Alaska Criminal Justice Commission

Meeting Summary

Tuesday, August 20, 2019
11:00 am – 4:30 p.m.

Snowden Administrative Office Building Training Center
820 W 4th Ave, Anchorage, AK 99501
And Audio-teleconference

Commissioners Present: Joel Bolger, Sean Case, Matt Claman, Kevin Clarkson, Nancy Dahlstrom, Beth Goldstein, Shelley Hughes, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Adam Crum, Amanda Price (Kelly Howell served as proxy for Commissioner Price)

Participants: John Skidmore, Glen Klinkhart, Araceli Valle, Troy Payne, Alysa Wooden, Lauree Morton, Kim Stone, Nancy Meade, Teri Tibbett, Brad Myrstol, Janet McCabe, Travis Welch, Gennifer Moreau, Jonathan Pistotnik, Ceri Godinez

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

Approval of Meeting Agenda and Previous Meeting Summary

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

Victim Workgroup Update and Report

Barbara Dunham, project attorney for the Commission, reminded the group that at the last meeting, the Commission had decided to continue to hold victim listening sessions and to form a workgroup devoted to victims' rights and services. The next victim listening session would be held in Anchorage on September 15, most likely at the Loussac Library. The first meeting of the Victims' Rights and Services Workgroup took place in July, and the next would take place September 25.

Ms. Dunham explained that she had circulated the report on the previous victim listening sessions and the victim survey; this had been sent to the workgroup as well and was discussed at the meeting in July. The report had analyzed the data from the survey after extensive coding of the responses performed by herself and staff analyst Staci Corey. Generally speaking, survey respondents reported they needed better information, communication, services and support. Many reported feeling as though the defendant had more rights than they did.

Commissioner Stanfill added that the first meeting of the workgroup was mainly informational; the group heard about the VINE notification systems and OVR as well as hearing about the report on the listening sessions and survey. The next meeting will be devoted to figuring out priorities and goals, and potential recommendations. She was not sure the workgroup would have a recommendation in time for the Annual Report but may have something for the next legislative session.

John Skidmore asked whether there had been any additional survey responses since Ms. Dunham wrote the report. She said she had received a handful. The bulk of the survey responses came after 49th Rising, an advocacy group for victims of sex offenses, advertised the survey on Facebook.

Chair Claman asked whether there was also a listening session planned for Nome or Koztebue. Ms. Dunham explained that at the workgroup meeting, Ingrid Johnson, researcher at UAA, had noted some victim fatigue among victims in Western and rural Alaska. Victims felt as though they had been frequently asked to share personal information despite nothing seeming to come from it. The thought now was to wait until the session at AFN and gauge interest then.

Commissioner Stanfill noted that CDVSA Executive Director Diane Casto had agreed to be the moderator for the session in Anchorage.

Reentry Simulation

Jonathan Pistotnik explained that he was the Anchorage Reentry Coalition Coordinator, one of four funded by the Trust. One purpose of the Reentry Coalition is to educate the community about reentry and the challenges reentrants face. As part of that education component, and as a way to engage the coalition, he put together two reentry simulations earlier this year.

Reentry simulations have been done elsewhere around the country; Mr. Pistotnik found a model from a team in Florida with the help of Teri Tibbett of Alaska's Mental Health Board and Yolanda Candelario from the US Attorney's Office in Anchorage. The Anchorage Reentry Coalition then hosted a simulation in April with 24 participants, and one in June with 52 participants. Mr. Pistotnik believed this was the first time such a simulation had been done in Alaska.

The aim of a reentry simulation is to educate participants and raise their awareness of the complexities of reentry. Participants are given an identity of a reentrant, then need to get an ID, food, medications, employment, and to get to meetings with their PO, all using limited transportation options and limited resources. The simulation will also throw in an unexpected challenge.

Mr. Pistotnik said the simulations were well-received by participants, who said they found the exercise worthwhile and impactful, and would recommend it to others. Volunteers who provided the "services" for the simulation also had positive feedback.

Mr. Pistotnik said that participants found that reentry is complicated, and the reentry experience varies from person to person. Participants saw a need for services that extend beyond law enforcement and corrections. His hope was that after participating, people will be more supportive of reentry services, and understand that these services will make the community safer.

The Anchorage Reentry Coalition is planning to repeat the exercise, and is thinking of hosting a reentry simulation just for the UAA community. The coalitions in Fairbanks and the Mat-Su are also thinking of hosting their own simulations. Mr. Pistotnik said he was happy to let the Commission know of future simulations. His contact information was on the summaries he provided for this meeting.

