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.*
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> *When the Commission was created in 2014, the Legislature directed the Commission to make recommendations based on, among other things:*
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> - *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]
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> *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 grown and reduce the current prison population by 15%, or (3) avert all future prison grown 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.*
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> *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:*
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> - *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 the 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.