

Alaska Criminal Justice Commission

Meeting Summary

Friday April 28, 2017

1:30 PM

CIRI

725 E Fireweed Ln #800

Anchorage, AK

And Audio-teleconference

Commissioners present: Alex Bryner, Matt Claman, John Coghill, Jahna Lindemuth, Walt Monegan, Greg Razo, Stephanie Rhoades, Quinlan Steiner, Brenda Stanfill, Steve Williams.

Commissioners absent: Trevor Stephens, Dean Williams (Deputy DOC Commissioner Karen Cann had Commissioner Williams' proxy.)

Participants: Val Davidson, John Skidmore, Rob Henderson, Renee McFarland, Morgen Jaco, Doreen Schenkenburger, Terra Burns, Alysa Wooden, Fred Dyson, Donald Revels, Crystal Godby, Amber Nickerson, Sean Case, Jon Woodard, Taylor Winston, Tony Piper, Karen Forrest, Gretchen Staff, Don Habeger, Amory Lelake, Kaci Schroeder, Jordan Shilling, Lizzie Kubitz, Janet McCabe

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

Introductions and Approval of Meeting Agenda

Chair Razo called the meeting to order at 1:35, and asked the Commissioners and members of the public present to introduce themselves. He then asked for a motion to approve the agenda. Commissioner Stanfill so moved, and Commissioner Monegan seconded the motion. Chair Razo asked if there were any objections or additions to the agenda. There were none and the agenda was approved.

Approval of Summary from Last Meeting

Chair Razo asked for a motion to approve the summary from the last meeting. Commissioner Stanfill so moved, and Commissioner Monegan seconded the motion. Chair Razo asked if there were any objections to the summary, and there were none. The summary was approved.

Suspended Entry of Judgment /Suspended Imposition of Sentence

ACJC Project attorney Barbara Dunham explained that she had circulated a memo on Suspended Entry of Judgment/Suspended Imposition of Sentence (SEJ/SIS) issues that Commissioners had asked for at the last meeting. Dunham briefly summarized the memo,

explaining that the workgroup that had initially proposed the SEJ in 2015 did intend that it would supplant SIS, and that it also appeared they had intended the same exclusions to apply. Changing the statute so that an SEJ could be imposed over the objection of a prosecutor might raise some constitutional questions, but they would seem to be answered by an Alaska Court of Appeals case, *State v. Nelles*, 713 P.2d 806 (Alaska App. 1986). That case stated that a court could dismiss a criminal case without the consent of a prosecutor if the legislature had specifically delegated that authority to the courts. Finally, Dunham found that there were a number of practical impediments to requiring a risk assessment before sentencing a defendant to complete shock incarceration as a condition of an SIS.

Commissioner Lindemuth asked whether there were any steps to take next. Chair Razo asked whether the Commission wanted to make a recommendation. His recollection was that the SEJ was intended to supplant SIS, and he was surprised when after SB 91, there were two different provisions, SIS and SEJ. He said the Commission could recommend moving to the SEJ only. Commissioner Lindemuth said that she recalled the discussion at the last meeting was that prosecutors and judges saw a benefit to having both.

Commissioner Rhoades said she was not seeing any SEJs offered in Anchorage for misdemeanors and that something was needed to change the culture to get SEJs offered. She recalled the Commission heard compelling testimony from a woman who had successfully completed an SIS but her life had been ruined nevertheless. She also knew of an applicant to a job with the court system who had been screened out before they even got to the interview selection stage because they had an SIS. She thought there should be a considered discussion about the reasons for having both the SEJ and SIS.

Commissioner Steiner said he thought there were reasons to have both. There is a benefit to having a judge be able to impose an SIS over a prosecutor's objection. Though the record stays on Courtview the defendant can at least discuss with potential employers what an SIS is. The distinct difference between the two merits having both. Commissioner Monegan agreed that both were useful tools. Commissioner Bryner pointed out that as a practical matter, discarding SIS would be difficult. Commissioner Claman thought there was an important distinction between the two and that it was important to keep them both. He recognized it was an imperfect process but thought there needed to be a way to balance the need to have a clear record with other interests.

