Alaska Criminal Justice Commission

Meeting Summary

Monday, March 9, 2020
12:45 pm – 5:15 p.m.

State Office Building, Juneau
And audio-teleconference

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

Commissioners Absent: Kevin Clarkson, Adam Crum (DHSS Deputy Commissioner Al Wall attended for Commissioner Crum), Nancy Dahlstrom, Amanda Price

Participants: Travis Welch, Theresa Capo, Karl Clark, Alex Cleghorn, Cathleen McLaughlin, Triada Stampas, Tracey Dompeling, Nancy Meade, Kim Stone, Carmen Lowry, Buddy Whitt, Brad Myrstol

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

Note re: Commission Sunset July 1, 2021

Chair Claman noted that there had been discussions about this in the capitol, though there was nothing requiring action today. He just wanted to remind the Commission of the sunset date, and note that there are a number of options at that point. They ranged from full reauthorization to letting the Commission end without any further action. Reauthorization was not super likely, as he was not seeing any support for that. There were several hybrid options that could involve maintaining the Commission's data collection and research functions, and/or continuing to look at criminal justice policy with a narrower scope of work, such as just looking at rehabilitation. He suggested keeping these options in mind as part of the planning process in the fall for next year's agenda, similar to what the Commission did last fall.

Approval of Meeting Agenda and Previous Meeting Summary

Justice Bolger moved to approve the meeting agenda and Commissioner Cherot seconded the motion. The meeting agenda was approved without opposition.

Commissioner Cherot moved to approve the summary of the previous meeting and Justice Bolger seconded the motion. The meeting summary was approved without opposition.

Data: Pretrial

Commission Project Attorney Barbara Dunham explained that she would review data on the pretrial population at DOC as part of the ongoing project to help the Commissioners become more familiar with the data the Commission collects. The data contained in this presentation would mostly be DOC data.

The first chart of her presentation showed the pretrial population in DOC facilities on snapshot days, through January 1, 2020. The snapshot days were the first days of each quarter starting July 1. 2014. The pretrial population peaked on January 2015 at 1,668, then fell to a low of 1,300 on October 1, 2016. From then on, the population had been rising more or less steadily. The last data point the Commission reported in its annual report was from July 1, 2019, at which point the pretrial population was 1,647. Since then, the pretrial population has jumped up sharply, to 1,947 on January 1, 2020.

The next chart compared the pretrial population with the sentenced population; unlike the pretrial population, the sentenced population has been decreasing more or less steadily, reaching 2,016 people on January 1, 2020—only 69 people more than the pretrial population, the smallest differential in the Commission's data.

The next two charts looked at pretrial admissions, showing the number of admissions per quarter. These were broken down between felonies and misdemeanors, and violent and nonviolent. Nonviolent misdemeanor admissions accounted for the bulk of pretrial admissions; they dropped between 2015 and the beginning of 2017, then began to rise, reaching a peak toward the end of 2019.

Commissioner Stanfill asked when the bail schedule had been implemented. Judge Stephens said that the statewide bail schedule was implemented in 2016, and had been revised several times since then; however, there were bail schedules before 2016 in each judicial district, but they were not standardized.

Commissioners wondered whether there was any link to crime rates. Ms. Dunham explained that linking this kind of data to crime rates was tenuous at best; looking at prison admissions was more reflective of the criminal justice system's response to crime rather than crime itself. It could reflect increased staffing levels for law enforcement or a change in practices. She noted that the new pretrial scheme mandated by SB 91 began in January 2018, and was revised by HB 312 in May 2018.

Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, noted that some of the increase in pretrial admissions after January 2018 could be due to the start of pretrial enforcement, which has supervision duties and is also more likely to catch defendants for a Violation of Conditions of Release (VCOR), a nonviolent misdemeanor. Brian Brossmer, research analyst for the Council, didn't think the pretrial admissions numbers were related to probation violations. Ms. DiPietro said staff would take a closer look at what's driving those numbers, particularly looking at admissions and snapshot data just for VCOR.

Judge Stephens reported that in calendar year 2015 the court system saw over 3,000 VCORs, while in calendar year 2019 there were over 8,000. In his experience, a single defendant can have two or three VCORs in course of one case.

Commissioner Stanfill asked whether there was length of stay data for pretrial defendants. Mr. Brossmer said that DOC currently only provided length of stay data for people who have been convicted and sentenced, and only for those who have been convicted of one crime. Unlike most

of the other data provided by DOC, length of stay data comes pre-analyzed and not in its raw form. It doesn't distinguish how much time a person has pretrial or post-conviction.

Commissioner Stanfill said it would be interesting to know how much time defendants were spending pretrial. Ms. Dunham said that the court data provides time to disposition, but would not provide how much time pre-disposition a defendant spent in jail. Ms. DiPietro said that could possibly be done with a sample paper file review.