Commissioner Razo said he participated in one of the simulations, and he found it to be very impactful, especially since he went into the exercise thinking he already knew what the challenges would be. But after jumping though hurdle after hurdle, with limited information, it was hard to see path to success in reentry. He appreciated Judge Rhoades volunteering as one of the "service providers."

Judge Rhoades said the simulations represented experiential education at its finest. She acted as the person to talk to to get an ID. She added that she would highly recommend that the Dept. of Corrections to send their POs. There was a Federal PO contingent, and all of them got sent back to "jail" during the exercise, to their chagrin. They all gathered after the simulation was done to discuss what they learned and how to implement their ideas. Judge Rhoades thought this was a great outcome.

Senator Hughes wondered how the Commission could learn from the hurdles Commissioner Razo mentioned, and whether they might point to things that could be improved.

Judge Stephens noted that the simulation brought all the services together in one place, but in reality those services are spread out. Accessing services would be much more difficult in real life without transportation. In an ideal world, all these services would actually be in one place, and reentrants would be more successful.

Chair Claman said that he participated as well, and that the simulation used bus passes. If a participant had no passes, their only option was to go back to jail. Everyone who thought they could navigate the system ran up against these limitations, and almost everyone went back to jail. He strongly recommended participating in a simulation to the members of the Commission. He thought that one real-world lesson from the exercise would be to just give everyone on probation or parole bus passes.

Judge Rhoades thought that one real-world takeaway was that a personal one-on-one navigator would be helpful, or else actually having all the services in one place. The reentry center tries to do this. A similar model would be Project Homeless Connect, which gets all the homelessness service providers in one place for people who are homeless.

Senator Hughes wondered how long the simulation would last. Mr. Pistotnik said it typically takes a little over an hour for the activity itself, plus introductions at the beginning and a debrief afterward. Senator Hughes said she was asking because "Step 2" of HB 49 was to address recidivism and reentry issues. To this end she thought it would be helpful host a simulation with all of the legislators in Juneau.

Chair Claman said he would support that, and that it would probably be best to do early in the session. Mr. Pistotnik said that a simulation would need at least 25-30 participants, with 15 volunteers. From there, the exercise can be scaled up. There is a Juneau Reentry Coalition that could help. Chair Claman suggested hosting a simulation the day before or the day after the January Commission meeting.

Ms. Dunham interjected that Ms. Tibbett had contacted her to inform the Commission that the Juneau Reentry Coalition was already planning a simulation in collaboration with Central Council of Tlingit and Haida Indian Tribes. Chair Claman suggested coordinating with that effort.

Commissioner Stanfill wondered whether certain variables in the exercise could be adjusted to tell which services would have the most impact and improve the success rate. Mr. Pistotnik said that it might be possible, though he hadn't done it. It might be interesting to see what would happen—there could be unintended consequences to well-meaning adjustments. There were only six different personalities for participants to assume, but each person experienced those personalities differently as they went through the simulation.

Chair Claman said his experience of being a "reentrant" was generally miserable and the simulation made it easy to fail; the natural reaction is to want to fix the whole system. It would be interesting to identify whether one variable could be tweaked to help people be more successful.

Mr. Pistotnik said that the simulation was designed to be frustrating. Participants were purposefully given very little information at the start to mimic being released from prison without a roadmap. It would be interesting to see what would happen if participants were given more information at the beginning.

DV Diversion Pilot Program

Commissioner Case said that his proposal for a pilot diversion program stemmed from years of dealing with domestic violence cases and noting the high rates of recidivism, and thinking there has got to be another way. Also, domestic violence defendants typically do not have extreme substance abuse or mental health issues, which makes that population a good option for a diversion program since not a lot of treatment resources are required.

Commissioner Case explained that the Judicial Council staff did some research on this topic and found that 40% of DV defendants go back to jail within one year. Half of defendants have a continuing relationship with the victim while the case is open. Also, once a defendant is arrested, that person will have reduced opportunities for employment, which can exacerbate the violence in the relationship, and increase recidivism.

Commissioner Case added that criminal cases take time, and there is no immediate post-arrest intervention for a DV defendant. Victims often want the no-contact order lifted as soon as possible (for a variety of reasons) so the case is just pending without any change or benefit to the defendant or victim.

The goal of the pilot program is see if this is a way to reduce victimization and recidivism in DV cases at a lower cost. Under the program, officers will respond to a DV call, and do a quick risk assessment—there are existing instruments for this. Moderate-risk defendants would be the target. Low-risk defendants are unlikely to recidivate, and high-risk defendants should be arrested because of the danger to the victim.

