin Lee of Fairbanks said that he hopes the Commission will continue to look at Barriers to Reentry and make it a priority.

Moving Forward:

The Commission will not meet in May. The next meeting on June 18th, 2015 will be the first meeting with JRI. At that time, Commissioners will be assigned to three JRI workgroups, the focus of which are still to be determined.

**Alaska Criminal Justice Commission
Meeting Summary**

**March 31, 2015, Noon – 3:00 PM
Atwood Building; First Floor Conference Room
Anchorage, Alaska**

Commissioners Present: Retired Supreme Court Justice Alex Bryner; Jeff Jessee, CEO, Mental Health Trust (videoconference); District Court Judge Stephanie Rhoades; DOC Commissioner Ron Taylor; Lt. Kris Sell, Juneau Police Department (videoconference), Superior Court Judge Trevor Stephens, Richard Svobodny, Department of Law; Greg Razo, Board of Directors, Alaska Native Justice Center. DPS Deputy Commissioner Terry Vrabec was present periodically by phone.

Dunnington Babb participated on behalf of Quinlan Steiner.

Commissioners Absent: Senator John Coghill; Representative Wes Keller; Brenda Stanfill, Interior Alaska Center for Non-Violent Living; Alaska Public Defender Quinlan Steiner

Staff Present: Alaska Judicial Council staff: ED Susanne DiPietro, Attorney Susie Dosik, Senior Analyst Teri Carns. ACJC staff: Mary Geddes, Project Attorney; Giulia Kauffman, Project Research Analyst.(meeting note-taker).

Guests Present: Craig Richards, Attorney General; Nancy Meade, General Counsel, Alaska Court System (telephonic); Janet McCabe, Board of Directors, Partners for Progress; Sarah Heath, Gov. Bill Walker's Office/MatSu; Dennis Schrantz, Center for Justice Innovation (on contract to ADOC); Al Wall, Division of Behavioral Health (telephonic); Darrel Gardner, Federal Defender; Phil Cole, Special Assistant to Commissioner Taylor; Regan Williams, Public Defender Agency.

1. Call to Order and Introductions

The meeting was called to order at 12:15 pm by Chair Bryner.

2. Legislators' Report

The legislative members were not available to attend the meeting due to conflicting floor sessions and committee meetings. The legislative report was therefore deferred.

The new omnibus crime bill, SB 91, was briefly discussed. Jordan Schilling is working on the sectional analysis of the bill, which Ms. Geddes will circulate to Commissioners. The effort was applauded by Trevor Stephens. Ron Taylor agreed "for the most part," but expressed concern about the burden on Corrections.

Commissioner Jessee reported that funding for the proposed criminal justice information center proposed by UAA Professor Andre Rosay, was included in both the House and Senate versions of the University's budget, at \$250,000 (half GFMH and half MHTA funds). The center will provide a clearinghouse for criminal justice related data. It will support the PEW Results First requirements that a state has data capacity; it also in the long run will provide much useful information about the performance of the criminal justice system for researchers and policy makers.

3. Proposals for Commission Recommendation

Amend Community Work Service (CWS) statute. Judge Rhoades summarized the proposal. Commissioner Svobodny asked if a simpler approach might be to change the penalty provision for DWLS, specifically the mandatory community work service requirement of 80 hours. It was noted that recently introduced SB91 contains changes similar if not identical to the changes being proposed here. Commissioner Svobodny suggested that a simpler approach might be to change the penalty provision for DWLS, specifically the mandatory community work service requirement of 80 hours. Commissioner Razo moved to endorse the portion to SB91 pertaining to

community work service; Commissioner Rhoades seconded. After discussion, Commissioner Razo accepted an amendment to the motion to instead endorse the Sentencing Alternatives workgroup proposal. Judge Rhoades accepted the amendment to her second. The amended motion passed unanimously.

Judicial Education on Pretrial Practices to Alaska Court System. Judge Rhoades explained the proposal, noting that a formal recommendation from this commission would encourage the planning committee to give priority to this topic. Commissioner Razo moved to support the recommendation; Commissioner Taylor seconded. The commissioners discussed the issue of funding for training; it was clarified that the recommendation is assumed to apply to the court system's regularly funded conference. The motion passed unanimously.

Enact "Ban the Box". Ms. Dosik explained that the recommendation was from the employment subgroup of the Barriers to Reentry workgroup. 14 states and 100 local governments have enacted similar legislation intended to restrict employers from asking about a job applicant's criminal history until the applicant reaches the job interview stage or gets a conditional offer. Target and Walmart voluntarily adopted 'ban the box' measures and consequently those chains no longer ask about an applicant's criminal history during the initial phase of the hiring process. Responding to Commissioner Svobodny's question about whether 'ban the box' measures "work," Dosik said that delaying those questions until later in the hiring process is pivotal for increasing the hiring of ex offenders, and notably employment is the most significant predictor for non-recidivating. Janet McCabe indicated that employer to employer education on the issue may be helpful.

AG Richards requested more information about possible impacts on private businesses, particularly tourism. Commissioner Razo expressed interest in getting feedback from HR people. It was suggested that a proposal could be limited to apply to state government. It was agreed that the recommendation should go back to the workgroup for more work, particularly for outreach to the business community and advice from human resources professionals. There should be consideration of the efficacy of similar laws and consideration, of how the ban the box measures are enforced and whether ban the box provisions impacts the constitutional right of public to access court records. Commissions Razo and Rhoades each encouraged the re-submission of a proposal once these questions have been researched.

Collaboration with Controlled Substances Advisory Committee. Justice Bryner explained one of the Commission's tasks to review and make recommendation to the drug schedule. The Classification workgroup has decided it would greatly benefit from collaboration with and expert advice from the never activated Controlled Substances Advisory Committee. Commissioner Svobodny reported that he has now received the appointments for all committee members and agreed that it would be good for the group to work with the Commission. He noted that the Controlled Substances committee has never been funded, so getting funding for meetings could be difficult. Ms. DiPietro suggested that the Judicial Council could help with travel funds during this remaining fiscal year. The issue of whether to recommend funding for the next fiscal year was tabled until the next meeting. Attorney General Craig Richards said he will report on the status of the CSAC at the Commission's April meeting.

4. Workgroup Updates

Rural Criminal Justice: Commissioner Razo reported that the group continues to work on an outreach plan. One way to conduct outreach is to let folks know about the commission and encourage them to give input. The rural work group received good information from Billy Houser who runs the Electronic Monitoring program for DOC. It was recommended that Houser address the entire Commission at its next meeting. Commissioner Rhoades noted that as Houser had already addressed other workgroups, perhaps he could simply be available for questions.

Classification of Crimes & Applicable Sentences: Justice Bryner reported that the group hopes to forward a recommendation to full Commission to regarding simple possession offenses presently under MISC 4. Noting that the Commission has responsibility for reviewing the presumptive sentencing scheme, Bryner noted that Professor Berman's presentation on other states' models should jump-start our discussion.

Sentencing Alternatives: Judge Rhoades reported that the group is working on a recommendation to replace the Suspended Imposition of Sentence mechanism with a Deferred Imposition of Sentence; and a pretrial diversion proposal.

Pre- and Post-trial Laws and Processes: Judge Rhoades reported the group is completing a bail survey to analyze the reasons for pretrial incarceration; it is studying pretrial risk assessment, title 12 (mental health, competency), probation and parole issues, and electronic monitoring. It was decided that the Pre and Post workgroup would meet on Friday, April 24, rather than on April 28 so that any recommendations could be finalized before the April meeting.

Barriers to Reentry: Ms. Dosik reported the workgroup will continue to study "ban the box" and "fair chance" legislation, access to public records, expungement, and Title 28 issues.

5. Justice Reinvestment and Results First Update

Both initiatives are on track and moving forward. For the Justice Reinvestment Initiative, the Commissioners will engage with the Pew team in an intensive series of in-person meetings beginning in June through December. It is important that all Commissioners are able to attend these meetings, which are now being scheduled (see information below).

The Results First Initiative team plans to schedule a technical webinar with state government analysts who have access to the necessary data. Legislative Finance also will be invited.

6. Planning for next quarter

Re next meeting on April 28, in Anchorage, the Commission decided to start the meeting at 9:00 AM.

- The Commission will hear a presentation by Professor Doug Berman from Ohio State, who is a national expert on sentencing law. [\[Professor Berman's credentials here\]](#)
- It was also agreed to invite Billy Houser to the next meeting.
- Several workgroups intend to have recommendations ready for the April meeting.

Ms. Geddes recommended that the commission plan to finish up this phase of its work by the end of April in preparation for our work with PEW/JRI. Ms. Geddes proposed and the Commission agreed that no May meeting be scheduled due to the early June meeting with JRI.

7. Public Comment

Dennis Schrantz, Center for Justice Innovation, spoke about the ADOC's recently completed report to Governor Walker on the Department's own Recidivism Reduction Plan. [This report is attached] The plan involves the ADOC's implementation of its Prisoner Reentry Initiative. The plan focuses on the creation of a transition plan beginning at point of entry. It emphasizes state and community efforts, the importance of process and outcome, and identifies assets and barriers.

8. The meeting was adjourned 2:51 p.m.

Alaska Criminal Justice Commission
Staff Notes from February 24, 2015 Meeting
At the Dimond Courthouse, Jury Assembly Room, 123 4th Street, Juneau

Commissioners Attending (all or part of meeting): Alex Bryner, Jeff Jessee, Representative Wes Keller, Greg Razo (tel.), Stephanie Rhoades (tel.), Kris Sell, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Rick Svobodny, and Terry Vrabec (tel.).

Staff Attending: Susanne DiPietro, Mary Geddes (notetaker), Susie Dosik (tel.), Teri Carns (tel.), Giulia Kaufman (tel.)

Invited Guests: Gary VanLandingham and Stanford Turner, Pew Trust Results First

Participants: Ken Truitt, Jordan Shilling, Amory Lelake (tel.), Andre Rosay, Nancy Meade, Greg Miller, Chris Provost, Carmen Gutierrez, Denise Morris, Daniel (unidentified), Jayce Robertson, Hannah Grothe, Kathleen McLaughlin, Janet McCabe, Kimberly Martus (tel.), Jerzy Shedlock (tel.), John Bioff (tel.).

**Next Meeting: March 31, 12:00- 3:00 PM Atwood Conference Ctr. Rm. 102,
550 W. 7th Ave, Anchorage**

Introductions began at 10:35 a.m.

Report from Chair:

Commissioner Bryner reported to the group concerning his and Susanne DiPietro's meeting on February 13 with Governor Walker and Marcia Davis, the Governor's Deputy Chief of Staff. Bryner said that the Governor's views indicated an alignment with the Commission's mission, and he expressed a strong view that it is very important that the Commission utilize an evidence-based approach in proposing any reforms. The Governor was clearly very interested in taking advantage of the free technical assistance available through the Pew Trust for data analysis. Additionally, he mentioned as concerns: a possible abuse of peremptory challenges of judges, especially in rural locations, as being burdensome for the state; the reported overreliance by judges on third party custodian conditions, originally intended as an alternative to monetary bail, now added on in addition to monetary bail; the reported practice of detaining minor offenders who cannot afford monetary bail in the absence of a real need to do so. Bryner and DiPietro told the governor that one of the Commission workgroups was already at work investigating such questions.

DiPietro informed the Governor that the Judicial Council was hosting the annual conference of the National Association of Sentencing Commissions (NASC) in Girdwood in August, and informed the Governor that NASC would be asking him to address that convention.

Report from the Legislature

Commissioner/ Representative Keller gave the report. (Senator Coghill was having a dental procedure in Fairbanks and was unable to attend this meeting.)