Judge Stephens asked whether the paper file review done in 2018 showed that more people were being released. Ms. DiPietro said that was true, but most of that review was done before HB 312 went into effect. Judge Stephens noted that his recollection was that lengthy time spent in jail pretrial was why the Commission made many of the recommendations it did in terms of pretrial reform. Many people were spending time in jail for misdemeanors and then sentenced to time served without access to services. It would be nice to track that. Justice Bolger agreed it would be nice to get a handle on what exactly is happening there. He was also interested in looking at pretrial releases compared to pretrial admissions.

Commissioner Stanfill asked if there was any way to overlay this data with crime rates. Ms. Dunham said it was technically possible but because the relationship between this data and crime rates had a tenuous connection it might not be a valid analysis. Comparing arrest rates might be more sound. Commissioner Stanfill suggested just looking at offense-specific data. Chair Claman also suggested a side-by-side comparison rather than having the data overlaid. Commissioner Williams suggested getting AJIC to participate in that analysis.

Commissioner Stanfill said she was concerned that DOC was going to be housing pretrial defendants at the halfway houses again— she thought it was not a best practice to be mixing the pretrial and post-conviction/parole populations. Chair Claman said he hadn't heard DOC was definitively going to be doing that. Commissioner Stanfill said she believed that was DOC's testimony in House Finance recently.

Bail Study Report

Ms. Dunham explained that staff had conducted a study of a sample of cases in 2018 to gather data about bail practices. The 2018 study was intended to follow up a 2015 study which found that around half of defendants were released pretrial. The 2015 study also found that most defendants were either a third-party custodian and/or were required to pay a cash bond. The study further found that Alaska Natives were much less likely to be released pretrial than Caucasians.

The Commission also looked at research on pretrial practices; the research showed that that pretrial decision-making was more accurate with information from an actuarial risk assessment tool than with professional judgment alone, and that unsecured bonds (which do not require cash payment up front) are as effective at achieving court appearance as secured money bonds. This research and the findings from the 2015 sample of cases prompted many of the recommendations that went into the Commission's 2015 Justice Reinvestment Report.

The 2018 study was conducted similarly to the 2015 study. From a sample of just under 400 cases from Anchorage, Juneau, Fairbanks, Bethel, and Nome, 357 cases qualified for analysis. Of those cases, 281 were released pretrial and 248 were seen by a judicial officer. The 2018 sample consisted of cases opened between 4/1/18 and 6/30/18. Staff looked at the paper files for each case to determine whether the defendant was released pursuant to the bail schedule, was released after being seen by a judicial officer, or was not released.

In the 2018 sample, 79% of defendants were release at some point prior to case disposition, compared to 48% of defendants in the 2015 sample. Of all releases, 44% were released pursuant to the bail schedule. If the bail schedule releases are excluded from the sample (leaving just those cases seen by a judicial officer) 69% of those seen by a judicial officer were released.

Judge Stephens said that he wanted to make sure that everyone knew that the bail schedule only applies to misdemeanors. The bail schedule sets standard bail amounts or OR (own recognizance) releases for common misdemeanors.

Ms. Dunham said that of those in the 2018 sample who were released by a judge's order, 35% were released OR (in 2015, 12% of all cases were released OR); 23% were released on an unsecured bond (compared to 10% in 2015); 40% had a cash bond (compared to 67% in 2015); and 27% of cash bonds were set at $2500 or more (compared to 41% in 2015).

In the 2018 cases, a third-party custodian was assigned in only 5 cases. Supervision by the Pretrial Enforcement Division (PED) was assigned in 49% of cases. Around half of defendants had a drug or alcohol restriction, monitoring, or testing requirement

Chair Claman asked whether staff were able to find out what percentage of people who were assigned to PED supervision who were released. Ms. DiPietro said that was not investigated.

Commissioner Case wondered, if there were higher numbers of defendants released OR, fewer cash bonds, and lower cash bonds, why the numbers of nonviolent misdemeanants held in prison are increasing; he would think it should be going down. He wondered if PED supervision was related. Ms. DiPietro said that might be part of it. There is data showing that more than half of the people assigned to PED were low risk which could increase the chance of failure for that population. Also the number of VCORs increasing increases the population.

Ms. Dunham said that the 2018 study appeared to show that the racial disparity in pretrial releases was decreasing. In 2015, 25% of Alaska Natives were released compared to 61% of Caucasians; in 2018, 75% of Alaska Natives were released compared to 83% of Caucasians. She cautioned that neither of these studies controlled for other factors, but these results were positive.

Ms. DiPietro echoed that, noting that the study was not able to control for other variables such as crime charged, as there was not enough data to use those rigorous controls. The Judicial Council was able to perform a rigorous study, with controls, in 2004, and that study also found unjustified racial disparities in pretrial release decisions even controlling for other factors. That was one reason why staff chose to look at race even though they were not able to control for other factors.