Commissioner Stanfill asked if the SEJ was not being used because practitioners considered the SIS to be the default, and wondered how the choice between the two was decided. John Skidmore with the Department of Law replied it was a matter of prosecutorial discretion. He added that he had handled pretrial conferences in Sitka a few days ago and two cases had not been resolved; he offered an SEJ and those two cases were resolved that way.

Mr. Skidmore asked, in regard to Ms. Dunham's memo, if she had a copy of the memo from Doug Gardner, referenced in her memo. She replied that she did not find it in the materials left by her predecessor, Mary Geddes, but that Mary had referred to the memo in other work she had done.

Commissioner Rhoades said that regardless of whether a defendant is charged with a felony or misdemeanor, the consequences for a conviction are the same—the defendant can't get housing. She was concerned that the SIS was not being used as had originally been intended.

Commissioner Steiner said that he had polled his staff in January, and found that SEJ was not being used in a number of jurisdictions, as he had relayed to the Commission at the last meeting— though he hadn't checked recently to see whether this was still the case. Mr. Skidmore said that there had been no policy from Law directing DAs not to use SEJs. He was, however, hearing concerns from some DAs that with the new earned compliance credit system, they were not comfortable offering an SEJ if one year of probation would actually be 6 months. Commissioner Lindemuth added that after Commissioner Steiner had mentioned in February that DAs in certain jurisdictions were not using SEJs, she circled back and encouraged the DAs to use them.

Susanne DiPietro noted that the Commission is collecting disposition data quarterly, and the data has shown there are many deferred prosecutions being offered. She was not sure why this would be different from or preferable to the SEJ. Mr. Skidmore reflected that the Municipality of Anchorage often offered deferred prosecutions, and Seneca Theno (Municipal Attorney) might be able to explain why. It could be a way of getting around the earned compliance problem but still achieve the same outcome.

Commissioner Rhoades asked whether there was any data on how often an SIS came with shock incarceration. Ms. DiPietro said that staff had looked into that and found that it was hard to estimate that figure because DOC has not been reliably tracking that data. With the quarterly data now coming in from DPS under SB 91, the Commission might be able to get that data going forward.

Commissioner Stanfill wondered whether the Commission should come back to this issue in the fall, as it is probably too late to suggest anything that might pass this session anyway, and it would be nice to see if things just need time to get working.

Chair Razo said he thought it seemed prudent to defer this discussion to later in the year, when there will be more information to go on. There was no objection to moving on.

Sex Trafficking Statute

Ms. Dunham explained a memo she had circulated regarding the sex trafficking statute. Members of CUSP (Community United for Safety and Protection) had expressed opposition to the Commission's January recommendation regarding the sex trafficking statute at the previous meeting, and Judge Stephens had asked for this item to be put on the agenda.

Ms. Dunham's memo explained the statutory evolution of Alaska's sex trafficking laws. SB 91 had made some changes to the third- and fourth-degree sex trafficking statutes, so that they would not apply to someone who was engaging in prostitution in the location being investigated. In January, the Commission voted to rescind these provisions from SB 91 and also voted to create a definition of the word "compensation" as it pertains to the sex trafficking statute.

Chair Razo asked whether the Commission should defer discussion of this item to a later date when Commissioner Stephens could participate. Commissioner Stanfill asked whether this

recommendation was found in SB 54, the SB 91 “cleanup” bill now before the legislature. Mr. Skidmore replied that it was. He said that the purpose of the recommendation was to try to balance the concerns of CUSP with the concerns of prosecutors.

Commissioner Steiner said that the narrow concern the Commission was addressing with the January recommendation was only one of housing, i.e. not criminalizing sharing rooms and the like. It was not intended to address all activities that could potentially also have a harm reduction function. He hoped that this wider discussion could take place in the Sex Offender Workgroup.

Commissioner Claman said that he had heard from various groups on this issue, including CUSP and the prosecutors. He understood that the issue was how to deal legally with the scenario of two people involved in sex work, neither one controlling the other, sharing living quarters to reduce danger. CUSP’s concern is those two people will be charged with sex trafficking each other. The two groups take very different views on this and there does not appear to be much agreement.