The officer will then ask both the defendant and the victim if they want to participate in this voluntary program. The defendant will agree to be electronically monitored with area restrictions (they will still be able to work) and participate in programming. Ideally there will be two components to programming, a clinician and a case manager or resource manager. The idea is to have a 90-day process in which compliance and involvement is expected from the offender. If the person is not successful, APD will bring the case to the municipal prosecutor.

Commissioner Case said the purpose of sharing this was just to give the Commission an update; he is still in the process of developing this pilot program and gathering information. He realized there were still some holes. He is talking to a clinician now about how that part of the program would work. He was open to hearing the thoughts of the group.

Commissioner Stanfill said she was taking idea in, and was trying to have an open mind. She asked if the idea was not to arrest someone accused of domestic violence. Commissioner Case said yes, the person would be put on ankle monitoring instead. In most DV cases now, unless a defendant is really high risk, that defendant is not staying in jail, but released with conditions including a no contact order—and release happens in a fairly short time frame. But until the case is disposed, no other preventive measures are taken in that time. He thought this process would actually pose less risk to the victim because it would allow for a more immediate intervention. Both the victim and the defendant must volunteer to participate.

Commissioner Stanfill wondered how this would be affected by the mandatory arrest law. Commissioner Case said that a prosecutor can waive the arrest requirement if APD requests it. Chair Claman said this was a provision in the law he discovered recently that he hadn't known before: that there will be an on-duty attorney in each prosecutor's office who can authorize non-arrest in DV cases.

Judge Rhoades asked for a review of how the funding worked for this project. Ms. Dunham explained that the funds were part of the grants from BJA that were made available to all states that had enacted some form of justice reinvestment. Previously the grants were used to fund things like training for DOC staff. The Commission serves as the body that decides how this money should be spent.

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, reminded the Commission that it had discussed a pilot diversion program last year along with other proposals for DOC suggested by the previous DOC commissioner. When the administration changed, not a lot of action was taken on those proposals but Commissioner Case wanted to move forward with the diversion project idea. When the legislature passed HB 49, BJA canceled most of the grant with the exception for this one project because it was already going. BJA is generally supportive of law enforcement and felt it was a worthwhile pilot program.

Judge Rhoades wondered why the target population was DV offenders. She recalled the original idea was to create a diversion program for people with severe mental health issues. Ms. DiPietro said that Commissioner Case and other stakeholders had gone to Seattle [and San Francisco] to study their law enforcement diversion programs (LEAD). The key thing they founds was that diversion programs need to have something to divert people *too*—and in Anchorage, those services don't exist and we don't have the opportunity to wait for that to change in the timeframe of this grant. Case had idea

Ms. DiPietro added that the idea to target the DV offender population was born out of officers' frustration with this population. Commissioner Case said to that end he brought this idea forward about a year ago. The funding will be used to answer some questions about whether this model would be feasible.

Commissioner Stanfill wondered if Commissioner Case had conferred with victim services providers on this. Commissioner Case said that would be the next step, to reach out to all boots on ground entities to refine the concept.

Judge Rhoades said she would not be comfortable moving forward even with just a small pilot without a literature review, and an assessment of whether this has been done in other places. She was also uncomfortable that the plan didn't include a needs assessment as well as a risk assessment. She did not agree that this was not a high-needs population.

Ms. DiPietro said that staff did do that research, and have a memo that staff can circulate to the Commission. As to the defendants' criminogenic needs, that would be addressed by the clinician piece and would clearly need to be in place before this program started operating.

Judge Rhoades said she also worried about waitlists, and that that was the problem with having a 90-day program, as people might be on the waitlist for the programs that they would need to complete.

Commissioner Stanfill observed that the moment when law enforcement has been called to respond to a domestic violence incident is not necessarily a good time to ask a victim about whether they want to participate in a program, as they might not be in a good space to do that. She had concerns about victims having to make a night-of decision. She was not giving the idea a thumbs-down for now but want to follow up with Commissioner Case and read the memo.

Chair Claman said that his understanding was that the motivation for this proposal in part comes from the recognition that there are a number of DV cases where an offender is arrested and the within a week the offender is released and back to living with the victim. That reality can't be ignored. Maybe one solution was not to offer the program to the victim and offender on the night of.