Representative Keller stated that he had "never experienced anything like this session" in his 15 years in Juneau, both as a legislator and staffer. "The economic crisis is sucking all the oxygen out of" the proverbial room he said. He said he "felt he needed to admonish the Commission – don't waste the opportunity" to offer reforms. He said that the Commission should determine if it could weigh in on any issues in the current legislative session. The Commission's voice would make a difference because the legislators are used to hearing from the same old players. "Now I'm going to poke a little [more]. The

judicial branch is isolated from the political process. There needs to be a nexus between justice and politics [for this to work]. Consider watching bills. Don't be afraid of inserting yourself in to the political process." Representative Keller gave HB15 as an example of a bill to watch. This bill would mandate good time for time spent on electronica monitoring. Keller stated that that legislators could use the expertise of the Commission. Another example is the bill which would cap the caseloads of probation officers, which reportedly could impact the implementation of PACE.

The Senate Judiciary Committee will be holding a Crime Summit tomorrow, all afternoon. It will be streaming on Gavel to Gavel.

Commission Vote on Food Stamp Ban: Final Action

Mary Geddes reported that the January vote by Commissioners on the food stamp ban would stand as a final vote. All Commissioners present (10) had voted to make a recommendation to the Legislature, but also conditioned the finality of that vote on a staff poll of the absent Commissioners: Taylor, Coghill and Keller. If any absent Commissioner wanted further discussion, the matter would be reconsidered at the February meeting. Geddes reported that none of the absent Commissioners wanted any further discussion.

Commissioner Jessee asked Representative Keller for the most effective way to forward the recommendation to the Legislature. Keller recommended a letter, with a short explanation of the issue, from Bryner to the two Judiciary Committees.

Miscellaneous Items from Staff

The Attorney General is making his conference rooms in Anchorage, Juneau and Fairbanks available for ACJC workgroup videoconferencing. This is enormously helpful to staff and much appreciated. Please note that only two sites outside of Anchorage can be video conferenced at a time.

Mary Geddes has asked for advice from the AG's office on the Open Meetings Act. She will prepare a memo for Commissioners by next meeting.

NASC Conference

Alaska Judicial Council Director Susanne DiPietro confirmed the Chair's report that NASC planned to hold its annual conference in Alaska, and urged the Commissioners' attendance. Past NASC conferences have great technical content and nationally renown experts as presenters. The conference will be in Girdwood at the Alyeska Prince Hotel August 16-18.

Recidivism Reduction Plan

Jessee reported that the Plan was out, that each Commissioner would be provided a hard copy, and that it had been presented to House Finance and HSS Committees and would be presented tomorrow to Senate Judiciary Committee. He reported that Representative Neumann in particular was working closely with the RRP Group to implement the Plan. Without legislative and program policy changes, Alaska will definitely be looking to building another prison.

Commissioner Razo wondered about the appropriateness of the specific ask on page 36 for \$600,000 funding for a particular program (Partners for Progress) when there are other non-profits, including Alaska Native organizations, doing reentry work. He asked if this was viewed as a increment or realignment of resources. Jessee indicated that they focused on Partners for two reasons: good outcomes and a real threat

of discontinued state funding. Jessee said that, in doing so, they hadn't meant to slight other groups with good outcomes. He also sought to clarify that he was not asking the ACJC to endorse the report, merely to note the specific recommendations relating to Commission work. The chair inquired as to whether more extended discussion should take place at a future meeting. Razo said he would welcome all future opportunity to discuss the report.

Selection of Co-Vice Chairs

Commissioner Bryner noted that, as the bylaws don't provide for the election of a chair and everyone is so busy, he had selected two Commissioners to alternate as substitute chairs during any absences: Greg Razo and Jeff Jessee. The chair thanked Jessee and Razo for offering to take on this responsibility.

Barriers to Reentry

Commissioner Stanfill reported for the Employment Barriers Subgroup. She said that the group had initially talked about a general provision sunsetting Title 47 employment barriers, but learned that such a strategy would likely not apply when the statute itself says relatively little and that most of the barrier crimes are actually in the regulations. Diane Castro of DHSS will assist the Subgroup with the review of current restrictions.

Commissioner Svobodny inquired as to whether anyone had investigated if DHSS would lose federal i.e. Medicaid funding if the barriers were removed. Susie Dosik had asked and learned that the barriers were not requisites for Medicaid funding. Stacy Kraley AAG was her Law contact. Svobodny indicated that he would commit Law's Civil Division to give help in this subject area.

Pre-and Post-Trial Laws and Processes

Commissioner Stephens reported for the workgroup. Stephens said that the judges and PD had just sent out a survey on bail issues; as far as the workgroup knew, the Department of Law (Law) had not yet sent out the survey to line staff. One focus of the survey is the use of 3rd party custodians. Svobodny indicated that while he had not yet turned his attention to the bail survey, law personnel was involved in the numerous edits of the survey instrument.

Stephens also noted that the group is investigating the use of risk assessment tools to better inform judges prior to bail setting. In addition to issues in bail-setting, the group is also seeking more information on electronic monitoring and other technologies as tools for pretrial supervision.

Commissioner Rhoades indicated that she hoped the workgroup would be looking at opportunities even earlier in the criminal justice process. She noted that Commissioner Sell had reported on the Juneau police Department's institution of a crisis intervention team, which allows police to partner with mental health.

Svobodny asked if the survey asked how many people are released OP or own their own recognizance. Susanne Di Pietro stated that the court has that raw data, but there is no field in Courtview that allows for retrieval of that information. Svobodny wondered if the information could be available through the police-court pilot program in Anchorage (or is it Fairbanks?) allowing for the retrieval of bail conditions. Alex Bryner said this seems like an incredible problem that we can't keep track of how we release people.

Stephens said that some of the information gleaned through a survey may indicate a need for judicial education on bail issues. DiPietro indicated that it has been five years since there was any bail education

program. Commissioner Rhoades noted that there are bail schedules for certain offenses and locations which may be used in a consistent manner by magistrates. Rhoades has asked Lisa Fitzpatrick, who coordinates judicial training, to consider obtaining a new bail/pretrial release curriculum.

Jessee asked if judicial education is how judges achieved some consistency in their interpretation of statutes. Nancy Meade, general counsel for the court system, stated offers information on law changes following each legislative session. For example, she did offer information about the 24/7 program and what the legislature wanted in enacting the measure. Judges do have twice yearly training conferences. Other than that, they receive no directive from ‘up above,’ outside of caselaw.

Meade acknowledged that there are sometimes ‘sub-cultures’ that develop between DA’s, PDs and Judges in a particular court in which consistent ‘asks’ (e.g. in bail-setting) become accepted norm.

Commissioner Svobodny noted that there may be different bail related concerns in different regions of the state and that you are ‘never going to get consistency across the state.’ He noted that 40 years ago, the Juneau Police Department offered daily breath tests each morning to accommodate court ordered bail conditions, but he is sure that is no longer available. Stephens said that the practice Svobodny describes still exists in many Alaska communities.

There was some additional discussion about the national finding that pretrial incarceration is associated with lengthier sentences and whether the finding reflected merely that more dangerous individuals had been appropriately detained or whether that question was ‘controlled for’ by the use of other variables in the analysis. The studies establish that pretrial incarceration has an across-the-board lengthening effect, not merely with respect to more serious offenders, according to Quinlan Steiner (and sources identified below by staff¹).

Commissioners shared their observations of bail practices. Stanfill stated that OR releases in Fairbanks are rarely used. Sell stated that she has seen OR releases in Juneau even in DUI cases. Stephens stated that he has observed “wildly disparate” bail schedules among districts, providing for OR release in one to \$1250 in another. (Bail schedules are set by the presiding judge in each district and some offenses are excluded from bail schedules.)

Later in the meeting, Stephens said that the group had not previously discussed the peremptory challenge issue but it would fall under the Pre and Post-trial group’s responsibilities. He would seek information on this topic from the courts. Svobodny suggested that the request seek information on civil peremptory challenges as well.

Rural Criminal Justice Workgroup

After a break, Steiner reported that the Rural workgroup’s plan includes its consideration of issues considered in other workgroups for the purpose of offering a lens through which rural perspective is obtained. The group also intends to do ACJC outreach through the vehicle of regularly scheduled conventions, conferences and regional meetings. The group received an update from TCC attorneys and an Assistant AG regarding progress made towards civil agreements between tribes and the State for civil

¹ [Investigating the Impact of Pretrial Detention on Sentencing Outcomes November 2013](#)
[Research on the Effects of Pretrial Detention \(Federal Probation Journal June 2014\)](#)

diversion agreements. The workgroup is agreed that it should promote the use of pretrial diversion in rural areas as a means of reducing pretrial detention.

Greg Razo shared his recent experience in Kotzebue meeting with federal and state officials there. It struck him that rural Alaska is hungry for more information and involvement. The ACJC must make a concerted effort to inform and engage rural Alaskans, especially Alaska Natives, who are disproportionately affected by the criminal justice system.

The last meeting of the Rural group featured a presentation on MAJIIC. It seems that there is a lot of data out there but data sharing and effective utilization doesn't always happen. Alaska Statutes 12.62.100 provides for a Criminal Justice Information Advisory Board, but that Board hasn't met since 2013. Razo stated that we should ask the Governor to use this statutory mechanism to coordinate and promote collaboration among the agencies.

Stanfill suggested that the ACJC could ask AFN and TCC if they would consider creating opportunities at their conventions as a way of obtaining rural input. Razo indicated that "listening" sessions or conferences can be a good approach and that he would contact AFN and Native non-profits and other organizations to seek out those opportunities. Mary Geddes will help.

Rhoades asked if it were possible to obtain interagency or 'braided' funding to pay for ACJC Commissioners' travel to rural Alaska, given that AJC monies are very limited.

Jessee returned to an earlier proposal for rural outreach (to be funded by the MHTA) that would involve quick visits to rural hubs and overnight visits in rural villages. The purpose of the travel would need to be a focus on disability justice. Historically, the Trust has taken 25-30 individuals on these trips with much smaller groups (3-5) going for overnight stays in a village. The Chair wondered about the timing of such a trip, and said he was aware that the presence of a large group in a small place might not always encourage the desired dialogue. Jessee said that the trust does work closely with the agencies and people in the region to plan their trips.

Steiner suggested that outreach/travel plans should be developed with the 3 year lifespan of the Commission in mind, but that multiple trips would likely be needed. Sell suggested that trips with smaller delegations might be more productive, more capable of eliciting useful information. Jessee urged a multi-prong outreach strategy might be best.

The Chair asked the Rural group to come back by the next Commission meeting (March 31) with a plan for outreach.

Public participant Chris Provost introduced himself and asked to be heard. He noted that although he was now based in Anchorage he had spent 10 years living and practicing law in Bethel, and had been to every one of the 56 villages in the region with many overnights. He had also spent 2 years as TCC counsel representing their 20 villages. He said if village trips were being seriously considered it would be better to choose one village in each region because of the differences between the regions.

The Chair asked if there was not a directory of criminal justice stakeholders in the state. (There's not as far as we know). He urged staff to develop/compile a directory- by region - of all criminal justice stakeholders by the next meeting. Kim Martus of BBNA volunteered to help.

Sentencing Alternatives

Commissioner Stephens also reported for this group.

He said that the group had been looking at deferred sentencing, pretrial diversion, and a fix of the CWS statute. He stated that the workgroup had requested Law's policies regarding charge and plea bargaining, deferred prosecution and diversions. (Staff- The policies have not been received. 3.4.15) The workgroup does expect to have some specific proposals for the Commission by its March meeting.

The group is seeking more information on EM and other technologies. The workgroup is also interested in the therapeutic courts, the number of beds for residential treatment and halfway houses (CRC). The group has expressed interest in the use of telephonic and videoconferencing capabilities so as to avoid prisoner transport and unnecessary detention. Susanne DiPietro stated that the Court Rules Committee is currently looking at Rule 38.1 and 38.2. Steiner stated that the Committee might be specifically discussing more waivers of appearance by defendants.

The Chair asked Svobodny to what extent are sentencing alternatives and plea bargains controlled by statewide policies versus the decision of a local DA? Svobodny indicated "no simple answer" and he was still working out what information he would choose to give the ACJC staff..