Chair Razo called for any motions on this topic and none were made.

Crime Rate Memorandum

Ms. DiPietro explained that there had been many theories about the crime rates since the passage of SB 91, and this memo was an attempt to document the crime rates and serve as a reference. ACJC staff member Staci Corey compiled the 100+ page report and a summary, and Ms. DiPietro wrote an analysis of some of the things the report revealed. These documents had been circulated to the Commissioners and staff was happy to take any comments.

Ms. DiPietro explained that the bottom line was that crime rates were on a downward trend over the last 30 years, with an uptick in the last few years. Property crime rates (property crime accounts for the lion’s share of all crime), hit its lowest point in 2011. There was not a similar downward trend in the rate of violent crime (which accounts for a much smaller share of all crimes).

Commissioner Stanfill said it would be good to update the report yearly. Ms. DiPietro said that that was the plan. The data contained in the report is pretty strong, and can be relied upon. Staff member Teri Carns pointed out that because the report was based on Uniform Crime Reporting (UCR) data, it could also be compared to other jurisdictions.

Commissioner Monegan wondered whether the opioid epidemic was a complicating factor in crime rates and whether this could be quantified. Ms. DiPietro said it would be great to quantify but difficult. Ms. Carns pointed out that there have been other drug epidemics in the past and researchers have not been able to track these epidemics with the crime rates.

New Vice-Chair

Chair Razo noted that with the departure of Commissioner Jessee, the Commission needed to elect a new vice-chair. Commissioner Steiner nominated Commissioner Stanfill for the position.

Commissioner Rhoades seconded the motion. There was no opposition, and Commissioner Stanfill accepted the position of vice-chair.

[At this point, Commissioner Monegan had to leave the meeting.]

Whether the Commission’s Sentencing Workgroup Should Review and Make Recommendations Regarding Juvenile Waiver

Commissioner Steiner explained that there was a growing body of research about the development of the human brain that he thought should prompt a discussion about taking some offenses out of the juvenile auto-waiver category.

DHSS Commissioner Val Davidson said she was interested in having this conversation, having seen the impact auto-waiver policies have on some youth. She thought it might also be an opportunity to look at dual sentencing. It does, however, raise another question of resources, and how to provide the necessary services for any juveniles that would now be in DHSS/DJJ (rather than DOC) custody. DJJ has taken significant cuts recently—they have closed their Ketchikan facility and are evaluating closing another. They could absorb no more than 5 additional youth into the system. More than that would require opening a new wing at the McLaughlin Youth Center.

Commissioner Davidson agreed that there was a need to look at the impact of the auto-waiver. Kids are kids, and not all of them have a good start in life which would help them make good choices. The auto-waiver doesn’t consider the challenges that an individual youth might have faced in his or her upbringing.

Chair Razo said that the Commission’s enabling statute, SB 64, was broad but didn’t mention juvenile justice. However, the auto-waiver intersects the juvenile and adult criminal worlds so taking this topic up would be within the Commission’s purview. Mr. Skidmore noted that the auto-waiver provision shifts the juvenile justice case, governed by title 47, into title 12, making it an adult case—so in that respect it would be appropriate to look at auto-waiver.

Commissioner Rhoades wondered how many auto-waiver cases there were per year. Ms. Carns gave an estimate of around six murders or rapes per year. Most auto-waiver cases concerned armed robbery, and there were between 10 and 20 of those per year. Commissioner Steiner agreed that it was a relatively small number. Commissioner Davidson said there were around 70 juveniles in DOC custody between 2001 and 2008.

Karen Cann, deputy DOC Commissioner sitting as DOC Commissioner Dean Williams’ designee, said this was something DOC would also like to look at. Kids should not be in an adult facility; even if they are receiving services. The services are directed towards adults and not juvenile needs. There are other services they could be receiving.

Chair Razo asked if there were any objections to having the Sentencing Workgroup take up this issue. There were none.