Ms. DiPietro said it was important also to emphasize that the proposal was only to open this program to people accused of misdemeanors. Felonies and dangerous cases would already be screened out. Commissioner Case reminded the group that this project was not yet close to implementation. But he thought it was important to be looking at a different way to do things.

Criminal Justice/Mental Health Summit Update

Justice Bolger reminded the group that the idea for this summit started with the conference he attended along with four judges, DHSS DC Al Wall, and staff from the Trust. They came away from the conference with a commitment to provide a mental health summit in Alaska, bringing together agencies, lawyers, and judges to assess and discuss the current state of the mental health and criminal justice systems.

Since they started planning the summit, there has already been a lot of study and activity in this area just in the interim since the last meeting. That includes the 1115 waiver for mental health treatment, which will probably be approved to begin October 1. A study for the feasibility of a crisis stabilization center, probably Anchorage, is also in the works. Agnew::Beck has done two studies, one for ASHNHA on the civil commitment system and one for DHSS on the forensic psychiatry system.

Justice Bolger said that since many things are being addressed already, he will discuss the need for a summit with the other judges in the coming weeks, and will push the theoretical date of the summit to December. It is certainly something he would want to do after the 1115 waiver goes into effect. Chair Claman asked whether a location had been selected yet. Justice Bolger said that one was not locked in yet. They want to make sure that if the summit proceeds, the program is worthwhile and includes all the latest developments.

1115 Waiver Update

Chair Claman asked for an update on the 1115 Medicaid Waiver Demonstration project.

Gennifer Moreau, director of DBH, explained that this project had been in the works since 2016 and the passage of SB 74. After extensive planning, the project is now finally "real." The project went live on July 1 for substance use disorder treatment. DHSS is now enrolling providers, and there are currently 96 approved locations with 118 providers. They expect the first claims to come in in September. They are targeting major population areas in year 1: Anchorage, Juneau, Fairbanks, plus a few other areas. Reimbursable treatment is available along a full continuum of care, including inpatient and outpatient treatment, community supports, and MAT.

They are thinking they will be able to implement the mental health treatment component of the waiver in October, and will be able to reimburse 28 new services. In this component, the targeted populations are the severely mentally ill and at-risk families. New services will include early intervention for families using a study on child abuse and neglect to focus on the social determinants of abuse and neglect. They are holding off on an IMD exclusion waiver for now.

Judge Stephens wondered how this would interact with the new federal act called Family First, which requires that families receive services before children are removed from their parents. Ms. Moreau said that legislation set federal criteria for best practices, and they were working with OCS to meet with providers to understand gaps and needs. Judge Stephens asked whether programs in Alaska would be required to meet those standards. Ms. Moreau said it would depend on the services. For substance use disorder treatment, they are raising the bar and requiring that programs must be evidence-based; they are hearing from providers that it's a heavy lift. But they are also doing things like opening up provider qualifications to use traditional healers. She suggested going to the DHSS website for more details.

Senator Hughes asked whether there was any movement on Medicaid covering treatment for DOC inmates. Ms. Moreau explained that Medicaid will reimburse for inpatient (in-hospital) care, and might reimburse for care for those residing in a CRC depending on that person's restrictions. Other than those exceptions, CMS has not seemed flexible on reimbursing for inmate care in the past. She has not heard anything to suggest they've changed their mind. Senator Hughes said she had heard that they were considering reimbursing for substance use disorder treatment. She realized this was a bit off topic but she saw a need to reduce recidivism by providing robust treatment in prison, and she thought it would be helpful to get assistance from Medicaid for that.

Judge Rhoades asked whether crisis intervention would be covered by the 1115 Waiver. Ms. Moreau said it would; the new services included 23-hour crisis stabilization, residential crisis services, mobile crisis response, and ACT teams. Judge Rhoades wondered how difficult it would be for previously grant-funded providers to become Medicaid-eligible providers, and whether there was any technical assistance available for that. Ms. Moreau said there was ongoing technical assistance available for that purpose.

Chair Claman asked if he was right in thinking that if someone was released from prison to inpatient treatment in another facility, that would be covered by Medicaid, but if that same person was offered the same program in prison, that would not be covered. Ms. Moreau said that was correct.

Judge Stephens asked whether, if a person is enrolled in Medicaid, then spends two years in prison, that person will still be enrolled in Medicaid upon release. Ms. Moreau said they would be, if they do the right paperwork. Commissioner Goldstein asked how prisoners would get that paperwork in prison. Alysa Wooden with DBH said that was a challenge, because prisoners can't use a computer, and have to complete paper applications. They have tried to train DOC staff to help. Community providers can also intervene and assist in specific cases.