Chair Claman said that the 2018 study would suggest that the changes to the law that were made were having an impact on those disparities. Ms. DiPietro noted that in releasing a larger percentage of people, it seems natural that everyone would see higher release rates, but it looked as though Alaska natives saw even more of a difference in release rates than before reform. Justice Bolger wondered whether releasing more people without cash bail benefits economically disadvantaged minorities. Ms. DiPietro said that was a reasonable hypothesis.

Ms. Dunham explained that around half of the case files in the 2018 study were missing risk assessments. Staff followed up with court personnel to obtain some of the missing risk assessments, after which the percentage of missing assessments dropped to 32%. Some of those missing risk assessments could be bail schedule cases in which a defendant was never held in jail, and hence never got a risk assessment.

In the cases that did have a risk assessment, the defendant was more likely to be released pretrial. 73% of cases with a risk assessment were released while 64% without a risk assessment were released.

Judge Stephens wondered whether the Commission should follow up with the missing risk assessments. Ms. DiPietro said that staff did do some follow up, and found that some locations were better at including the risk assessments in the file than others. In some instances, staff were under the impression that some felt the risk assessments were not needed. Staff believed that there had been some follow up from the court system in those cases.

Chair Claman wondered whether there was still pushback from the state's judges regarding the utility of the risk assessment, or whether the assessment now had more credibility. Judge Stephens said his sense was that it was not. He looks at them, and makes a note of the score and recommendation.

Nancy Meade from the Court System said that they did a survey of judges about four or five months ago, and generally there was not a lot of confidence in the tool's validity. On the other hand, some judges thought the tool was great. Judges were on all ends of the spectrum.

Ms. Dunham wondered whether the judges had been given any information about the revalidation study at the most recent judicial conference. [The revalidation study, the results of which were presented to the Commission in August 2019, showed the tool was still valid.]

Ms. DiPietro said that the judges had a robust training on the tool before it was rolled out, but didn't think there had been any training about the revalidation. She wasn't sure if DOC had released the study.

Chair Claman said the difference in release rates between cases that had risk assessments and those that didn't suggested that the risk assessments were at least having an impact. Judge Stephens pointed out that for most of the sample period in the 2018 study, judges were required to consider the risk assessment and release certain people with low scores. He said he would talk to Judge Miller about adding something about the risk assessment to the judges' training. His impression was that the newer judges were more interested in or receptive to the tool.

Ms. DiPietro agreed that and said that the revalidation study conducted by AJIC was a good study, but didn't think it had been widely disseminated. Dr. Brad Myrstol, director of AJIC, said he also didn't know if DOC released the study. He knew that Dr. Troy Payne presented the study to DOC, and issued a full report plus recommendations, but didn't know what happened after that. Ms. Dunham added that DOC Commissioner Dahlstrom had to bow out of this meeting at the last minute as something unexpected had come up.

Ms. Dunham explained that the 2018 bail study found that 21% of cases had at least one instance of failure to appear (FTA), based on bench warrants issued, before disposition. This could be very generally compared to a study of cases from 2014-2015 that found a 14% FTA rate, although that study used different methodology.

The 2018 study also found that 35.2% of 2018 cases had new criminal activity (NCA). If VCORs were excluded, that rate dropped to 24%. This could be very generally compared to the study of 2014-2015 cases, which found a 37% NCA rate, although again, that study used different methodology.

In the 2018 cases, 47% of cases in which defendants were supervised by PED had new criminal activity, about half of which was VCOR. For cases in which the defendants were not supervised by PED, the NCA rate was 29%, around one-fourth of which was VCOR. Of people released per the bail schedule, 22% had new criminal activity.

Ms. DiPietro said she thought the NCA data was interesting. One data point that drove reform was that Alaska was holding many low-risk people in prison pretrial, so the idea with using a risk assessment tool was so that judges would be better able to know who to release. She thought this was encouraging data in that we are not seeing a greater rate of NCA even though we are releasing more people. She added that the data about those released per the bail schedule was also encouraging.

Commissioner Stanfill recalled seeing a presentation on this a year ago, and noted this was an update of the results. She agreed this was encouraging. Ms. DiPietro said that on the other hand, the legal structure has changed since the 2018 study was sampled.

Commissioner Stanfill wondered whether the higher NCA rate for those supervised by PED was because those supervised by PED were high-risk. Ms. Dunham said it was hard to say, but the fact of supervision alone might tend to mean that more criminal activity was detected for that population.

Judge Stephens said he would bet that two-thirds of the new criminal activity of those on supervision would be people with "dirty" urinalysis. This might be expected if there is a lack of treatment available immediately—people are often waiting on substance use disorder assessments and treatment beds. It was the reality of the justice-involved population.

Commissioner Stanfill said that while perhaps the Commission had initially hoped that PED would morph into more of a diversion/service program, and would act more like Probation/Parole in connecting people to services, PED in its current incarnation is more focused on enforcement.