Public Comment

Janet McCabe from Partners for Progress said she was interested in the crime report and thought it would be fascinating to look at economic statistics for a comparable period. Staff research analyst Brian Brossmer cautioned against drawing any conclusions from such data as to causation. Ms. DiPietro said that Ms. Corey could look into economic statistics.

No other public comment was offered.

Update on Reentry

As there was time left in the public comment period and DBH Reentry Coordinator Alysa Wooden was present, Commissioner Stanfill suggested getting an update on reentry. Ms. Wooden informed the Commission that the four planned case managers had all been hired, have just completed their training and have started working with their caseloads. Ms. Wooden thanked Karen Cann and Morgen Jaco from DOC for their help in hiring and training the case managers. All of the case managers are using AKAIMS for data tracking and DHSS and DOC are working on coordinating that data with ACOMS data. Ketchikan and Dillingham are the newest reentry coalitions to receive reinvestment reentry grants.

Ms. Jaco added that they had needed to do some work on managing expectations. Many of the reentry coalitions are working on building capacity right now and there were expectations in some quarters for immediate outcomes.

Ms. DiPietro asked whether the coalitions were tracking capacity for treatment and services. Ms. Wooden explained that they were doing that, and also identifying barriers to accessing services and ways to get around those barriers. Commissioner Rhoades said she would like to funnel the issue of capacity to the Commission's Behavioral Health Standing Committee. With the greater number of reentrants seeking services, there could be a bottleneck of resources. The treatment needs of reentrants have to be balanced with the needs of those on the front end of the criminal justice system. Ms. Wooden agreed and said that there was additional funding coming for FY18 that would be devoted to looking at resource and capacity issues.

Janet McCabe and Doreen Schenkenberger said that Partners for Progress was taking some Therapeutic Court clients into their job lab program. There is a statewide grant for therapeutic court clients to receive these services but the same funding has been granted yearly despite an increase in therapeutic courts. The program could use greater funding; they are particularly concerned about the availability of services in Ketchikan.

Announcement re: CDVSA

Commissioner Stanfill informed the Commission that Diane Casto has been appointed to head the Council on Domestic Violence and Sexual Assault. This appointment is exciting given Ms. Casto's strong expertise and background with prevention programs.

Break- 10 min

Proposal to Respond to Recently Published Op-ed and to Clarify the Position of the Commission

Commissioner Steiner asked the Commission to write an op-ed on the concerns behind the SB 54 recommendations and to clarify some of the statements in the op-ed from Commissioners Lindemuth and Monegan that was recently published in several Alaskan newspapers. Commissioner Steiner took issue with the fact that the op-ed suggested that there would never be any jail time for Theft 4 offenders and that SB 91 had compromised public safety. He thought that the record should be corrected with an op-ed stating that there can be jail time for Theft 4 if a third-time offender's probation is revoked, and that there is no evidence to support the suggestion that SB 91 had compromised public safety.

Chair Razo asked for a response from Commissioner Lindemuth. Commissioner Lindemuth said the Governor, the Department of Public Safety, and the Department of Law would all like to see SB 54 passed this year, and she wrote the op-ed in question to encourage its passage. She stood by her statements regarding Theft 4, as the intended audience for the op-ed was the general public, and the language was crafted to be understood by the general public. She worked on drafting this op-ed herself and sought input from Commissioner Monegan and her staff.

Commissioner Steiner said he appreciated Commissioner Lindemuth's point but still thought that the op-ed was misleading by suggesting that SB 91 caused certain offenders to commit five to seven Theft 4 offenses in a row and had affected public safety.

Chair Razo asked if any of the other Commissioners had a comment. Commissioner Steve Williams, participating by phone, said that it was difficult to hear the conversation so he could not offer his input. Commissioner Claman said he would not weigh in because the op-ed had been in part directed at him in his capacity as a legislator.

Commissioner Stanfill reflected that each Commissioner has to juggle wearing more than one hat. This was a tricky topic because SB 91 got such a bad rap. She thought that if the Commission were to write an op-ed, it could support SB 54 but clarify that there was no known impact to public safety from SB 91. It could also note that SB 54 went beyond what the Commission recommended and address the fiscal note. There might be a way to tag on to the original op-ed in a positive way.