Judge Stephens thought that at some point the Commission should talk about making it easier to retain Medicaid while incarcerated. It that were the case, community-based organizations could then go inside to provide services. He thought the state should do everything possible to address treatment needs in jail. Senator Hughes said that if community-based programs were brought into DOC, then inmates can continue to get treatment with the same provider when released.

Ms. Moreau noted that having a family member in jail was one of the criteria for being an at-risk family and therefore one of the target populations for the Medicaid waiver.

Ms. Goldstein noted that the PDs were hosting a federally-funded program called Holistic Defense that provided services like these. This program is already in place in Bethel but the grant funding is going away in the near future. It could be a model that could be built on.

Commissioner Williams suggested that Commissioners go back to the sequential intercept model which demonstrates the various points at which people can be diverted from the prison system. He wanted to keep in everyone's mind that even if people are provided robust services in jail, almost all of them are going back to the community at some point. These people need to be supported after they are released to retain any gains they might have made while incarcerated. He thought this was a great discussion and noted that the group had been discussing various points on SIM continuum today. The value of the Commission was that it could touch all points on the continuum.

Commissioner Williams explained that the Trust was engaged with Recovery International and community providers and hospitals to develop the Crisis Now model for Alaska. The model aims to reallocate resources so that police can divert the people (or people can self-report) to a crisis stabilization center. He said he would send the Commissioners a link to the Crisis Now website.

Commissioner Dahlstrom said she was happy this conversation was happening, and that she agreed with agreed with both Senator Hughes and Commissioner Williams, and agreed that it would be beneficial to look into bringing community organizations into the prisons to provide services.

Janet McCabe explained that she was the chair of Partners for Progress, a high-volume reentry center in Anchorage serving 50 to 100 people per day. Relating to Commissioner Williams' and Commissioner Dahlstrom's remarks, she noted that Partners has been doing a lot more inreach into the Anchorage jail. They have observed that people who are prepared before they leave prison have lower recidivism.

Judge Rhoades thanked Commissioner Williams for bringing the discussion back to the SIM continuum. She said she would appreciate using the committee referral process for what was being discussed. She heard two important ideas: the first, from Judge Stephens, was looking at ways to keep people enrolled in Medicaid while incarcerated. In her mind the only way to do that was to engage the institutional POs. The second idea was how to get Medicaid to cover treatment

for people while they are inside DOC facilities. She wanted to refer those ideas to the Behavioral Health Standing Committee. Judge Stephens so moved, and Justice Bolger seconded the motion. The motion passed with no objection.

Senator Hughes said she went to a rural jails conference in Montana in June. Other states have a smart 911 system, which keeps the details of people with mental health issues, so that information pops up if there is a call from that person's residence. Some states also have a mental health professional associated with the 911 system, who can accompany first responders. There was also discussion of the SOAR (SSI/SSDI Outreach Access Recovery) program at the conference as a way to maximize reentry opportunities.

Pretrial Risk Assessment Revalidation Study (Part 1)

Dr. Troy Payne, professor at UAA's Justice Center, gave a presentation on the completed revalidation study of Alaska's pretrial risk assessment tool, the AK-2S. He explained that it was important to remember going into the presentation that DOC had been handed a series of large tasks with the passage of SB 91, not least creating a whole new division devoted to pretrial. SB 91 also required DOC to create a pretrial risk assessment for anyone detained in DOC custody following an arrest or for whom the prosecution requests an assessment.

The AK-2S was developed by researchers at the Crime and Justice Institute (CJI) using data on pretrial defendants in Alaska in 2014 and 2015. They were required to construct a tool only from static data available in state databases, because the process envisioned for using the tool did not include interviews with the defendants. The tool was required to assess a defendant's risk for failure to appear and being arrested for a new crime if the defendant were to be released from custody.

Dr. Payne explained that CJI then engaged in exactly what they should have done. They conducted meetings with an extensive stakeholder meetings. Stakeholders made suggestions as to what items might be considered for use in the tool.

The tool was required to be equally predictive for race and gender, and items used in the tool were required to be predictive both individually and together. Individual items on the scale were expected to have a *p*-value of ≤ 0 and the overall scale was required to have an AUC of 0.60

After considering an exhaustive list of items, the researchers at CJI found that failure to appear (FTA) and new criminal arrest (NCA) were two distinct outcomes, and the items that were predictive of one were not necessarily predictive of the other. This is not unusual and is consistent with the scientific literature on pretrial risk.