Svobodny further stated: as for plea/charge bargaining policy, there have been four shifts in policy since the Hammond Administration. Under Av Gross, there was a complete ban on plea bargaining. Charlie Cole backed them off the ban. Under Bruce Botelho, it reverted to the situation before Av Gross when both charge and sentence bargaining were allowed. Geraghty was convinced by Carpeneti that there should be no sentence bargains, although there could be charge bargains.

Svobodny said that, if asked whether the last Administration's parameters are in effect, he would answer yes. He would also say that the AG has indicated "some openness" and policy is "under consideration." He noted that, even with bans, there have always been individual exceptions made.

Svobodny said when "the Supreme Court had said it did not approve" pretrial diversion, Law had stopped that program and haven't looked at the issue since then. The Chair asked if the Supreme Court decision to which he referred was the Stobaugh case, and Mr. Svobodny said yes. The Chair noted that it was a very limited holding that turned on its particular facts. Svobodny said that he recognized that there were ways around that decision and, at that time, Law had made a defendant's confession of guilt a pre-requisite for admission into the program.. Certainly a sentencing diversion following a plea would be one possibility. As for the old Pretrial program, Law had a probation officer in each Pretrial Intervention community location, so it had a lot of additional personnel. With respect to comparisons with the Municipal diversion program, the City can make money from fines and fees for program use. However, when a state Pretrial Intervention program took in money, it went into the General Fund and couldn't be used to fund the program. Svobodny said DOC might be a better place in which to situate pretrial services, but Law has not had an opportunity to discuss this yet.

PRESENTATION--Results First

Susanne DiPietro introduced Gary VanLandingham and Stanford Turner from the Pew Trust. She noted that there had been conversations for a few years about whether Alaska could obtain the Results First cost-analytic model. With the change in administration and the economic climate, it appears the time may be right for inviting the Initiative. Our presenters arrived in Juneau on Monday and have had meetings with legislators and Governor's staff. Their PowerPoint presentation will be distributed along with these meeting notes.

VanLandingham noted that the Results First Initiative is a technical assistance project, giving states tools (software) and helping states build its analytic capacity so that decision-makers can determine the best ways to invest dollars in criminal justice programs. The model came out of Washington State's efforts to find the 'sweet spot' for cost-effective programming. It's a 'Moneyball' approach to criminal justice planning. The idea is to build up the local database, and then 'marry up' national research results as to cost-effective strategies to Alaska programming. Results First builds the platform in Alaska and then connects it in effect to the expanding clearinghouse of information on evidence-based programs.

New Mexico is a great example of a state that has effectively utilized Results First planning. [from staff-see e.g. [Legislative Report: Reducing Recidivism, Cutting Costs and Improving public Safety in the Incarceration and Supervision of Adult Offenders](#). That state Legislature has embraced all recommended reforms because it understands the relative "cost of doing nothing." VanLandingham said the continuing TA is somewhat akin to investment advice, asking how do you want to spend you money. The technical assistance provided is ongoing once the local model is built because we continue to expand the number of programs that we evaluate. All participating states send delegates to an annual convention to confer with each other. The participating states must: commit to evidence-based decision-making, provide a letter of invitation from the Governor and legislative leaders, provide data necessary for the analysis and show a willingness to dedicate resources to the process.

Different states have devoted a different level of resources to the effort. Colorado has two employees. Most states do this with existing resources. Because Alaska's 'bench' is so shallow, VanLandingham thought Alaska would require one half-time employee to maintain the model. The goal is to automate the research.

States can choose what programs they want studied and then can make changes. Its not intended as a program killer. The goal is to improve outcomes, to up all of our games. And to do research in a wholly informed way. As a result of the RF Initiative in Iowa, Iowa changed its domestic violence interventions to a Cognitive Behavioral Therapy model.

There is no problem with Results First and Justice Reinvestment Initiatives occurring at the same time. They are different: JRI identifies drivers of incarceration and policy options. Results First is more program oriented.

With respect to identifying where Local Results First project management is best situated, it may turn on who has or handles data, but more importantly, who is trustworthy in the eyes of all agencies, has the requisite technical skills/staffing to maintain the model, and who can function as something of an ambassador to the Legislature, and communicate effectively with legislators. DiPietro added that the UAA

Justice Center seems like a great candidate for this role as they already get regular data dumps from many state agencies and they have experience in matching files between state department databases.

In Washington State, the model in use by Washington State Institute for Public Policy, WSIPP, is attached to the University and has legislators on its board. In New York, the model resides in the Governor's Office. In New Mexico, the model is in the Legislative Finance Committee. In Mississippi it is a joint project between two Legislative committee. Its up to the state to decide where it goes, who best to act as an "honest broker."

With respect to the relevant time frame for approval, the process for approval is moving apace. The Results First Board has to approve its work in Alaska, too.

A question was asked by Kimberly Martus as to the model's use in evaluating reentry programs, particularly those which are (local) culture-based programs. How inclusive is the database of tribal organization programming? VanLandingham stated that California has been developing an impressive clearinghouse on reentry programs, including those employed by tribal organizations. He said that analysis begins by comparison of program components, such as the use of CBT. Di Pietro noted that the Results First Initiative provides a model only. It will be up to Alaskans to build or customize the model for its own use. Denise Morris noted that it was important to make the model transparent and inclusive of those best practices with an overlay of cultural programming. VanLandingham clarified that the model is not intended to discourage or preclude original programming. The model should help new programs from showing they are evidence based. Jeff Jessee noted that – with respect to the analogy that RF is like investment advice which can be ignored – that decisions can be made to invest in strategies that are not proven, but may be worth the 'risk' to local decision-makers.

ACJC Vote on Making a Recommendation

With eight Commissioners still present (Ron Taylor, Brenda Stanfill, Rick Svobodny, Jeff Jessee, Kris Sell, Trevor Stephens, Stephanie Rhoades, Alex Bryner) a motion was made by Brenda Stanfill that the Commission recommend to all three branches of government that all three sign up and approve invitations to the technical assistance from the Results First and the Justice Reinvestment Initiatives. Prior to exiting, Ron Taylor indicated he would approve such a recommendation and sought to give a "proxy." The motion was subsequently seconded by Kris Sell. Discussion opened and Jeff Jessee asked if additional organizational details need to be provided in the motion and recommendation, i.e. like having the UAA Justice Center be identified as the 'keeper of the model.' DiPietro indicated that it was not necessary in her opinion. Rick Svobodny suggested that a sub-group could consider a plan for that. The question was moved by Jessee. The seven Commissioners remaining in the meeting unanimously approved the recommendation. [NB: 6 constitutes a quorum, and votes are made by majority.]

Discussion on Commission and Commissioners' Role

Commissioner Stanfill asked through what process would issues be brought to the Commission's attention. The Chair suggested that Commissioners or the public should contact Mary or him and new topics can get added to agendas.

Stanfill noted that, as virtually all of the Commissioners 'wear more than one hat,' said that she wanted to discuss contacts that may happen with legislators seeking feedback or ideas. Sell said that it was important to keep our roles separate, and that until the Commission votes to make a recommendation, it does not 'have a position.' Svobodny stated that he had heard there were several bills being identified as

Commission bills. Geddes clarified that ACJC workgroup ideas are reflected in meeting summaries and shared in email lists., and that legislators are apparently drawing on those ideas even though they are still under consideration in the workgroups and not yet presented to the Commission.

The Commissioners agree that when ACJC recommendations are made they shall be identified on the website, and that recommendations will only be made following a full consideration.

Public participation

John Bioff, counsel for Kawarek, asked to speak on behalf of Melanie Bahke, its director. He wanted to commend the work of the Alaska Native Justice Center and its work to reduce recidivism and its leadership. He would hope that any implementation of the Recidivism Reduction Plan would involve the Justice Center. The Chair thanked Mr. Bioff for his patience. He also urged public participants to communicate their concerns in advance of meetings so that their participation could be accommodated in a timely manner.

Denise Morris, the Acting Interim Director of the Center, noted that Alaska Federation of Natives had passed a resolution asking for more involvement by the Alaska Native Justice Center in the implementation of the Recidivism Reduction Plan.

Kimberly Martus also asked that the Alaska Native Justice Center be recognized, that the Center should take the lead in reducing recidivism efforts in rural Alaska, and that it is the only Alaska Native organization devoted to criminal justice issues.

The meeting ended at approximately 3:45 PM.

Alaska Criminal Justice Commission
Staff Notes January 23, 2015, 9:00 AM to 12:00 PM
At the Diamond Courthouse, Jury Assembly Room, 123 4th Street Juneau

Commissioners attending: Hon. Alex Bryner (chairing); Ron Taylor (part of the mtg.), Kris Sell, Rick Svobodny, Sen. John Coghill, Hon. Trevor Stephens (part of the mtg) Rep. Wes Keller, Terry Vrabec, Brenda Stanfill, Quinlan Steiner, Jeff Jessee, Hon. Stephanie Rhoades, Greg Razo

Staff Present: Susanne DiPietro, Mary Geddes, Susie Dosik, Teri Carns, Giulia Kaufman (notetaker)

Participants: AG Craig Richards, Cynthia Franklin, Karen Gillis (phone), Carmen Gutierrez, Commissioner Valerie Davidson, Albert Wall, Andre Rosay, Steve Williams, Janet McCabe, Nancy Meade, Chris Provost, Jordan Schilling, Ken Truitt, Kelly Cunningham, Denise Morris (phone), Barbara Armstrong (phone), Corey LePage (phone)

Future Meetings: **Tuesday, February 24, 2015, 10:30 – 3:00 PM (JUN)**
Tuesday, March 31, 2015, 12:00 – 3:00 PM
Tuesday, April 28, 2015, 10:00 – 1:00 PM

The meeting opened at 9:05 AM; Hon. Alex Bryner chaired the meeting.

Welcome and Introductions:

The Chair Hon. Alex Bryner opened the meeting at 9:05 AM and welcomed everybody. A special welcome was given to new ACJC commissioner Sen. Coghill, Attorney General Craig Richards, Valerie Davidson, Commissioner of DHSS, and Albert Wall, Director of the DHSS's Division of Behavioral Health.

Hon. Bryner stated that the Alaska Criminal Justice Commission was created through SB 64. The Commission consists of thirteen members and has a limited term ending on July 1, 2017. The Commission shall evaluate and make recommendations to improve criminal laws and practices, keeping in mind the goals of enhancing public safety, offender rehabilitation, victim restitution and reducing costs. The Commission may recommend legislative or administrative action to the Legislature and the Governor. The Commission, which is staffed by the Alaska Judicial Council, had its first meeting on September 22, 2014.

Discussion about General Issues:

DHSS Representation:

Present on the phone was Karen Gillis, Director of Boards and Commissions within the Governor's Office. The Boards and Commissions office actively recruits, interviews, and vets board candidates throughout the year and recommends qualified candidates to the governor. At any given time, approximately 1200 Alaskans are serving on nearly 130 boards and commissions. In an average year, Governor Walker makes approximately 200 to 300 appointments. Current commission members are appointed until June 30th, 2017; members serving at the will of the governor have easy access to the Boards and Commissions Office.

Some Commissioners have expressed concern that DHSS does not have a ‘seat’ on the Commission. Razo asked Gillis and legislators Coghill and Keller about the reasoning behind that and who would have the authority to establish permanent DHSS representation on the Commission. Coghill stated that a challenge the Legislature faced was how large the Commission could be before it would not be able to reach a consensus. He stated that it was assumed that representatives of the departments in question would volunteer and attend commission meetings.

Format of Recommendations:

Hon. Bryner posed the question in what type of format the legislature would like to see the Commission’s recommendations, especially with regards to language and specificity. Rep. Keller stated that the Commission is asked to make statutory as well as regulatory recommendations. He stated that it would be best if the recommendations would be put forward to the judiciary committees. Sen. Coghill advised commissioners that it would be best if the group followed the guidelines in the statute. Further, he stated that if the Commission identified gaps in a statute or recommended statutory changes, it would be best if the Commission would draft it in statutory language. In addition, Sen. Coghill stated that it is of interest to the legislature that the Commission answers the “why questions” (e.g., why is something not working; what should be done instead). If departments’ policies are inconsistent with the direction of SB64, the Commission should approach departments and find out as to why that is the case. Sen. Coghill said that the Commission should also examine mandatory sentencing laws and determine, if they are too rigid.