She still thought PED was beneficial, particularly in regard to victim safety. DV victims like PED because they feel like the defendant has immediate consequences and someone is watching them.

Ms. DiPietro added that when the PED program first got started, those involved were surprised at the high number of defendants charged with DV. Chair Claman said that another gap PED was meant to address was the ineffectiveness of third-party custodians, who often would not report defendants when they should have.

Ms. Dunham asked for the Commission's thoughts on what the Commission wanted to do with the bail study information. It was not something the Commission was required to report. Ms. DiPietro reminded the Commission that the study's dataset was from a different legal landscape than the current one. The Commission could replicate the study with the current legal landscape. Staff would need to let some time go by for cases to conclude. It would help answer some questions Commissioners had earlier about the pretrial population.

Judge Rhoades said she was interested in looking at high-cycling misdemeanants, and wanted to capture more data about that group.

Chair Claman suggested keeping this idea on the planning agenda for the year ahead. Ultimately it sounded like a resource decision. Ms. DiPietro said that it was a resource decision not just for Commission staff but also Court System staff who have to gather the sampled files.

Domestic Violence

Commissioner Case said he wanted to give just a quick update on the DV workgroup: it has had two meetings so far, and had been a good venue to get practitioners' perspectives, with participants from all over the state. They have been identifying issues, inventoried what resources there are, and have received varying responses as to how the state is doing on domestic violence. Some programs provide better data than others. There are varying opinions as to what should be the focus for improvement.

It has therefore been challenging to understand how we're doing on DV. So APD has signed a user agreement with AJIC to dive into APD's data on DV cases, to help better define the problem. Dr. Payne from AJIC has analyzed some information from DPS, but that was using a limited data set. APD can provide much more data. It will be interesting to see what comes back.

Chair Claman wondered if the funds for the diversion program that was previously discussed could be used for this. Ms. Dunham said that those the funds have to be spent by September of this year. Ms. DiPietro added that the Commission would also have to sign a new agreement with the grant manager. Commissioner Case said that in a perfect world, there would have been one consistent ask from the DV workgroup right away that could have been funded that way, but there wasn't. His understanding was that AJIC didn't need the money for the data dive.

Commissioner Stanfill noted that the funds initially were intended for a diversion program for people who are homeless, and wondered whether that was still worth looking at. Commissioner Case said he could check with Nancy Burke, Anchorage's homeless coordinator. He thought the available funds amounted to about $60,000. Commissioner Stanfill wondered if the

grant was still approved for its original purpose. Ms. DiPietro said she wasn't sure and would have to defer to the grant manager.

Judge Rhoades said she would hate to see those funds to go to waste, and thought there might be a potential partnership with the municipality's homelessness program. Chair Claman agreed and suggested that Commissioner Case could contact Nancy Burke and maybe Cathleen McLaughlin. Staff could schedule an ad-hoc meeting to determine if this idea matches the original funding proposal. He appointed Commissioners Case, Stanfill, and Rhoades to look into this. Commissioner Stanfill said that since this program would be Anchorage-based, she didn't need to participate. Commissioner Williams said that he could step in, and Travis Welch, program officer from the Trust, might be interested too. Chair Claman agreed and said they should keep the Commission posted. A quick telephonic plenary meeting could be scheduled if need be.

Medicaid Enrollment

Ms. Dunham explained that in the fall, the Commission had developed a list of items to address in future meetings, two of which related to Medicaid. One issue was expanding Medicaid coverage for people who are incarcerated, which the Commission addressed at the last meeting by voting to recommend that the Legislature pass a resolution in favor of the idea. Staff had since forwarded that recommendation to the Legislature.

The second issue related to Medicaid was how to ensure that people who are incarcerated can enroll in Medicaid or maintain their enrollment (if otherwise eligible) so that they can be sure they have Medicaid coverage upon release. Ms. Dunham had circulated a very brief memo on this and welcomed direction from the Commission as to further research needed.

Currently, people who are enrolled in Medicaid don't lose their enrollment when they become incarcerated. However, people enrolled in Medicaid must renew their enrollment yearly, and if they are incarcerated at the time they are supposed to renew, they might not receive a notice to renew or might not be able to complete the renewal on time. New Medicaid enrollments must be done on paper, and there is a backlog of paper applications. It's unclear whether there is also a backlog for renewals.

To address this issue, one option might be to allow people who are incarcerated access to the internet for the purpose of completing Medicaid enrollment or renewals. There may be a bill in the works to do this already. Another option is to expand the use of Medicaid navigators, who are going into some DOC facilities already.

Chair Claman said that Rep. Kreiss-Tomkins had already introduced bill to allow internet access for educational and reentry purposes.