Commissioner Steiner said that he didn't have any position on the tone of the response, he was simply concerned that the op-ed from two Commissioners alone undermined the authority of the Commission. He thought it was important to clarify that there is no evidence that SB 91 impacted public safety because SB 91 continues to be blamed for resource issues.

Commissioner Lindemuth said she was careful in writing the op-ed to support SB 91 as a whole. If the Commission wanted to get the word out there, she was all for it, but she did not see a need to write a response to the op-ed.

Chair Razo said that when the Commission takes an action, it is appropriate for Commissioners to explain the action's basis and express its support. That said, all Commissioners wear other hats and have their own opinion on things, and not every Commission action is by

unanimous vote. The op-ed was obviously an opinion. If the Commission wanted to respond to the op-ed he would be happy to sign it. He asked whether there was a motion.

Commissioner Steiner moved to publish an op-ed explaining the Commission's rationale behind its recent recommendations [and to clarify the public safety statement?]. Commissioner Stanfill seconded the motion, and Chair Razo called for discussion.

Commissioner Rhoades asked whether the Commission would do this otherwise if there were no op-ed to respond to, and whether there was an independent reason to do this. If not, she would rather leave sleeping dogs lie.

Ms. DiPietro said that staff get a lot of requests to explain the Commission's work and SB 91 and there is a fair amount of misinformation floating around. The public might appreciate some clarification. Commissioner Stanfill agreed that it might be good timing from that perspective. She appreciated Chair Razo's opinion on this. But SB 54 wasn't moving forward and it might not be a bad idea to keep these issues in the public mind.

Chair Razo agreed about the misinformation in the public discourse. SB 91 appears in online comments every day. But he thought that the Commission's role was limited to making its recommendations and not to comment on pending legislation. He also worried about unintended consequences if a response were published—there are those who think that SB 54 does not go far enough. He was planning to vote no on the motion.

The motion was decided by a roll call vote. Yes votes: Alex Bryner, Brenda Stanfill, Quinlan Steiner. No votes: Jahna Lindemuth, Stephanie Rhoades, Greg Razo, and Karen Cann voting with Dean Williams' proxy. Commissioner Steve Williams was unable to hear the discussion and did not vote. The motion did not pass.

Update on the Administration's Response to the Opioid Epidemic

Dr. Jay Butler, Chief Medical Officer and Director of the Division of Public Health, gave an overview of the steps the administration has taken to combat the opioid epidemic. Governor Walker's February disaster declaration not only created an opportunity to get funding for more naloxone kits, but also created an opportunity to amplify the conversation on opioid abuse. Over 90 Alaskans died of an opioid overdose last year, more than at the peak of the AIDS epidemic. The opioid epidemic has particularly affected younger people. It has also had a great impact on crime.

The disaster declaration allowed the state to move to an incident command structure which enables the various state agencies to collaborate more easily and facilitates communication. Dr. Butler, as the incident commander, has a direct line to the Governor. He also heads up a multi-agency coordinating group with subgroups devoted to operations, logistics, financing, and planning. They are also planning long-term and looking at systems development; their focus is broader and more far-ranging than would be the response to a natural disaster such as a fire.

This year's SB 91 (not to be confused with last year's justice reinvestment bill) gave the authority for a standing order (effective until 2021) to distribute naloxone kits and to train people to train others on how to use them. Incident command is already hearing reports of lives saved because of this.

In addition to these life-saving measures, incident command is also taking a look at primary prevention, treatment issues (particularly the gaps in availability of long-term treatment), and reducing access to opioids. Dr. Butler commended DOC for beginning opioid treatment programs within DOC and creating warm hand-offs for reentering citizens so they can continue to receive services once released from prison.

April 29 was drug takeback day. Additionally, because many Alaskans in rural communities can't always make it to a drug takeback drop-off site, over 14,000 drug disposal bags, donated by pharmaceutical companies, had been distributed around Alaska.