Rural Alaska:

Razo pointed out that the Commission has to consider the impacts its recommendations will have on rural Alaska. He said that in order for the group to make the right recommendations, travel to rural Alaska is essential, especially in order to understand how practice and policy interact. He also pointed out budgetary constraints with regards to travel. Sen. Coghill said rural justice is a very complex issue. He stated that, at the time, the legislature contemplated the issue but was not able to determine how to effectively address it. Jessee stated that each year the trust sends a rural outreach group to a different location in rural Alaska to gain firsthand experience. He stated that the trust may be able to help with funding for travel.

In the interest of time, Hon. Bryner asked the legislators, if they had any issues or questions they wanted to bring forward to the group; both legislators said they did not. The group proceeded with the agenda.

Presentations:

ABC Board’s Recommendations to Legislature for Changes to Title 4 (Cynthia Franklin, Director ABC Board)¹

Franklin gave a presentation about the Board’s recommended changes to Title 4. Title 4 regulates the manufacture, barter, possession, and sale of alcoholic beverages; Title 4 has not been updated since 1980 and the current laws are outdated and confusing. The recommended Title 4 revisions include the clarification of the ABC Board’s purpose, the simplification and update of the licensing system, the reformation of underage drinking penalties, and the reduction of the alcohol availability in local option communities.

¹ Please refer to the attached PPT presentation for more details.

One of the focuses of her presentation was the reduction of the penalties for underage drinking offenses. She stated that these offenses represent the largest group of Title 4 offenses (i.e., about 75%) and about a third of those cases are eventually dismissed; yet, minors whose charges were dismissed are still visible in CourtView. She stated that one recommended approach to handle these cases is to impose a \$500 fine, which can be reduced to \$50, if defendants show proof of treatment. If they are unable to obtain treatment or pay the fine, the amount will be taken out of their PFD. As to criticism with regards to the reduction of penalties, Franklin and Judge Rhoades agreed that the reason why MAC defendants end up in jail is not the offense itself but rather non-compliance or violations; both pointed out that jail is not the answer to incentivize youth and to reduce recidivism.

PACE Program Explanation and Expansion (Ron Taylor, DOC Commissioner and ACJC Member):

Taylor informed the group that the PACE (Probation Accountability with Certain Enforcement) is a program established in 2010 that views probation violations in a different way. The goal is to address probation violations in a swift and consistent manner (e.g., short jail time; expedited hearings). The Program currently runs in Anchorage (200 spots), Palmer (40 spots) and Juneau (10 spots). The program is currently expanding; the DOC has created 14 new positions to support the program. Also in a couple of months the program will start in Fairbanks (40 spots). The program focuses mostly on felony probation violations but will also be expanded to parole violations.

Recidivism Reduction (Carmen Gutierrez, Owner of Justice Improvement Solutions and Contractor for the Alaska Mental Health Trust Authority):

Carmen Gutierrez is the contractor for the AKMHTA and tasked with writing the recidivism reduction plan, a requirement through HB266 (click [here](#) for a brief overview). She stated that the report is due on February 2nd, 2015 and that she is now finalizing the draft. She said that the first part of the report outlines the current situation and challenges in the state. She informed the group that the drivers of the growing prison included the incarceration of non-violent as well as unsentenced offenders. She pointed out that in 2002 most offenders were incarcerated for violent offenses. However, by 2012 most offenders were incarcerated for violent offenses, especially drug and property offenses as well as PTRPs. In addition, DOC's facilities are currently maxed out and operating above capacity (101%); Gutierrez said that according to DOC data 40% of this population are unsentenced pre-trial offenders. She also pointed out that these offenders are spending more time unsentenced than even five years ago. If offenders are unsentenced, they can only be held at certain DOC facilities and are unable to qualify for treatment programs. As a result, they spend less time sentenced during which they may not be able complete treatment. She stated that her major recommendation is to have PEW's Justice Reinvestment Initiative provide technical assistance to the state.

Jessee added that the jail is not the answer in reducing recidivism, but rather providing treatment, housing, and employment. He pointed out that is especially important to keep this in mind with regards to the current fiscal situation; Gutierrez agreed.

Staff Reports (Mary Geddes, Project Attorney):

- Ethics Report
Geddes reported that the Commission just filed its quarterly report and that there were no reported ethical violations.
- Videoconferencing and Meeting Arrangements
Geddes informed the group that video conferencing will be available for the next workgroup meetings. However, commissioners will not be able to participate from their work station but will have to go to an external location. She stated that she is still looking into using facilities at the AKMHTA but will have to talk to Jessee to determine how much it would cost the Trust to host the meetings.
- Webpage
The webpage still consists of two pages, the notification and the resource page. The notification pages displays meeting schedules and will in the future also display meeting notes/summaries. The resource page displays resource materials categorized by topic; new items are listed on the top of the page on a monthly basis. Suggestions with regards to materials on and layout of the webpage are welcome.
- Information about Federal Funding Opportunities: RFPs
Geddes informed the group about the following external funding opportunities:
 - [Justice Reinvestment Initiative: Maximizing State Reforms FY2015 Competitive Grant Announcement](#)
 - [Second Chance Act Statewide Adult Recidivism Reduction Strategic Planning Program FY2015 Competitive Grant Announcement](#)
 - [Swift Certain and Fair Sanctions Program FY2015 Competitive Grant Announcement](#)
 - [Smart Policing Initiative FY2015 Competitive Grant Announcement](#)
- Contacts with PEW: Justice Reinvestment Initiative (Susanne DiPietro, ED AIC)
DiPietro informed the group about the PEW Justice Reinvestment Initiative, an initiative that provides free technical assistance to states to advance data-driven, fiscally sound policies and practices in the criminal and juvenile justice systems that protect public safety, hold offenders accountable, and control corrections costs. DiPietro stated that although the state missed its window to work with PEW in the fall of 2014, they may have another opening in the late spring/early summer of 2015. She said that PEW requires a letter of support of the three branches of government in order for them to provide assistance. AG Richards asked why it did not work out and was interested to learn about potential downsides of the project. DiPietro responded that it was not quite clear as to why the project did not go through but that it was mostly a timing issue. The group agreed and Jessee added that some people were also afraid that PEW was going to interfere with the state's independent policy making. However, he and DiPietro informed Richards that they simply make recommendations and do not require the legislatures to pass certain policies. Richards said to send a proposal to him and he will forward it to the Governor.
- Budget Concerns (Susanne DiPietro, ED AIC)
DiPietro informed commissioners about budgetary constraints and said that it would save hundreds of dollars if commissioners could make their flight reservations two weeks in advance. She also stated that if commissioners would prefer to travel on their agency's budget that would also be an option.

Work Group Reports:²**Barriers to Reentry (Stanfill):**

- One of the primary issues discussed was whether Alaska should consider to fully or partially opt out of the SNAP program
- Other issues included Title 28 offenses and public access to court records

Pre- and Post-trial Laws and Processes (Steiner):

- Issues discussed included bail and pre-trial release, DOC data, the role of third party custodians, pre-trial risk assessment, and the ongoing bail survey (expected to be completed by the end of February)

Rural Criminal Justice (Razo):

- Issues discussed included transportation costs, availability of data (MAJIC), bail issues, and the role of the AFN. While there is overlap with other groups but this group's primary focus is how these issues play out in rural AK.

Classification of Crimes and Applicable Sentences (Bryner):

- Issues discussed included reclassification of drug offenses (especially MICS4).

Sentencing Alternatives (Rhoades):

- Issues discussed included different diversion programs at the municipal (ANC, JUN) as well as the state level and the role of the therapeutic courts

Work Group Issue:

The Workgroup on Barriers to Re-entry has identified an issue for consideration by the full Commission.

"Our Workgroup has been discussing an Alaska statutory 'opt-out' of the federal lifetime ban on Food Stamps for otherwise eligible persons who have ever been convicted of drug felonies. Alaska is one of only 10 states that still maintain an absolute ban. Food Stamps are a federal benefit administered by each State. The benefit itself is 100%-funded by the feds; administrative costs are split 50-50 with each State. More states have chosen a simple opt-out from the ban, but a nearly equal number have chosen a modified ban which may condition eligibility on completion of treatment or probation, or a court or agency certification of some kind. In her paper and FAQ on the topic [sent to the Commission last week], Mary Geddes has explained why a simple opt-out may make more sense administratively." (J.Jessee)

The meeting did not end on time, and Commissioner Taylor had to leave at 12 o'clock. However, the commissioners present wanted to take a vote on the food stamp question. All commissioners present indicated that they were able to make an informed vote on the issue. Steiner made a motion that the Commission should recommend to the legislature that the state fully opt out of the SNAP program. However, if any of the absent commissioners (Taylor, Coghill, Keller) informed staff that they wanted more discussion of the issue, staff would inform the workgroup, the workgroup would write up a one page brief, and the Commission would take a second vote in February. Stanfill

² For more detailed information about the work groups please refer to the Working Group Summaries (Dec 18th to Jan 12th, sent out by Mary on 01/15/15)

seconded the motion. The motion was unanimously supported by all Commissioners present: Bryner, Sell, Svobodny, Stephens, Vrabec, Stanfill, Steiner, Jessee, Rhoades, Razo.

Future Directions:

- With regards to the fact that it has been difficult to finish the agenda in the past and the Commission was not able to finish the agenda for this meeting, commissioners asked that the meeting time for February would be extended, and that any presentation be scheduled for later in the meeting.
- Hon. Bryner asked that the workgroups zero in on specific issues, prioritize them and establish a timeframe in which to address them. Further, he asked if a workgroup is ready to bring an issue to the whole group, they should write a brief so that commissioners who are not part of the workgroup can make an informed vote. A format for the briefs will be agreed upon in the near future.

Alaska Criminal Justice Commission
Staff Notes from December 18, 2014 Meeting, from 10:00 - 1:00 PM
 At the Snowden Conference Center

Commissioners attending: Jeff Jessee (chairing), Rick Svobodny, Fred Dyson, Kris Sell, Terri Vrabec, Wes Keller, Greg Razo, Trevor Stephens, Stephanie Rhoades, Brenda Stanfill, Quinlan Steiner, Alexander Bryner (phone)

Absent: Ron Taylor

Staff Present: Mary Geddes, Susie Dosik, Teri Carns, Giulia Kaufman

Participants: Nancy Meade, Greg Olson, Andre Rosay, Brad Myrstol, Steve Williams, Janet McCabe, Tony Piper, Jim Morgan, Amory LeLake (phone), Karen Gillis (Governor's Office of Boards and Commissions)

Future Meetings¹: **Friday, January 23, 2015, 9:00-12:00 plenary (JUN)**
 Tuesday, February 24, 2015, 12:00 – 3:00 PM (JUN)
 Tuesday, March 31, 2015, 12:00 – 3:00 PM (Split)
 Tuesday, April 28, 2015, 10:00 – 1:00 PM (Split)

Materials Provided:

- [Pew Fact Sheet - States Project 3% Increase in prisoners by 2018 \(November, 2014\)](#)

The meeting opened at 10:02 AM. Jeff Jessee chaired the meeting because Justice Bryner was only able to attend the meeting via phone, and Vice-Chair Geraghty was no longer a member of the Commission.

Staff Report (Mary Geddes):

- Justice Bryner has contacted Governor Walker and DHSS Commissioner Davidson. Governor Walker's office has responded and hopefully a meeting early in the New Year will be arranged.
- Mary Geddes has also contacted Director Wall from DHSS, but has not heard back.
 - o Jessee encouraged the direct participation of the new Administration's (agency) Commissioners in the ACJC and stated he would reach out to the Attorney General and Commissioner Davidson and invite them to its future meetings.
- ACJC changes:
 - o DOC Acting Commissioner Ron Taylor replaces Joe Schmidt.
 - o Deputy AG Rick Svobodny is the AG's designee from the Department of Law
- Senator Coghill will replace Sen. Dyson in January. Justice Bryner, through Jeff Jessee, thanked Dyson for his service on the Commission.