Commissioner Stanfill asked whether the reentry coalitions were helping with this. Commissioner Williams said he wasn't sure exactly but he knew that they do orientations, and were definitely an asset that can be used. He added that there was also the SOAR program, which ensures enrollment for people in the IDP+ or APIC programs. He believed SOAR had a high success rate, but it was not the easiest thing to do. He thought the Commission could look at ways to capitalize on what's already being done. This also falls into work that the Trust is doing with DHSS.

Commissioner Williams said he also wanted to reiterate that people don't get kicked off of Medicaid entirely; if they don't renew they get suspended after 30 days. If they aren't kicked off, there should be a way to get them reenrolled quickly and easily.

Judge Rhoades said this was also an issue for SSI: people who are eligible for SSI and Medicaid should already be enrolled when they walk out of the prison doors. She believed DOC was no longer running SOAR.

Chair Claman said that for the next meeting, staff should prepare an update on programs that are out there. He would also look into the bill regarding inmate computer access as well. Buddy Whitt, staff to Sen. Hughes, said that he thought the bill originated in discussions about ways to get inmates access to job training.

Judge Rhoades said that the next meeting of the Rehabilitation, Reentry, and Recidivism Reduction Workgroup would also be meeting in May, and that group could also look into this.

Commissioner Stanfill asked whether any legislator has taken up the resolution recommended by the Commission. Chair Claman said he didn't think anyone had taken action. He could also look into that.

Juvenile Auto-waiver

Commissioner Cherot said that in the past, one of the Commission's workgroups had looked at trying to address the collateral consequences of adult confinement on youth, and how to account for advances in our understanding of youth brain development. The proposal that the workgroup had looked at had three parts, all of which address the statute that automatically waives youth charged with certain crimes into adult court (the auto-waiver statute).

First, removing some of the less serious crimes from the auto-waiver statute entirely; second, removing some of the more serious crimes from the statute provided that DJJ could retain jurisdiction up to age 26; and third, retaining the most serious crimes in the auto-waiver statute but enacting a reverse-waiver provision. This proposal and an explanatory chart had been circulated to the group prior to the meeting.

Ms. Dunham noted that the chart was created prior to the passage of HB 49, so the sentences listed were no longer accurate. In addition, HB 49 restricted the use of discretionary parole for the offenses in the auto-waiver statute.

Justice Bolger wondered where the workgroup left off. Ms. Cherot said that the proposal was discussed among the workgroup but never forwarded to the full Commission.

Tracy Dompeling, director of DJJ, said that the workgroup had also been talking about how to have youth charged with adult offenses held in DJJ custody. Since the workgroup last met, the reauthorization of the federal statute governing juvenile justice has adjusted the definition of adults and minors—now, if someone is under the age of majority, they are definitely a minor. Those youth will need to be housed in DJJ facilities by 2021 in order to be in compliance with federal law. DJJ/DHSS are now looking at how to bring Alaska into compliance. There may need to

be a statute change, or DJJ could execute an MOU with DOC. She recently visited a facility in Oregon, where they keep youth housed in juvenile facilities until age 24. It was interesting to see.

Justice Bolger asked whether Alaska will have to do something to accommodate this change in the federal law no matter what the Commission may recommend. Ms. Dompeling said that was correct, new procedures would need to be in place by October 2021.

Chair Claman asked if a youth was charged as an adult, convicted of a murder charge, and sentenced to 25 years, they would still have to stay in a juvenile facility until a certain age, even if they would eventually be moved to an adult facility. Ms. Dompeling said that was correct. The federal law would require they be held in a juvenile facility only until the age of majority. But what we choose to do as a state is different question.

Commissioner Stanfill said that her recollection of the workgroup meetings was that one of the things the group was trying to figure out was how to accommodate the developing science about brain development, and how were are dealing with those under age 26. The workgroup was also talking about why we are treating 17.5- and 18.5-year-olds who are accused of the same crimes differently. Ms. Dompeling agreed. The question was whether that was a juvenile justice issue or a general criminal justice reform issue? Chair Claman said he imagined that in larger states, there could be prisons that could have specific programming or housing for that population.

Judge Stephens said it sounded like there were two underlying issues: how the criminal justice system accommodates the lack of full brain development at a younger age, and whether to house youth with older, long-term, and repeat offenders.

Justice Bolger said he would abstain from speaking for or against this idea because it was a substantive issue, but he noted that some of the auto-waiver offenses were class B felonies, for which youth may only be spending about two years in custody. If two people were convicted of the same B felony but one was kept in the juvenile system and one in the adult system, they would experience very different detention circumstances even if they spent the same amount of time in custody. Someone in the juvenile system would not be exposed to older adults and would likely have a lower risk of recidivism.

