

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](#); billydianeouser@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

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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: Fillymcc@aol.com
To: [Jordan Shilling](mailto:Jordan.Shilling)
Cc: sloan@kasloan.com; billydianeouser@outlook.com; [D. Schenk](mailto:D.Schenk); [Mary Geddes](mailto:Mary.Geddes); [Susanne DiPietro](mailto: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.