¹ Exact Locations TBD.

- Five Commissioners signed up for the online Westlaw Next training offered by the state Law Librarian. ..
- The ACJC website has been updated. There is a main page and a resource page, which is being continually expanded. Each month the “new” additions to the resource page will migrate to the remainder of the page.
 - o Please note:
 - The main page will list Commissioners by name.
 - The Commission agreed that Staff Notes on ACJC and Workgroup meetings (which are not minutes and not an official record) should nevertheless be posted on the website as long as Commissioners are provided with sufficient opportunity to review the notes beforehand. It was agreed that the Notes could be posted 5 days after they are distributed to Commissioners so there is some opportunity for corrections/clarifications etc.
- Several Commissioners have requested video conferencing of future Workgroup and plenary sessions. Rooms with video conferencing capability are now available at the Atwood Building and the Trust facilities. Mary G will start making arrangements for future use of those facilities. .
- Alaska Judicial Council Executive Director Susanne DiPietro has decided that ACJC plenary and Workgroup note taking and other support tasks can be shared among AJC staff. Susanne, Susie Dosik, Giulia Kaufman and Teri Carns will be sharing note-taking responsibilities.

Report from the [Pew Justice Reinvestment Summit](#)² in San Diego (Steve Williams):

Steve Williams reported that fellow Alaskans Susanne DiPietro (AJC), Nancy Meade (ACS), Ron Taylor (DOC), Sen. Ellis, Jordan Schilling, Amory LeLake, and Carmen Gutierrez attended the conference with him. Their reviews were very positive.

The conference was very broad and highlighted different topics, such as drivers’ licenses and management, criminal justice processes, criminality and psychological assessments, public safety and personal trajectory, recidivism, and data collection and strategies. There were several keynote speakers and the conference was diverse in terms of participants’ political backgrounds.

Up to this point, 35 states have participated in the Justice Reinvestment Initiative; states included HI, SC, GA, and OR. Williams stated that some states which have participated in the initiative had been in a similar budget situation as Alaska. He stated that this provides hope that Alaska could reach out and participate in the initiative despite its budget constraints. Further, he and Sen. Dyson pointed out that although it would require an initial cost, participating in the Justice Reinvestment Initiative would save money in the long term. Sen. Dyson urged that this point needs to be emphasized when presenting the initiative to the legislature.

Greg Razo was wondering what exactly Justice Reinvestment entails. Williams stated that Justice Reinvestment can take many different forms. For example, it can be seen from a dollar perspective (i.e., how and when do we get the best bang for our buck?) but it can also focus on staffing resources and strategies or the availability of mental and behavioral health services. Further, Williams stated that Justice Reinvestment is not limited to resources within the criminal justice system but can also encompass resources within other departments, such as DHSS.

With regards to the situation in Alaska, Williams stated that despite a decreasing crime rate, Alaska’s prison population is growing. In fact, Alaska is among the three states with the fastest growing prison population (see [Fact Sheet](#)). A discussion about why the prison population is growing so fast despite the

² [Click for Program Overview](#)

increasing crime rate established that the high number of unsentenced offenders and offenders incarcerated for PTRPs and probation violations are likely driving factors.

Jeff Jessee stated that Alaska is still on the same track as predicted in the [ISER Report \(2009\)](#) and if Alaska continues this trajectory a new prison would have to be built by 2017. At the same time, Jesse pointed out that the commission has to make recommendations to the legislature that do not jeopardize public safety. Sen. Dyson said if the state was to reclassify offenses, it would be important to give misdemeanants the same access to treatment and services as felons. He stressed the importance of breaking administrative barriers and promote interagency efforts and coordination.

Judge Rhoades pointed out that a paradigm shift within the justice systems needs to occur. Rather than letting the offense dictate the level of need, the system needs to assess offenders' risk and needs and treat them accordingly. She stressed the importance of evidence based sentencing using the Level of Service Inventory (LSIR) which assesses criminogenic risk and need and allocate resources accordingly.

Update on Law Related Initiatives:

Title 12.47:

Title 12.47 governs legal competency issues and involuntary commitment. Steve Williams informed the group that the Trust has contracted with the University of Nevada to examine the current statutory framework, compare it to other states, identify gaps and make policy recommendations. The final report is expected in March, 2015 and recommendations will be made by May, 2015. Williams agreed to distribute the group's scope of work and the latest draft report if agreeable to the contractor. (12/12/14).

Judge Rhoades pointed out that this work is crucial for the Pre-and Post-trial Laws and Processes work group. Sen. Dyson stated that the review of Title 12.47 is of uttermost importance considering the high FASD rate in the state.

Title 4:

Title 4 governs alcohol licensing and distribution. A report, 2 years in the making, has been approved by the Alcohol Beverage Control Board (ABC). Recommendations with regards to licensing, underage drinking, and alcohol in rural communities will be made to the legislature and statute changes will be suggested.

Recidivism Reduction Group:

Jesse pointed out that the legislature directed agencies to work together to determine how to reduce recidivism among reentering citizens. These agencies include DHSS, DOLWD, the Alaska Housing and Finance Corporation, the Trust, etc. Carmen Gutierrez will prepare the final report which will be presented to the ACJC, the CJWG, the legislature, and other stakeholders.

Future Meetings:

As requested by Commissioner Stephens, the Commission scheduled future monthly meetings through April. The Commissioners determined that the January and February meetings should be held in Juneau. In addition to the ACJC's plenary session on January 23, the January date should allow for a joint meeting with the two Judiciary Committees, so members should expect a day-long session. Staff will provide updates on that prospect as soon as possible. The March meeting may be either in Juneau or Anchorage.

Jessee suggested meeting locations could be determined by the city where the chair (Justice Bryner) is located.³

Work Group Reports:⁴

Barriers to Reentry:

- Brenda Stanfill reported that the group is still very much in the education process.
- The group wants to host a Title 28 symposium, but is cognizant that the planning of such a major event might require additional staff resources.
- A subcommittee was formed which focuses on employment and licensing.
- Judge Rhoades added that the Re-entry Task force has already done a lot of work on this topic and Lisa Rieger might be a good resource or additional participant.

Pre- and Post-trial Laws and Processes:

- Mary Geddes reported that the group heard from Jay Hochberg about an informal survey conducted by the PDA around the state with regards to differences in bail setting and pretrial release; the group is currently discussing the results of this survey
- Judge Rhoades noted that an expansion of this survey throughout the DOL would be very helpful as well.

Classification of Crimes and Applicable Sentences:

- Mary Geddes reported the group has reviewed the work of other states with regards to reclassifying sentences, particularly drug offenses and non-violent crimes.
- The group has received reports concerning the reclassification of MICS 4 offenses and will review those during the next meeting.

Sentencing Alternatives:

- Brenda Stanfill reported that the group has met once and is still very much in the education process; the group met after the full commission meeting.

Rural Criminal Justice:

- Greg Razo reported that the group educated themselves and established a baseline knowledge on the status quo of rural justice across the state.
- Next, the group wants to draft a piece of legislation pertaining to rural justice.
- Judge Rhoades pointed out that it would be crucial to have a rural justice representative for every group.

Data:

- Andre Rosay reported that the data group met once and discussed [Pew Results First Initiative](#) which aims to help states implement an innovative cost-benefit analysis that helps them invest in evidence based programs and policies.

³ Further information about meeting locations will be provided when available.

⁴ For more detailed information about the work groups please refer to the Working Group Summaries (Nov 18th to Dec 18th, sent out by Mary on 12/15/14)

Other Business:

Sen. Dyson pointed out that at this point the Commission has nothing to present to the legislature for action during this legislative session, and urged efforts and action by February. He pointed out the Gov. Walker is very supportive of criminal justice issues. He encouraged Justice Bryner to meet with the Attorney General. Justice Bryner reported that he wrote a letter to the Governor and proposed to set up a meeting to talk to him about the commission's work. Sen. Dyson stated that he would write to the Governor and the Attorney General and inform them about the commission's work as well.

During the public participation portion of the meeting, Janet McCabe mentioned that Judge Jeffery had provided insightful information to the Rural Criminal Justice Workgroup concerning the statutory sentences required for sexual offenders, and that such sentences were too long. Brenda Stanfill said that many persons, even some in the domestic violence network, had wondered if they were too long for some types of offenses. Although there was skepticism expressed as to whether the Legislature would consider such information, several Commissioners urged that appropriate workgroups look at these questions.

Presentations:

Tony Piper, Program Manager of the ASAP Program (DHSS):

Tony Piper, the Program Manager of the ASAP Program, gave a presentation on the new 24/7 program established under SB64. The presentation started out with a short [KTUU clip](#) about the program. Program participants take a breathalyzer test twice a day, usually in the morning and at night; and are also subject to random drug tests. The program promotes swift and immediate reinforcement; participants who fail a test face prompt consequences.

The program is currently only available in Anchorage and has two service sites; an in-house option is also available. Thus far 135 people have participated in the program. Breathalyzer tests cost \$5 a day and drug tests cost between \$10 and \$60 per test. So far, the results are very promising: out of 8000 alcohol tests only 6 were positive and out of 867 drug tests only 12 were positive. Currently the program is state funded and serves mostly convicted felons who are substance abusers. The goal is to expand the program throughout the state.

The discussion continued about the availability of specialty courts in Alaska. Currently Alaska has therapeutic courts (substance abuse & mental health), veteran courts, CINA courts, and municipal courts. Drug and mental health courts are designed to divert people who have substance abuse and mental health issues. They provide Moral Recognition Therapy (MRT), a type of cognitive behavior therapy which addresses criminal thinking patterns. They focus on the individual defendant; each defendant has a personal team assigned to them. It typically takes 18 months to complete the program. In order for a defendant to enter the program, the prosecution's agreement is required.

Currently, therapeutic courts have 90 beds in Anchorage, 30 in Palmer and Fairbanks, and 15 in Juneau and Kenai. However, the waiting period in the current state drug courts is 4 to 6 months because of the lack of resources, capacity, and staff. Therapeutic courts promote collaboration and partnership among all parties involved and aim to divert people to treatment. Judge Rhoades pointed out that the drug court model is evidence based and increases public safety..

Several Commissioners expressed interest in getting an update on the implementation of PACE, and any information concerning that program's effectiveness.

The Commission meeting was expected to adjourn at 1:02 PM. However, many Commissioners remained in order to hear Jim Morgan's presentation to the Sentencing Alternatives Workgroup. That Workgroup met immediately after the Commission's plenary session. The following is taken from Staff Notes documenting the meeting of the Sentencing Alternatives Workgroup.

Jim Morgan from [Jett Morgan Treatment Services, LLC](#):

Jett Morgan Services, LLC provides community based, client centered intensive outpatient treatment to adults struggling with substance abuse or substance dependence. The treatment approach is based on the [neuroscience of change \(McGonigal, 2012\)](#), an approach based on the principles of neuroscience, cognitive behavioral therapy, and System's Theory which uses a motivational counselling style. Patients are provided with coping strategies to divert and ultimately change negative thinking patterns and develop positive thinking patterns instead. This process takes about 18 months, but can vary based on whether the client is abusing substances or physically dependent on substances.

Morgan stated that 94% of the recovery process occurs within the community, which is why outpatient programs for different levels of offenders are of such great importance. He said that clients' safety and success within the community are crucial for treatment success. Morgan informed the group that his treatment program is very successful and he estimates that the re-admission rate is less than 1%. Intensive outpatient treatment consists of nine one hour sessions per week at the cost of \$125 per hour. This means that if a patient participated in treatment for 18 months, the treatment would cost out of pocket about \$81,000. Morgan stated that his company offers treatment to a client's significant other for free, if they come to the meetings with them; the company has also provided pro bono treatment. In addition, Jett Morgan Treatment Services, LLC also provides aftercare programs to promote more prosocial behaviors.