Commissioner Stanfill recalled there was support in the working group for the first recommendation to remove some of those class B felonies from the statute, and wondered if that was something that should be looked at separately, and whether there was a different way to approach the other offenses. Ms. Dunham noted that changing the auto-waiver statute was not necessarily the only avenue of approach, and that she had distributed a public comment from Angela Hall, who suggested reviewing the sentences of those incarcerated as teenagers.

Chair Claman said it sounded like the Commission was not ready to take action, on this, but thought it was reasonable to take it up at the next meeting. He asked whether the workgroup wanted to take another look at the proposal and revise it in light of the change to the federal law. He noted that the change of federal law might mean there would be more interest in the legislature to look at a proposal.

Commissioner Cherot agreed to reconvene the sentencing workgroup and act as its chair. Commissioner Stanfill noted that the Commission had intended to reconvene the sex offenses group but her sense was that there was no appetite in the legislature to revisit the sex offenses laws. She suggested the sentencing workgroup could meet when the sex offenses workgroup was intending to meet, starting May 11. Chair Claman said that would put the group on track to come up with ideas for the August meeting.

Commissioner Stanfill said that some participants had been very set against removing the more serious offenses from the auto-waiver statute. Justice Bolger noted that there was also a reverse waiver proposal, and that members of the workgroup had reported that previous attempts to instate a reverse waiver met with fierce opposition in the legislature. He wondered whether the workgroup should account for that previous opposition or ignore it.

Chair Claman said he didn't think that it would hurt anything if all of the Commission's recommendations aren't accomplished. Sometimes having something to say no to makes it easier to get to yes on something else. His instinct was to say that judges should be able to hear arguments as to why someone should be waived into adult court or not. He could see why people might be unhappy about taking offenses off of the statute.

Judge Stephens said he thought there was already a reverse waiver. Ms. Dompeling said there wasn't a reverse waiver statute, but there was a way to achieve the same effect, if a youth agrees to plead to a lesser offense that is not included in the auto-waiver statute, they will be held in the juvenile system. Renee McFarland of the Public Defender Agency added that offenses in the auto-waiver statute would be charged in the adult court, but if the youth was convicted of a the lesser offense, the case would go to the juvenile system.

Judge Stephens said that he thought in general if it made sense for a 17-year-old to serve some part of their sentence in DJJ custody, an 18-year-old should have the same opportunity. He thought the Commission should look into the idea before Commission's sunset.

Pretrial Enforcement

Anastasia Kiefer, Pretrial Supervisor with DOC's Pretrial Enforcement Division (PED), explained that she was one of three supervisors in the Anchorage PED office. She had pulled some ACOMS data to answer questions previously submitted by the Commissioners. One question was how many people PED had been supervising. Since program launched January 1, 2018, the number of people assigned to PED increased steadily, eventually reaching an average of around 2100, with around 1000 on supervision (the remainder were either still incarcerated or on abscond status.

Roughly half of those assigned to PED supervision were assessed as low-risk by the pretrial risk assessment tool. That might be unexpected, but those assessed as low-risk could include those accused of serious crimes who score low—the score doesn't relate to the classification of the offense charged. Also, if a person has spent time incarcerated, their score is likely to be lower.

Commissioner Stanfill asked what supervision typically looks like. Ms. Kiefer said that it varies, depending on the defendant. It can consist of check-ins, testing, and/or electronic

monitoring (EM)—in Anchorage, a majority of defendants are on EM. Judicial officers will order the conditions they think the defendant should have, and it's not necessarily based on risk.

Ms. Kiefer went over the coverage areas of each PED office. The main offices were in Anchorage, Fairbanks, Palmer, Juneau, Kenai, Ketchikan, and Sitka. There were regional differences in supervision in terms of who was on EM and the risk levels of the defendants assigned to each office.

Each office also has different ways of assigning caseloads to PED officers. In Anchorage, there is a flow of work/bank system with defendants assigned to different "banks" relating to the crime they are charged with and/or their conditions. For example, there is a house arrest bank, and a DV bank. In other offices around the state, officers have is individual caseloads. Smaller offices have officers with blended pretrial and probation/parole supervision duties.

Ms. Kiefer explained that EM is a very popular bail condition. Community jails have contracted with DOC to do EM in smaller communities. All communities with EM are able to monitor defendants on house arrest, and most are able to also use EM for alcohol monitoring and GPS monitoring. In Anchorage, there are 428 defendants on EM specifically for 11.41 crimes, 299 of which are defendants charged with a DV crime.

PED officers are engaged in field work 24/7. On holidays and weekends, their offices are not open, but officers are working. They prioritize victim safety, including any exclusion zone breach. They try to call victims if there is a breach, and will send out officers along with law enforcement. Since the escape law was amended (to include cutting EM device straps within the offense of escape), they have seen a 30% reduction in cut straps.

Commissioner Stanfill recalled that she was on the JRI subcommittee that made the recommendations for pretrial, and one thing that the group thought was that the pretrial officers would have enough of a connection to defendants to connect them to treatment. She wondered if Ms. Kiefer thought pretrial officers had that kind of connection, or was their job more about enforcement.