Many items that might be expected to be predictive did not work as well as they needed to in order to be included in one of the scales. These items were identified by stakeholders as things that the researchers should look at, but ultimately were not predictive enough to be used in the tool: current age, current DUI charge, current drug charge, current public order charge, any

prior felony arrests, any prior convictions, current probation charge, and prior domestic violence arrests.

The tool did not include national criminal history data, because the federal national crime database did not allow pulling bulk data for research purposes. However, individual criminal history can be pulled on a case-by-case basis, which is what DOC's Pretrial Enforcement Division has been doing. They have recorded national criminal history data for each defendant, meaning that data can now be assessed for potential predictive capability.

Dr. Payne explained that DOC had commissioned the revalidation study and that it was limited in scope. The project had four components: 1) ensure that the items on both the FTA and NCA scales continue to meet the expected criteria (listed above) when the tool was created; 2) ensure that each scale over all meets the same expected criteria; 3) test whether certain new items meet the same criteria and if so, whether their inclusion improves the performance of the tool; 4) whether national criminal history information meets the criteria and improves the performance of the tool.

Senator Hughes said she spoke to someone who talked about how these tools could potentially break down the NCA scale into violent and nonviolent NCA, and wondered whether that was possible with this scale. Dr. Payne said that was not within the scope of his project. Ms. DiPietro said that CJI had looked into that idea but concluded that there was not enough data to perform that analysis. They suggested that over time, with more data collection, that might be possible.

Senator Hughes said she was thinking of how different things are now 2014-2015, the years when the data to create the tool came from. Since that time the opioid crisis grew exponentially, for example. She asked when this kind of study would be done again. Dr. Payne responded that revalidation was never done. It should be seen as a cycle.

Public Comment

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

Pretrial Risk Assessment Revalidation Study (Part 2)

Judge Rhoades wondered at what point a revalidation becomes a revamp. Dr. Payne said it depends on what the person requesting the analysis wants. A total revamp would be something that would have to be planned for from the beginning. Chair Claman noted that since DOC commissioned this study it was up to DOC to decide what to do next.

Dr. Payne clarified that the term "revalidation" does not necessarily imply a foregone conclusion or that there should not be any changes to the tool. As populations evolve, these tools should be revalidated periodically and adjusted if necessary.

[At this point Commissioner Kevin Clarkson joined the meeting; Deputy AG John Skidmore served as his proxy until this point.]

Dr. Payne explained that his data set was comprised of all criminal cases in which a risk assessments was performed in 2018, with some cases with missing data removed. This wound up being just under 15,000 cases.

He then looked at those cases to determine which ones experienced pretrial failure –either FTA or NCA—within 2018. To be assessed for pretrial failure, the person must have been out of custody for at least one day before disposition (or before the end of 2018) and must not have pled guilty at arraignment. He said it was important to note that the data is from calendar year 2018, so not every case in the data set was fully disposed. If he had excluded those cases, a large number of cases would have dropped out of the data set and the analysis would have been less meaningful.

Dr. Payne explained that 58.5% of the 2018 cases had no failure, meaning the defendants in those cases never had an FTA or NCA before the case was disposed or before the end of the year. 18% of defendants had an FTA incident (in which a warrant was issued for failure to appear) and 32.8% had an NCA. Of the new criminal arrests, 26% were for Violation of Conditions of Release. Roughly 7 in 10 of new criminal arrests were for nonviolent misdemeanors. Roughly 1 in 10 included violent felony charges.

Dr. Payne explained that these numbers could not be directly compared with the baseline rates that CJI used in developing the tool, because all cases in the CJI data set were fully disposed cases. The baseline rates in that data set were 14% FTA and 35% NCA. For the current data set, he would expect the rates to go up a bit, but not by much, if he were to reassess when all cases were disposed.

Dr. Payne went on to summarize the efficacy of the tool itself. As noted above, the tool has two separate scales, one for FTA and one for NCA. The FTA scale had some problems. It was constructed as a scale with scores ranging from 0 to 8. However, no defendant ever scored an 8, not even those held in custody pretrial.

The reason for this was that two items included on FTA scale were very rarely scored a "yes" (meaning one point would be assessed), and even more rarely scored together, making it nearly impossible to score an 8. Those two items were "currently booked on an FTA" and "currently booked on a non-DUI motor vehicle charge." After SB 91 passed, FTA in most instances was reduced to a violation, as were most non-DUI motor vehicle charges, meaning that it would be rare for someone to be "booked" under one of those items as a criminal charge. In 2014-2015, the period from which CJI took its data to design the tool, those things were still crimes. Essentially, the tool was designed for a legal environment that no longer existed.