Morgan informed the group that about 95% of his patients are in court ordered treatment. Currently, about 50% of his patients are Alaska Native or American Indian and out of those patients about 98% are court ordered clients. Overall, Morgan has a very favorable attitude towards court ordered treatment and judicial supervision. He said that research has not shown a statistically significant difference in treatment outcomes based on whether the treatment was court ordered or voluntary. During the group discussion it was established that the court can recommend treatment but not prescribe treatment.

Currently, Jett Morgan Treatment Services, LLC has a contract with the Southcentral Foundation through which they have a lot of referrals. At the moment, the Southcentral Foundation is operating under the Access to Recovery Grant which funds a voucher system that provides vouchers for public transportation to participants which enables them to attend their treatment sessions. However, the grant is about to run out. Judge Rhoades stressed the importance of the voucher system. In addition, Judge Rhoades pointed out that this type of outpatient treatment addresses important criminogenic risk factors, such as substance abuse, antisocial personality patterns, antisocial cognition, and antisocial association. The group is interested to see how Medicaid expansion will affect in- and outpatient programs.

Notes by Giulia Kaufman

Alaska Criminal Justice Commission
Staff Notes of November 18, 2014 Meeting¹
at the Snowden Conference Center

Commissioners attending:

Alex Bryner, Brenda Stanfill, Wes Keller (tel.), Mike Geraghty, Fred Dyson, Quinlan Steiner, Greg Razo (tel.), Kris Sell (tel.), Trevor Stephens, Stephanie Rhoades, Joe Schmidt, Jeff Jessee.

Staff present: Teri Carns, Mary Geddes, Susie Dosik, Giulia Kaufman.

Participating: Janet McCabe, Darrel Gardner, Brad Mrystol, Chris Provost, Chuck Kopp, Ernest Prax.

Next meeting: Thursday, December 18, 10:00 AM to 1:00 AM
Snowden Conference Center

PRESENTATION

David Mannheimer, Chief Judge of the Alaska Court of Appeals, a member of the court since 1990, was invited to make remarks to the ACJC concerning the presumptive sentence scheme and the criminal code. Chief Judge Mannheimer stated:

- The presumptive sentence scheme and the criminal code were both enacted in 1978 and took effect in 1980. The criminal code had been unchanged since territorial days. The change followed a huge uptick in the numbers of prosecution and court cases, all due to the oil boom.
- Because of the increasing volume of cases, the legislature had to decide whether to increase the size of the Alaska Supreme Court or create an intermediate court. It decided to create an intermediate court that would only handle criminal cases, which is unusual; other states' intermediate courts handle criminal and civil appeals cases.
- Before the passage of the new criminal code, felonies were defined merely by having a sentence minimum of one year. Most felonies carried 'indeterminate sentencing' penalties, allowing the court to impose any outcome up to a maximum.
- Changes to the Alaska sentencing scheme coincided with a national 'transparency in sentencing' movement against obscure decision-making. Legislators sought to require more objective factors as a basis for sentencing decisions. Also influencing this passage to the new sentencing scheme was the Alaska Judicial Council's study showing that the two most significant factors influencing a sentencing outcome were the judge's identity and the defendant's race.
- The new scheme established "presumptive" sentences, specifying years. This scheme took into account the background of the defendant and factors concerning the crime. Twenty states have similar structures, but there are major differences. For example, Oregon, the state to which Alaska is most compared, has sentencing guidelines presented in a matrix which factors in the defendant's prior criminal history and the seriousness of the offense.

¹ Staff Notes are neither minutes nor an official record of Commission proceedings except with respect to any votes by its members. Statements attributed by staff to any speaker are not necessarily accurate.

- In Alaska, a “presumptive” sentence was intended for a typical offender who has committed a typical offense. If the offense is aggravated, the judge has authority to increase the sentence. If there are mitigators, those factors give the judge authority to decrease the sentence from the presumptive term.
- With a mitigator, if the presumptive term was 4 years or less, the sentence could be as low as 0; if the presumptive term was more than 4 years, the term could be reduced by 50%. With an aggravator, the sentence could go up to the maximum. If the offense was neither aggravated nor mitigated the judge could impose only the “determinate” presumptive sentence, e.g. 4 years.
- In theory, the judges’ sentencing discretion was constrained, but in actuality, it was not because almost all cases have an aggravator, or mitigator, or both. With even one mitigator or aggravator, the sentencing changed from presumptive to indeterminate.
- But in 2005, Alaska’s sentencing system changed again because of a 2004 United States Supreme Court decision. Blakely v. Washington, 542 U.S. 296, which impacted many states’ and federal sentencing practices. [Washington state law had allowed a judge to impose a sentence above the standard range if he finds “substantial and compelling reasons” for doing so that were not computed into the standard range sentence. The U.S. Supreme Court held that an exceptional sentence increase based on a judge’s determination that Blakely had acted with “deliberate cruelty” violated Blakely’s Sixth Amendment right to trial by jury. Bottom line: facts increasing the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.]
- One type of response was to permit greater judicial discretion; the federal government, for example, made its sentencing guidelines, which included aggravating factors, advisory rather than mandatory in terms of the sentence to be imposed.
- The Alaska Legislature took a different tack. First, consistent with Blakely, it revised the sentencing statutes to acknowledge that if an aggravating factor was alleged, which would increase a presumptive sentence, the fact had to be proved to a jury beyond a reasonable doubt. Second, the legislature changed the presumptive term (e.g. 7 years) to a presumptive range of years (e.g., 7-11 years). Notably, the new range started from the prior presumptive term and went upwards. The stated intent of the legislature, however, was not to increase sentences. This stated intent, however, is largely unenforceable.
- Given these changes, and the enactment of dozens of statutory aggravating factors to increase a sentence, if one is proved, the presumptive ‘determinate’ scheme is largely an indeterminate scheme in practice.
- In the 1970’s, legislators focused only on “just desserts” and isolation purposes of criminal sanctions because they believed that other factors such as offender’s capacity for rehabilitation and deterrence effect were unknowable. Presumptive sentencing was therefore, to some extent, inconsistent with the *Chaney* criteria (which predated presumptive sentencing) of deterrence, community condemnation, and rehabilitation.²

² Staff note: The Alaska Supreme Court outlined the goals of criminal sanctions in State v. Chaney, 477 P.2d 441 (Alaska 1970). As the court interpreted the sentencing statute, AS 12.55.120, the goals of sanctions were rehabilitation, isolation, specific and general deterrence, and community condemnation. *Id.* at 444. These goals were viewed as an implementation of Alaska’s constitutional mandate that “penal administration shall be based on the principle of reformation and upon the need for protecting the public.” *Id.* At 443 (quoting Alaska Const., art. I, § 12).

- The original presumptive sentencing scheme was not applicable to the most serious “unclassified” crimes; rather those crimes carried maximum penalties of 99 years. However, more serious felonies have since been designated as unclassified.
- The most significant changes in sentencing has been in sexual offenses, both in terms of a potential maximum offense of 99 years, and dramatically lengthened presumptive ranges.

Trends:

- There are more trials and more appeals.
 - There are 5000 felonies charged per year and 18,000 misdemeanors that are filed in a year. But there has been a 30% increase in the number of cases tried over the last 3 years.
 - There has also been an increase in the number of cases appealed. 2 years ago, between 70-80% of cases in which a conviction was obtained at trial were appealed; now 100% of those cases involve appeals. Previously, 25% of misdemeanor trial verdicts were appealed, now 40% are appealed.
- The conviction rate has gotten lower.
 - Since 2009, the trial conviction rate has been 60%. In FY12, 137 felony trials ended in guilty verdicts; 123 misdemeanor trials ended in guilty verdicts. In FY14, 151 felony trials ended in guilty verdicts; 151 misdemeanor trials ended in a guilty verdict.
 - Between 2009 and 2013, the trial conviction rate for a felony conviction dropped to 60% from 77%. 15-20% of trials end in acquittals, the rest are plea bargains after the trials began or dismissals after trial begins.
- There are fewer sentence appeals and more merit appeals.
 - A large percentage of criminal appeals are merit, not sentence appeals.
 - Merit appeals take more time to prepare and decide. At present it takes two years for the parties to file their briefs and 8-9 months for the court to decide.
 - In 1990, 20% were sentence appeals; now, it's fewer than 10%.
 - The right to appeal a sentence has been restricted: a defendant can't complain about procedure nor that the defendant was denied an opportunity to present claims; one can only complain that the sentence was excessive.
 - A defendant may only appeal an unsuspended sentence of imprisonment that exceeds two years for a felony offense or 120 days for a misdemeanor offense, unless there was a plea agreement for a specific sentence and a longer sentence was imposed.

QUESTIONS FROM COMMISSION MEMBERS AND PARTICIPANTS

Q: *Why the change in the numbers of trials?*

A: It may be the relationship between the prosecutors and the defense attorneys.

Q: *Isn't plea bargaining sometimes a perversion of justice? Aren't we seeing a stacking of charges to force a plea? Don't we see an inordinate number of convictions from Western Alaska because there is a cultural norm there that if you screw up, you fess up? How does this impact sentences?*

A: The way the system was re-structured in 1980, there were many more charges that might apply to the same criminal conduct. Could be theoretically used to pressure a defendant into pleading. But more pressure probably results from bail. An old AJC study said there is a huge pressure to plead if you can't get bail or release on conditions. We have very few bail appeals. Certainly, you don't want to be the judge that sets a low bail and then a problem occurs. So it's difficult to get a low bail decision, and that increases pressure on a defendant to plead.

With respect to cases involving Western Alaska people, there is an inherent pressure in our system to talk, to explain. This creates a disadvantage for those who are culturally inclined to do that because we have an adversarial system.

Q: *Can you discuss the delays in the appeal process?*

A: Notices of appeal and requests for transcripts must be filed 30 days after sentencing. The transcripts are done 40 days later. After that, the parties are required to file various briefs. There has been a "creeping expansion" of the time to file a brief. We will be allowing up to 500 days is allowed for the opening brief, the appellee is given a maximum of 230 days to respond, and 60 days are permitted for the filing of a reply brief. This means that it takes 2 years to brief a case at present. The court is implementing new rules for briefing, gradually reducing the amount of permissible time to 1.5 years. Once a merit case is fully briefed, the process of deciding typically takes 8-9 months for law clerk and judge review and assignment, the scheduling and hearing of oral argument, and the circulating of draft opinions among the appellate panel.

Q: *The lengthening of sex offense terms has a big impact on the percentages of Alaska Natives in DOC institutions. While they are 37% of the DOC population, they are 40% of sex offender population. With longer sentences, their percentage in the population grows. Ten years ago, all DOC programs were eliminated; but now they have been brought back. Can sentences be shortened if an offender has successfully completed treatment?*

A: The sentencing judge cannot modify a sentence after 180 days, so the answer is no. There is no way to re-sentence.

Q: *Could you please explain about the law concerning three-judge panels.*

A: Three judge panels are convened only after the sentencing judge determines that the case is exceptional and the presumptive sentence should not apply. It's not easy to obtain a non-presumptive sentence: first you have to persuade the sentencing judge and then you still have to persuade three more judges.

Q: *I am concerned that a lot of court-ordered restitution never gets to the victim.*

A: My impression is that restitution doesn't get paid because people don't have the money to pay it. 90% of defendants are represented by public counsel. Two thirds of them are represented by the PD and one third by OPA. 5% of defendants represent themselves and 5% have private counsel.

Q: *How much does it cost to do an appeal?*

Quinlan Steiner: a typical case takes 3 weeks to work up, and costs the PD approximately \$7500. Defendants are assessed \$2000 in costs, but it is unknown how much of those costs are recovered

Q: Who decides if there is to be an appeal?

Mannheimer: It is a client's decision.

Steiner: If the client is being convicted of a felony, there is little disincentive to filing an appeal.