Ms. Kiefer said she thought it was both. For people with mental health issues, they can see the signs and can make referrals on a voluntary basis. If they see mental health impairments, or a lack of cognitive function if a defendant is not able to maintain an EM device- they will bring it to the attention of the prosecutor. There are a lot of prosecutorial diversion options in Anchorage. She thought that there were definitely more resources for those defendants than if PED was not in place.

Ms. Kiefer explained that the Anchorage PED office installs an average of over 200 EM devices per month, allowing DOC to free up hard beds in the Anchorage Correctional Complex and Hiland Mountain. They have a duty to warn any victim before a defendant is released on EM.

If a bail order requires that a defendant follow DV protection order (DVPO) requirements, a copy of the DVPO order is obtained from the Court and additional exclusion zones are set up as listed in the DVPO order to ensure victims' safety. Each time there is an exclusion zone entry, PED performs a real-time notification and a welfare check sto ensure victim(s)' safety.

PED works closely with prosecutors, the Office of Victims' Rights (OVR) and the Office of Children's Services (OCS) to ensure that DOC has up-to-date victim contact information and any victims' safety concerns are expeditiously investigated and addressed.

Commissioner Stanfill asked how quickly PED is able to warn victims of a defendant being released pretrial. Ms. Kiefer said they attempt to reach the victim before the defendant is released. If they get a voicemail they will leave a message asking them to call with questions; they are not required to reach the victim in person. If there are exclusion zones related to the victim's location, PED will need an accurate address, so a defendant will not be released if PED can't reach the victim or get the address. They can work with prosecutors to get that information. If defendants don't agree, they are advised to go to their attorney.

Ms. Kiefer explained that PED also collaborates with parole/probation. Not a lot of people are both pretrial and on probation. If they are dual status, probation will most likely take the lead. They have different strategies and parole/probation are typically authorized to conduct searches and enforce court ordered conditions of probation.

Ms. Kiefer concluded by saying that she had been with PED since day one, and she might be biased, but she was passionate about what PED does and thought they were doing good work. They have received positive comments from the defense bar. Defendant say that even just having EM/SCRAM is opportunity for them to achieve sobriety and get their life in order.

Commissioner Stanfill said she also heard positive comments from victims, and appreciated what PED did.

Public Comment

Adam Barger asked the Commission to look at ways to revisit sentences for people sentenced to long prison terms when they are young. Often these terms amount to a de facto life sentence. He himself was incarcerated at a young age, and released at age 43. While incarcerated, he met men who had been arrested at age 16, 17, or 18, who had spent half their lifetime behind bars. He thought there should be a way to revisit sentences of 30 years or more. First, because of our evolving understanding of cognitive development and how youth understand (or don't understand) consequences. He didn't want to excuse any conduct, including his own. But he was also not the same person he was 20 years ago. He didn't want to let young people throw away their life without the opportunity to rejoin society. He was happy to have an opportunity to rejoin society and show people that he was not a burden on society. There are many people who committed crimes and were incarcerated under age 21 who should have the same chance.

Angela Hall explained that she was one who sent in the written comment that Ms. Dunham had referenced earlier. She wanted to echo what Mr. Barger said, and hoped that the Commission would pick up this issue. Chair Claman confirmed that the Commissioners had received the letter.

Marijuana Tax

Ms. Dunham explained that this was another item the Commission had identified for a future agenda last fall. She had prepared a brief memo on the subject which had been circulated

to the Commission. SB 91 had designated half of the marijuana tax receipts to go to the recidivism reduction fund, which was to be used for recidivism reduction and crime prevention programs. SB 91 also included intent language which said that any "excess" should go to law enforcement, but it was a little unclear what was meant by that. The legislative history of these provisions in SB 91 revealed that legislators were skeptical that there would ever be enough money in the fund to cover the desired programs, let alone any excess.

Since the fund was created, it has been used for substance use disorder treatment at DOC reentry services administered by DHSS in coordination with the Trust, and crime prevention programs funded through the Council on Domestic Violence and Sexual Assault. In the current fiscal year, more revenue is on track to be generated from marijuana taxes than will be spent on those funds, however, additional allocations from the recidivism reduction fund have also gone to the Pioneer Homes this year.

Commissioner Stanfill said that she had recently spoken to folks in the capitol about this and not many legislators remember doing this in the first place, or thought it had been repealed. She thought the full 50% of the marijuana tax revenue should be put in the fund, and that it should be fully spent on reentry programs.

Chair Claman wondered whether the funding to the Pioneer Homes came from excess over and above the 50%. Ms. Dunham said that the line item in the budget said that funding came from the recidivism reduction fund. Chair Claman said he would try to look into it, and didn't think that the Pioneer Homes were necessarily within the purview of the recidivism reduction program.