Despite this flaw in the FTA scale, the scale was effectively predictive of risk. Those assessed as high risk were more likely to have an FTA incident than those assessed as moderate or low risk. Risk scores correlated to FTA rates in a linear fashion, meaning that the higher the risk score, the higher the FTA rate. There was a big jump in FTA rates between defendants who scored a 5 and those who scored a 6.

The non-problematic items in the FTA scale continue to be predictive. Dr. Payne tested new items for their possible inclusion in the scale. Items that did not work (were not predictive) included current age, any aspect of the current offense that was not already included in the FTA scale, and prior convictions of any seriousness. Items that did work were prior *felony* convictions, and any other pending cases.

Chair Claman asked why prior felony convictions was predictive but any prior conviction was not. Dr. Payne said that his best guess was that misdemeanors are more common, so having a prior record doesn't differentiate among defendants well enough. An item will not be predictive if many people have that same characteristic.

Judge Rhoades wondered whether the items relating to FTA and driving offenses might be relevant once again now that those items are now crimes again with the passage of HB 49. John Skidmore explained that FTA reverted to the pre-SB 91 version of the offense but driving with license suspended did not. Judge Stephens thought it was worth looking at.

Dr. Payne said that a risk assessment was like a pre-flight checklist. It contained a list of standard things to look at, but there could be other red flags in an individual case that could be just as or more important than the risk assessment score. It was not a one- step release decision. For the two previous items that are now offenses again, he would recommend looking at those again for the next revalidation. We don't know if those items are still predictive for the current population, so the next revalidation would need to do that analysis on a population for whom that law is once again in place.

Dr. Payne said that by adding the two new items to the scale (prior felonies and other pending cases), the scale was predictive of risk and defendants in the 2018 data set would have scored an 8 under this revised scale. The revised scale was equally predictive across gender and race as well. He suggested adjusting the margins of the low, moderate, and high designations so that low was a score of 0-2, moderate was 3-7, and high was 8. There were relatively large jumps in the FTA rate between those scored as a 2 and those scored as a 3, and between those scored as a 7 and those scored as an 8.

Dr. Payne said his analysis of the NCA scale showed no faults in the scale's design or predictive capability. He would, however, recommend renorming the scale (i.e. resetting the boundaries between low, moderate, and high). Under this scale, more than half the defendants were assessed as low risk, about a third were moderate risk, and about 1 in 7 were high risk.

Dr. Payne said that while there was nothing wrong with the current items on the scale, DOC staff expressed practical difficulties with the items that have a lookback period: total number of arrests in the past 5 years, total number of prior convictions in the past 3 years, and total number of prior probation sentences in the lase 5 years. DOC would prefer to have the same lookback period for those items because it is time consuming to look through the databases to score these items. Dr. Payne found that if the same time period were to be used for those three items, the three-year period was more predictive than the five-year period.

DOC also asked Dr. Payne to look into whether the new items on the FTA scale should also be added to the NCA scale. Dr. Payne determined that adding those items did not make a did not make a statistically significant difference to the scale's predictability. Adding them to the scale would be harmless. With those items added, the scale would become a 12-point scale. Dr. Payne suggested norming the scale by designating scores of 0-3 as low risk, 4-9 as moderate risk, and 10-12 as high risk.

[*At this point, Dr. Payne took a break from his presentation and the group heard a presentation from Thea Agnew Bemben from Agnew::Beck. The summary of that presentation is below the conclusion of this presentation.]*

Dr. Payne reiterated that the researchers who developed the AK-2S were not able to get out-of-state criminal history for defendants in their 2014-2015 data set in bulk, because the FBI doesn't allow the bulk collection of that data from its NCIC database. However, DOC has been collecting that data on an individual basis since the AK-2S went live. Accordingly, he was able to assess whether using any aspect of out-of-state criminal history would be predictive of pretrial failure.

He found that none of the items he analyzed were predictive, no matter how they were scaled. The NCIC data is limited, and it's not always possible to tell whether an item on a person's criminal history is a felony or misdemeanor or at what point in time it occurred. In all, less than a quarter of the 2018 cases had out-of-state criminal history. Most people who have out-of-state history also have in-state history, another reason why it might not be predictive. However, judges should know about this history if it appears on a defendant's record and DOC should continue to provide this information along with their risk assessments.