Q: How many appeals are "post-conviction relief" petitions [filed in cases where a defendant has already been convicted]?

A: In FY 2012, there were 111 direct appeals and 27 post-conviction relief cases; in FY 2013, there were 168 direct appeals and 41 PCRs. This is an interesting trend because the basis for appealing a PSR decision is very limited. The only grounds on which you can seek relief are ineffective assistance of counsel and the discovery of new evidence. Because most cases are handled by the PD, any PCR complaining about attorney representation has to be assigned to OPA. It's hard to find private attorneys that can be contracted by OPA. Most attorneys don't want them. One OPA contractor had 85 PCR cases. They are stacking up. Both the PDs and OPA have qualified experienced attorneys. Lots of private attorneys don't have the experience.

STAFF REPORT (M. Geddes)

- Many Alaskans are attending the Pew Justice Reinvestment Summit in San Diego: Susanne DiPietro, Ron Taylor, Steve Williams, Carmen Gutierrez, Nancy Meade, and legislative staffers. Alaska has missed this year's window for participation in the JR Initiative.
- The new Walker Administration has created transition teams which will be making recommendations. Three Commissioners are members: Greg Razo, Jeff Jessee and Fred Dyson.
- Some legislative leadership positions have changed with the election. Senate Judiciary is now chaired by Sen. McGuire. House Judiciary is chaired by Rep. LeDoux and Rep. Keller is now co-chair.
- Regarding the ACJC webpage: we intend to keep adding articles of interest. It is still a work in progress. In the future, we will expand the webpage to include meeting schedules, agendas and correspondence.

OTHER AGENDA ITEMS

- Sen. Dyson asked to postpone a discussion of victim restitution to a future meeting.
- Commissioners should direct requests for information to AJC staff; Mary is the usual contact person.
- Workgroup Reports
 - Barriers to Re-Entry- Jeff Jessee: Initial focus is on Title 28 (because loss of a driver's license is significant barrier), plus we have our SB 64 mandate to look at these issues. We will have a plan of action for the December 18 meeting. We need to come up with standards for reviewing legislative proposals. Maybe we will have a symposium of best practices during legislative session. We will also be looking at the issues which resulted in the SB108 bill. Our look at barrier crimes will begin

with misdemeanors, particularly “DV” assaults. Brenda Stanfill is chair of that subcommittee effort.

- Rural Criminal Justice- Greg Razo – we have planned an all-day meeting on November 24 in order to have a presentation from Alaska Legal Services, AFN, AVCP, and Judge Jeffrey on tribal courts. [This report elicited the comment that groups have overlapping interests. A recommendation was made to tape presentations and post on the website in the future. Also, it was suggested that staff send out reports from all groups to ACJC.]
 - Pre and Post Trial Laws and Practices – Stephanie Rhoades – We are interested in delays in court processes, data collection, risk and needs assessments, and bail statutes. Bryan Brandenburg from DOC is going to present on risk and needs assessments of offenders by DOC pursuant to SB 64.
 - Classification of Crimes and Applicable Sentences – Mike Geraghty – the group is looking at drug sentences and reclassification efforts in other states.
 - Data Group – Alex Bryner, Quinlan Steiner and Terry Vrabec have attended and heard presentation on the Results First model. UAA is considering taking this on. We could have some presentation on this on December 18. Justice Bryner noted this is a long term project.
 - Sentencing Alternatives will be meeting for the first time today.
- Question for the Commission: Should there be other workgroups?
 - Alex Bryner asked if there should be a group focusing on outreach strategies to ensure rural input. He would like to further discuss.
 - Rhoades: I think that outreach should be discussed by the entire Commission. Similarly, discussing of programming for treatment probably relevant to all workgroups.
 - Question for the Commission: Should there be DHSS representation on the Commission?
 - Stephanie Rhoades asked if the Commission could be enlarged so as to formally include Department of Health and Social Services.
 - Can we invite DHSS to attend? (Stephens)
 - We should consider the fact that the legislators did not seek their input. (Bryner)
 - Membership went through many permutations during legislative process. (Jessee)
 - Consensus to participate encourage participation, if not membership.
 - In December we can consider whether to ask for legislative action to add another Commissioner position.

PUBLIC PARTICIPATION

Chris Provost asked if there was interest in the juvenile waiver issue.

- Quinlan Steiner stated that the Classification of Crimes group has agreed to discuss the topic in the future.

**Alaska Criminal Justice Commission
Meeting Summary**

**October 13, 2014, 10:00 am – 1:00 PM
Snowden Conference Center
Anchorage, Alaska**

Commissioners Present: Retired Supreme Court Justice Alex Bryner; Senator Fred Dyson; Attorney General Michael Geraghty; Jeff Jessee, CEO, Mental Health Trust; Representative Wes Keller; District Court Judge Stephanie Rhoades; DOC Commissioner Joe Schmidt; Lt. Kris Sell, Juneau Police Department; Brenda Stanfill, Interior Alaska Center for Non-Violent Living; Alaska Public Defender Quinlan Steiner, Superior Court Judge Trevor Stephens, Greg Razo, Board of Directors, Alaska Native Justice Center.

Commissioners Absent: DPS Deputy Commissioner Terry Vrabec.

Guests Present: Dunnington Babb, Deputy Public Defender; Nancy Meade, General Counsel, Alaska Court System; Janet McCabe, Board of Directors, Partners for Progress; Chuck Kopp, Alaska Legislature; Ernest Prax, Alaska Legislature (teleconference); Andre Rosay and Brad Myrstol, UAA Justice Center and Statistical Analysis Center; Chris Provost.

Staff Present: Alaska Judicial Council staff: ED Susanne DiPietro, Attorney Susie Dosik, Senior Analyst Teri Carns. ACJC staff: Mary Geddes, Project Attorney; Giulia Kauffman, Project Research Analyst.

Call to Order and Introductions. The meeting was called to order at 10:00 AM by the Chair, Justice Bryner. Bryner introduced Commissioner Razo, who had missed the first meeting, and invited him to share his background and affiliations with his fellow Commissioners.

Razo stated that he is Alaskan Yupik who grew up in Anchorage and went to Gonzaga and Willamette Law School. He then moved to Kodiak where he spent 22 years practicing criminal and civil law. He returned to Anchorage in 2005 and is now a Vice-President of CIRI, establishing its division of government contracting. He also serves as a Vice-Chair of the Native Justice Center, the President of the Board of the Alaska Legal Services Corporation, a Board member of the Alaska Federation of Natives, and a Lawyer Representative to the Ninth Circuit Judicial Conference. He believes that his AFN affiliation will be of greatest utility to the Commission as that organization allows him to connect with all aspects of the Alaska Native community.

Staff Reports:

Handouts. Mary Geddes stated that there were four additional handouts: Alex Bryner's summary of ACJC's statutory duties and responsibilities; a letter to the Commission from Chris Provost concerning his work on juvenile justice issues; a compilation of the written recommendations for an ACJC workplan received before October 13; and suggestions from Greg Razo.

JRI. At its first meeting, the ACJC had heard a presentation by Zoe Towns of the Pew Public Safety Performance Project on the free technical assistance available to Alaska through the Justice Reinvestment Initiative. JRI requires an invitation from the governor's office. At this juncture, there is

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no invitation; without a sign-off this week, JRI assistance may not be available during the term of the Commission.

Results First. Susan DiPietro reported that a different type of technical assistance is currently being explored by Alaska agencies. Results First provides a cost-analytic model to states, and customizes that model for the state's own use in evaluating the cost effectiveness of its programs. Washington State is where this model was first developed and its validity and utility has been tested elsewhere. It takes a year from start to finish to implement this model. Discussions about Alaska partnering with Results First are underway. Those discussions involve Dr. Rosay from the UA Justice Center, the Judicial Council and other state agencies.

The ACJC Webpage Resource List. Commission members have asked for easy access to existing data and relevant reports and program descriptions. Attached to the agenda is a PDF showing a newly created webpage on which we have made such information now accessible to you, without a password. Go to the Alaska Judicial Council website and click on "Resource List" below the heading "Criminal Justice Commission." Staff will add documents and topics.

Staff Outreach. Geddes reported on the recent contacts with individuals and groups involved in criminal justice issues. She has been invited to attend the mid-November Workshop on Prisoner Reentry planned by DOC in partnership with the Trust and Carmen Gutierrez.

Directory of Criminal Justice Groups. Staff intends to soon provide the Commission with a directory of groups and initiatives involved with criminal justice issues.

Access to Other ACJC Materials. The chair has wondered how Commission members might best organize, maintain and track documents provided to them by staff. He suggests perhaps all Commission agendas and items of correspondence be made available electronically in some sort of file system. Our office is exploring the use of Dropbox. Any other ideas?

Scheduling of ACJC Meetings for November-December-January. Staff used "Doodle" to poll Commission members; it was completed by 11 out of 13. Staff needed to count as a "yes" those responses which were "yes but I really don't want to."

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Meetings Planned. After some discussion, Anchorage meetings were planned for November and December and a Juneau meeting in January during the first week of the legislative session as follows

Tuesday, November 18, 10:00 AM to 1:00 PM	Anchorage, Snowden Conference Center
Thursday, December 18, 10:00 AM to 1:00 PM	Anchorage, Snowden Conference Center
Friday, January 23 ¹ , 9:00 to 12:00 PM. Please note that an additional afternoon session with Judiciary Committee(s) is also planned.	Juneau, Jury Assembly Room, 3rd floor of Dimond Courthouse, for morning meeting.

Bryner stated that a monthly schedule would not likely be maintained after Commission subgroups got underway with their work. Stephens asked if the ACJC could set a schedule for the next several months - or at least for February, March and April - because trial calendars were otherwise extremely hard to manage. It was agreed that the Commission would do so at its next meeting. Steiner and Stanfill also asked for future consideration of meeting locations outside of Anchorage and Juneau.

Representative Keller suggested that the ACJC could meet with the Judiciary Committee. [NB: Rep. Keller is Chair of the House Judiciary Committee] Commissioners indicated that they would want to meet together to plan immediately prior to any session with legislators.

Election of Vice-Chair. Bryner indicated that a Vice-Chair is needed for the purpose of conducting any meetings when Bryner is physically absent from the state. Senator Dyson nominated Judge Stephens but Stephens said he anticipated there would be times when he could not be available in person. Bryner recommended AG Geraghty, who accepted and will serve as Vice-Chair.

Time Frames for Workplan. Bryner noted that the Commission will need to consider the timing of its reports/recommendations to the Legislature with respect to the three available time frames if it is going to have any statutory changes enacted before its sunset on July 1, 2017.

- **before 2/15/15 if the Commission seeks action during this first session of the Legislature,**
- **ideally before 9/1/2015 if legislation is to be passed within the second and last session of the 29th Legislature, and**
- **before 12/1/2016 for any action during the first session of the 30th Legislature.**

DOC Presentation to the Commission. Bryner introduced DOC Commissioner Schmidt and Deputy Commissioner Taylor, stating that Schmidt had asked for an opportunity to talk to the Commission about the direction in which DOC was already headed.

Schmidt noted that in 2003, all institutional programs for inmates were eliminated except for federally funded RSAT (residential substance abuse treatment). Since that time, DOC has been rebuilding its

¹ The January date was later changed, by staff, by a day, in order to accommodate the proposed joint meeting with the House and/or Senate Judiciary Committees during the first week of the session.

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programs, to include evidence-based programs, based on goals of recidivism reduction and a positive cost-benefit ratio. (The sexual offender program did not show a positive cost benefit ratio, but was kept as a matter of policy. In 2010, DOC got a new data department so it could track offenders. Schmidt noted that DOC philosophy has got to be balanced because there are such different groups of offenders. Goose Creek Correctional embodies that in the institutional context. There is a 10% population that needs to be confined and secure, but the other 90 % is in more open settings; those inmates behave and can do things on their own, like get their own meals, which also saves money. We should limit secure confinement to those who need it. Developing reformatory programs is crucial but we need to match offenders to programs using -careful risk-needs assessments. The transition back to the communities is where the solution lies for most offenders.