Commissioner Williams said he thought this was something the Commission should be paying attention to. This is where the recommendations of Commission in terms of further reinvestment become important, whether those recommendations are for substance use disorder treatment or other programming.

Commissioner Stanfill said she believed there was good data coming out of the reentry case management programs that can support further spending.

Chair Claman said the question for the Commission was whether the Commission should take action now, or consider this for a recommendation for the next fiscal year. Another option would be to leave further action to individual Commissioners. He will try to find more information on what is happening with the recidivism reduction fund for this coming fiscal year's budget. He thought this should be something to mention in the next annual report.

Commissioner Stanfill thought the Commission should take action, and that it should write a letter asking the legislature to use recidivism reduction fund money for recidivism reduction programs. Chair Claman said he would take that as a motion. Judge Rhoades seconded the motion. She thought the letter should note that the Commission has already made recommendations to the legislature as to how to further reinvest. This fund was intended to be reinvestment.

Senator Hughes wondered whether the letter might make some accommodation for efforts being made in the capital budget for substance use disorder treatment for the formerly incarcerated. The letter could ask that the legislature make up for any decrement in the recidivism

reduction fund in the capital budget. There might be as much as $30 million in the capital budget going toward SUD treatment, and she didn't want to detract from that effort. She thought the Commission should be open to that. She didn't object to writing a letter, but wanted to add to the letter that if the recidivism reduction fund was not fully going toward recidivism reduction, that it could be offset in the capital budget.

Chair Claman said that a letter would need to be drafted anyway— it may not be realistic to get something done.

Judge Rhoades said the purpose of having 50% of the marijuana tax creating a fund in the operating budget ensures that these programs will have some longevity, and is something to remind the legislature that these programs need funding.

The Commission voted to approve the letter with Justice Bolger, Judge Stephens, and Commissioner Williams voting no, and Judge Rhoades and Commissioners Cherot, Stanfill, Case, and Razo voting yes. Chair Claman said that staff would draft a letter for the Commission to review, and that he would also request a spending breakdown for the recidivism reduction fund for the upcoming fiscal year.

Commissioner Williams said his concern about drafting a letter now was that he wanted to have all available information in front of the Commission. Information related to needs, and the effectiveness of current programs. He thought it was a good exercise, but was concerned about doing something on a compressed timeframe. Commissioner Stanfill said she thought it was important to do something now so that it didn't fall off everyone's radar.

Ms. DiPietro said that staff can draft a letter but would need guidance from the Commissioners. Judge Rhoades and Commissioners Williams and Stanfill agreed to help.

Chair Claman said that whatever the letter looks like, this issue should also be on the agenda for fall planning to discuss the long-term outlook for the use of this fund. He also noted that the capital and operating budgets serve different needs. He thought a letter would have to be sent in the next 10 days or it would have to be next session.

Commissioner Stanfill said she hadn't intended that her motion be on any timeline. She thought that the Commission should have a well-crafted letter. It might be too late to do something for this session. Chair Claman wondered if she was thinking it would be for the May meeting or even the August meeting. Commissioner Stanfill said she did, she thought it should be a better-crafted letter, and wondered whether it should also take in to account Senator Hughes' comments regarding the capital budget.

Judge Rhoades said it sounded like there were two items at issue; one was reminding the legislature of the original purpose of the recidivism reduction fund. That didn't have to be a specific well-crafted letter. Another consideration is whether to mention funding of specific programs, which was not what she voted for. She thought the letter that was the subject of the motion would just express concern that the recidivism reduction fund was not being spent as intended, Just as a reminder to the legislature.

Chair Claman agreed and said he thought the motion was for a rapidly-written letter. He thought that the answer was that a letter should be finished by next Friday. If that letter is satisfactory to the Commissioners helping, the Commission can have a short telephonic meeting for a yea or nay. The letter would get at the gist of what Judge Rhoades was saying, just noting that this was how this fund was spent last year and are you sure that's what you want to do. A more specific recommendation as to how to use the fund can be on the Commission's agenda for the fall.

Crisis Now Consultation Report

Chair Claman said that he put this on the agenda for discussion, and thought that by now most people were familiar with the report. He wondered if anyone had any questions about it.

Commissioner Stanfill said that she had some questions from a DV advocate's perspective, but could talk more about it to Chair Claman and Commissioner Williams offline. Generally her concern was that when a diversion program includes crimes against people, there need to be clear intentions and put some side rails on the project. She was concerned that not everyone engaging with this system will have adequate training.

Chair Claman said that he had heard similar concerns and was already working on adjusting the bill that would implement the Crisis Now model to accommodate those concerns. He was happy to talk with Commissioner Stanfill about it.

Commissioner Williams noted that the bill and the Crisis Now model are two different things and that he could also talk with Commissioner Stanfill about the services that would come with the model.

Ajd 4:40