Dr. Butler was working with the Controlled Substances Advisory Committee (CSAC), which is working to put the drug U4770 and tramadol on the drug schedules. There is a bill for this in the legislature right now.

There is also an omnibus opioid bill in the works which requires pharmacists to update the Prescription Drug Monitoring Program (PDMP) database daily. Currently all providers must register with the database and pharmacists must update it weekly. Commissioner Davidson noted that the bill also empowers individuals to reject opioids or reject part of an opioid prescription, and makes the default prescription 7 days' worth of opioids.

The disaster declaration has also enabled Alaska to apply for federal grants. The Naloxone kits were distributed with the help of a five-year federal grant plus state and volunteer efforts. The CDC grant will provide for public health surveillance and analysis of the PDMP data. The STR (Strategic Targeted Response) grant, just announced, has \$2 million available for Alaska- three quarters will go to access for treatment, the rest will go to filling gaps in prevention and perhaps naloxone kits for teens.

They have distributed naloxone to law enforcement in spray form as well, which involves a very quick (2-3 minute) training process. They are tracking EMT use of naloxone but it is hard to track the use of the kits that have been distributed to the community. They are also collecting anecdotal data.

Commissioner Davidson added that they are also looking at wider addiction issues in conjunction with this effort, trying to answer questions about why people are self-medicating. The 1115 Medicaid waiver will allow DHSS to redesign behavioral health in Alaska. Among many changes, it will allow residential treatment facilities to have more than 16 beds, and will allow non-DBH grantees to receive Medicaid dollars.

Commissioner Davidson added that she recently went to a western states public health conference and participants were discussing why opioid use was becoming such a problem now. Her response was that this issue is being discussed more now because it is affecting white people. Epidemics like these happen when issues that seem to only affect socially disadvantaged communities are ignored over the years.

Dr. Butler said that the new systems being developed for the opioid crisis will also help "non-molecule-specific" problems, meaning other abused substances will also be addressed. Meth is still an issue, and some people are combining meth and heroin use. They are looking at how to

improve access to treatment for justice-involved individuals, including looking at what other states are doing. Three quarters of post-prison deaths are opioid-related.

Commissioner Lindemuth commended Dr. Butler for the work he has been doing as incident commander. The incident command team has been racking up weekly accomplishments. Before the incident command structure was formed, Alaska was lagging in its response to the opioid crisis; now, Alaska is in the vanguard. Commissioner Davidson echoed this sentiment and noted that Dr. Butler was also the president of a national organization of chief medical officers and was working to bring greater attention to substance use nationwide.

Chair Razo asked whether anyone had questions or comments for Dr. Butler. Commissioner Stanfill said that she had had reports of detox centers struggling to address the needs of patients with co-occurring addiction disorders. She suggested this was something the incident command team could look into.

Commissioner Rhoades asked about alcohol abuse and whether that would also be addressed. Dr. Butler said that while alcohol abuse affected a greater number of people, a greater percentage of overdose deaths were from opioids. Of the 125 overdose deaths in Alaska last year, three quarters were opioid overdoses. Opioid deaths were increasing, while alcohol deaths were remaining steady. Finally, medically-assisted treatment is available for opioid addiction but not for alcohol addiction. He hoped there would be more understanding about alcoholism as a disease in the future.

Ms. DiPietro noted that last year's SB 91 had made some changes to the drug crimes statutes, and wondered whether any other criminal response to the opioid crisis was necessary. Dr. Butler agreed that the opioid crisis was both a public health and a criminal issue. The biggest criminal issue is going after those who take advantage of those with the health issue. He is working closely with the Department of Law. Deputy Attorney General Rob Henderson noted that the CSAC also helps bridge the gap between the two areas.

The meeting was adjourned at 4:28 p.m.

Future Meeting Dates & Tasks

Next Commission meeting:

- June 15 at 9:30 a.m., Snowden Training Center

Upcoming Workgroup meetings:

- Sentencing – May 12, 2:00 p.m., Denali Commission
- Behavioral Health Standing Committee – May 18, 9:00 a.m., Alaska Mental Health Trust
- Barriers to Re-entry – May 22, 1:30 p.m., Denali Commission