Deputy Director Ron Taylor presented statistics on bookings and releases. Last year (?) 22,000 Alaskans entered DOC with 40,000 bookings. Last year DOC changed offender management plans so as to encompass planning for three phases: institution time/transition time/community time. Less than 25% of releasees are on parole or supervised probation. DOC is going to meet soon to review the whole re-entry process with 25-30 stakeholders. Even 3-4 years ago, DOC was shifting focus in Probation/Parole from law enforcement to successful reentry. But DOC does need to develop a violation matrix for dealing with people who violate so that people who don't need jail aren't in there. Bryner noted that there was no time remaining for follow-up questions. Schmidt and Taylor were thanked for their work. [The handout DOC provided is **Attachment A**.]

Substantive Discussion on Commission Priorities. A number of Commissioners had previously provided written suggestions: Stephens, Rhoades, Dyson, Steiner and Sell. Razo brought a list of ideas to the meeting. Bryner asked for any additional ideas. Ideas were generated in the meeting, and Mary Geddes wrote them down in short form. [All of the submissions, both written and oral, are in **Attachment B**.]

Following a break, members were asked to identify the broad category of issues they were willing to work on, so that workgroups and memberships could be identified. [That list of groups and members was generated after the meeting. It is **Attachment C**] It was agreed that workgroups should meet before the next meeting on November 18, and that staff would arrange the meetings as soon as possible.

The meeting adjourned at 1:05 p.m.

Notes taken by Teri Carns, compiled by Mary Geddes

**Alaska Criminal Justice Commission
Meeting Summary**

**Inaugural meeting
September 22, 2014, 1:30- 4:30 PM
510 L Street
Anchorage, Alaska**

Commissioners Present: Retired Supreme Court Justice Alex Bryner; Senator Fred Dyson; Attorney General Michael Geraghty; Jeff Jessee of the Mental Health Trust; Representative Wes Keller; District Court Judge Stephanie Rhoades; DOC Commissioner Joe Schmidt; Lt. Kris Sell, Juneau Police Department; Brenda Stanfill, Interior Alaska Center for Non-Violent Living; Alaska Public Defender Quinlan Steiner, Superior Court Judge Trevor Stephens, DPS Deputy Commissioner Terry Vrabec.

Commissioners Absent: Greg Razo, Board of Directors, Alaska Native Justice Center.

Guests: Senator John Coghill, Alaska Legislature; Representative Neal Foster, Alaska Legislature; Zoe Towns, Terry Schuster, Emily Leverett, Colby Ward and Terry Schuster of the Public Safety Performance Initiative of the Pew Charitable Trusts; Carmen Gutierrez, contractor for the Mental Health Trust; Nancy Meade, General Counsel, Alaska Court System; Janet McCabe, Board of Directors, Partners for Progress; Amory Lelake, Jordan Schilling, Ernest Prax, Chuck Kopp and Adam Berg, Alaska Legislature; Denise Morris, Alaska Native Justice Center (teleconference); Andre Rosay, Brad Myrstol and Stephanie Martin, UAA Justice Center and Statistical Analysis Center; Chris Provost.

Staff: Commission staff: Mary Geddes, Project Attorney; Giulia Kauffman, Project Research Analyst. Alaska Judicial Council staff: Susanne DiPietro, Susie Dosik, Teri Carns.

The meeting was called to order at 1:30 PM by Susanne DiPietro, Executive Director for the Alaska Judicial Council (AJC).

Commission Record. Ms. DiPietro noted that meeting summaries, not minutes, would be created, unless the Commission decided otherwise. No audio or video record is being created. The votes of individual members will be noted for the record.

Inaugural Remarks. Senator John Coghill, the leader sponsor of SB64, was invited to speak. He noted he would be joining the Commission in the future [in January], and would be closely following its work. He applauded the bipartisan effort that lead to SB64. Noting that while the legislature defers greatly to victims' rights and believes in community condemnation of criminality, legislators are ready, even impatient, to make some changes. Constituents wouldn't be served by a process involving studies without action. Past commissions' recommendations were not implemented. The six parts of the mandate for this Commission were carefully thought through. The Commission should know that its recommendations would be taken very seriously.

Agenda and Commission Structure. Ms. DiPietro briefly reviewed the statutory framework for the Commission's work: term (ending July 1, 2017), relationship to the Office of the Governor,

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both voting and non-voting membership, meeting frequency, and reporting requirements. She also drew the members' attention to the Alaska Judicial Council travel policy and to State Ethics Act requirements. Documents pertaining to these topics are in the Commissioners' notebooks and should be reviewed. She also reviewed open meetings requirements: the Open Meetings Act applies when three commissioners convene or two commissioners meet on a subcommittee.

Chair Elected. Ms. DiPietro invited the Commission to choose a chair either to lead the meeting or for the requisite one-year term. Jeff Jessee nominated Mr. Bryner based upon his years of experience in criminal law and practice; Mr. Geraghty seconded. Sen. Dyson said he wanted the chair to have a passion for the work and to move things along. Mr. Bryner said he would be honored to chair. Mr. Dyson moved that nominations be closed. The Commissioners unanimously approved Mr. Bryner. Voting yes: Jessee, Geraghty, Rhoades, Schmidt, Sell, Stanfill, Steiner, Stephens, Vraybec. Absent: Razo. Not voting: Bryner.

Meetings Planned. The Commission agreed to meet monthly through January, the month in which the legislature convenes.

Work Plan/Schedule. Sen. Dyson indicated a desire to create work products as soon as possible, even before statutory deadlines. He asked whether other groups such as the Criminal Justice Working Group, might have recommendations that could be considered by the Commission. Mr. Geraghty noted that the Criminal Justice Working Group (CJWG) had struggled on having/getting enough information on which to act, and that the criminal justice process has many moving pieces. Ms. DiPietro reported that the Judicial Council is working on a felony sentencing study, and therefore has a database from which to answer questions, among other sources of information. Mr. Jessee stated that he would favor frequent meetings but asked whether subcommittees are needed and how many.

The Commission set its next meeting for Monday, October 13, 2014, at 10:00 A.M.- 1:00 P.M. (in Anchorage).

Meeting dates and times for November, December and January will be determined after a Doodle poll by AJC staff. Mr. Keller suggested that the Commission try to coordinate future meetings with the Pew Justice Reinvestment Initiative group's availability (October 27, November 17-19 and the first week of December).

A question was asked about teleconferencing. Mr. Bryner said that while teleconferencing will be sometimes necessary, he would prefer if Commission members could meet in person.

Related groups, initiatives, and resources

A number of efforts related to criminal justice reform are underway. Those include:

- Criminal Justice Working Group. Co-chaired by Mr. Geraghty, the group has been meeting for several years. The CJWG addresses problems in the criminal justice system from an operational perspective. Lately it had been focusing on recidivism reduction and reentry issues. It has completed extensive data collection and analysis on barrier crimes, which

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information will be shared with the Commission. The CJWG may make future recommendations to the Commission.

- Recidivism Reduction Task Force. Carmen Gutierrez reported that the group was formed in response to legislative intent language in a variety of agency budgets. Members include representatives from DOC, DHSS, the court system, AHFC, and the Mental Health Trust. The group will issue a report in February.
- Title 4 revisions group. Mr. Jessee said that a re-write of Title 4 (concerning alcohol) has involved about 60 people over the past 2 years. They are finalizing their recommendations.
- Results First Technical Assistance. Susanne DiPietro reported that the Judicial Council has been exploring an application for technical assistance to build Alaska's capacity to collect and analyze data to measure cost effectiveness of criminal justice programs and processes. The TA is offered free of charge by the Pew Charitable Trusts' *Results First* initiative (this is different from but complementary to the Pew Justice Reinvestment Initiative). A test of an earlier version of Pew's analytical model was completed in 2009 by UAA Institute of Social and Economic Research, but it was limited in scope and is now out of date. The AJC reached out to the UAA Justice Center and other state agencies to discuss with Pew whether Alaska has the capacity to build an Alaska-specific analytical model and then to maintain it at the Justice Center.
- UAA Justice Center Statistical Analysis Center. The Center publishes Fact Sheets on a variety of criminal justice and public safety issues; for example, the Drug Arrest Fact Sheet included in the Commission notebook is an example of the type of work done by the Center. Dr. Andre Rosay, Director of the Justice Center, said that the Justice Center would like to be of assistance to the Commission.

Commissioner's Notebook. Each Commissioner received a notebook and separate supplemental materials (Hornby Zeller study, DOC's 5 year Reentry Plan, and excerpt from Indian Commission on law and Order). Also, staff has included 2 memos: one is a collection of ideas for Commission work; one is a memo about outreach strategies.

Presentation on the Justice Reinvestment Initiative and the potential for providing free technical assistance to Alaska. Zoe Towns of Pew Trusts spoke about Pew's Justice Reinvestment Initiative, a short-term intensive examination of a state's incarceration situation. Initial focus (6-8 weeks) identifies the drivers of incarceration: who is in jail and how long they stay and why. Following the collection of that information, results are shared with the State. TA then is available to a group like the Criminal Justice Commission to identify what other states have similar profiles and what responses have been successful for them. The goal is to create a process through which state officials are given the data and other information they need to develop their own local policy. Pew does not make suggestions for policy, but it will support a state as it develops its own policy solutions.

The focus is not to cut the DOC budget, but rather to interrupt the trajectory of an increasing incarceration population. Some initiatives that states have adopted cost money up front, while

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some save money right away. If invited to partner here, JRI team would need to meet 5-7 times with the Commission. Invitation requires sign off from all three branches of government.

A question was asked about racial or ethnic disparities in sentencing practices. Ms. DiPietro indicated that AJC performed that analysis on its felony sentencing data which will be shared with the Commission.

General discussion about the Commission's work. Mr. Bryner suggested that Commissioners come to the next meeting with concrete suggestions for a work plan, as well as short- and long-term priorities. Immediate actions could include forming subcommittees and identifying other people to reach out to.

Judge Rhoades said that changes must be data driven, and yet it is very hard to get data in this state. The Chair asked Commission members to be prepared to identify what data is needed so that we can determine where to get it. Ms. DiPietro indicated that the Alaska Judicial Council may be able to match some of the commissioners' request for data with its own existing databases. Mr. Jessee suggested that the Commission create a data work plan.

Sen. Dyson suggested the Commission consider: issues raised by SB 108; whether more judicial discretion is needed in presumptive sentencing; charging practices; and resources necessary for the public defender system. Rep. Keller mentioned decreasing revenue, and encouraged consideration of new ideas and programs to reduce recidivism, including particularly restorative justice programs.

Ms. Stanfill mentioned Barrier Crimes as potentially low-hanging fruit for consideration. [See webpage for the inventory of Alaska collateral consequences, <http://www.abacollateralconsequences.org/search/?jurisdiction=7>]

Mr. Dyson asked about activities/interests/concerns of the UAA Justice Center and the Native Justice Center, and wondered whether they could help give the Commission direction.

The Chair asked Commission members to come to the next meeting prepared to identify any issues which could be readily worked on or issues that are in progress.

Ms. Rhoades noted that the Commission lacks a representative from Department of Health and Social Services (DHSS), and that it would be hard to make recommendations about treatment without them. There is nothing preventing the Commission from inviting people or co-opting or augmenting other groups.

The Chair noted that commissioners should discuss the form of public involvement. (Ms. Geddes noted that she had prepared a memo on outreach ideas). We can use webpage and a static Facebook page (with no posts) to provide contact information. The Chair asked that public involvement and media outreach be on the agenda for the next meeting.

The Chair said he looks forward to a relatively informal means of proceeding, e.g. he does not intend to use Robert's Rules of Order and would like to try to achieve consensus as much as

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possible. He thanked Sen. Dyson and Rep. Keller for their participation and for their charge that needs should be addressed quickly.

The Chair adjourned the meeting at 4:25 p.m.

Summary by Mary Geddes