Mr. Skidmore suggested that judges should have access to complete NCIC histories for defendants. Judge Rhoades said that judges don't have access to NCIC themselves so someone needs to provide it before arraignment. Judge Stephens said that kind of information is harder to come by on weekends too.

Senator Hughes said that Alaska was the only state to require that judges use the risk score in the release decision. Dr. Payne said that any tool is only that, and generally shouldn't be a substitute for professional judgment. Judge Stephens pointed out that until HB 312 passed, there were a few offenses (nonviolent misdemeanors and C felonies) where a low or moderate risk score would mandate release. HB 312 removed that provision.

Dr. Payne said that no risk assessment should be robotically applied. His concern for the state of Alaska was that no one was tracking the reasons behind the release decision, and if a judge was departing from the guideline recommendation given by the tool, why that was. Collecting that information would be helpful for future revalidations of the tool, as well as looking at regional differences in release decisions and assessing training needs for Alaska's judges.

Dr. Payne explained that he gave DOC recommendations in line with what he had talked about today. His understanding was that they were working on implementing them.

Commissioner Stanfill recalled that one reason for recommending a risk assessment tool was that it was less likely to be racist, and she wondered if that was the case. Dr. Payne said he didn't have adequate comparison data to say whether the racial disparity in pretrial release was now better or worse.

Ms. DiPietro reminded everyone of the context: Dr. Payne's study was an assessment of the risk assessment tool, not of all pretrial releases. The Alaska Judicial Council's most rigorous study on pretrial release found statistically significant racial differences in who was released before trial and who was not, and that being detained pretrial translated into longer sentences. The Judicial Council did another study just before the Commission proposed criminal justice reform, and it found the same disparity.

Ms. DiPietro continued that the Judicial Council staff just did another study of all pretrial releases, and that recent data suggested there was less racial disparity. It is important to know that the study of the risk assessment, which only looked at defendants held in jail pretrial, is different from a study of release rates, which looks at all pretrial defendants (those released immediately on a bail schedule, those released after a risk assessment and arraignment, and those in jail). The recent study indicated that the racial disparity was not gone but that the disparity was decreasing.

Commissioner Dahlstrom said that Deputy Commissioner Jen Winkleman and Deputy Director Delila Schmidt were both on the line with her and they were still working though the final report for the study. She appreciated the work of Dr. Payne.

Forensic Hospital Feasibility Study

Thea Agnew Bemben explained that her consulting firm, Agnew::Beck had been tapped to conduct a feasibility study for a forensic psychiatric hospital in Alaska for the Division of Behavioral Health and the Mental Health Trust Authority. She gave the "speed version" of the study's findings and recommendations.

Ms. Bemben said that the original RFP was to look into relocating and/or expand API's current forensic psychiatric unit. They expanded the scope of the project as it went on. They also identified policy, process, and statutory changes that would be required to address the competency evaluation and restoration backlog, and researched the forensic psychiatric workforce and alternatives to inpatient restoration. They also looked at improvements in data tracking. There is not one data tracking system for this population, so Agnew::Beck compiled the data needed for this study.

The target population for the study was people in the forensic system and those peripheral to it—people who need a competency evaluation, people deemed incompetent to stand trial (IST) and in need of treatment to be restored (restoration), people who have been deemed IST and also non-restorable after going through restoration (specifically those who were charged with serious crimes and then civilly committed), and those who have been found Not Guilty By Reason of Insanity (NGRI) and civilly committed.

First, they mapped the status quo of the forensic psychiatric system using the sequential intercept model, following national best practices. They found there is a significant delay once a defendant is ordered to have a competency evaluation (with an average wait of 7.5 weeks) and also when waiting for restoration (with an average wait of 16). Once a person is transferred to API for restoration, their average length of stay 75 days. All told, an average, complete trip through the forensic system is a 9-month process.

The identified goals to improve the system were to 1) increase safety for people with mental illness and for the community and reduce inflow into the criminal justice system, 2) increase system efficiency so that people can proceed through the competency evaluation and restoration system without delay, and 3) reduce returns to the system by connecting people to long-term supports.

There has been a significant increase in the demands on the Taku Unit (the 10-bed unit at API that conducts competency evaluations and restorations) over the last few years, with increasing orders from the Anchorage courts and increasing evaluations completed. There is no data kept on the number of competency evaluation orders issued statewide.

The backlog of people waiting in the system has also increased. API added more evaluators to address the evaluation backlog in 2019, but the increase in evaluations also led to a greater backlog in people who have been ordered for restoration and are waiting for a bed.

For people admitted to the Taku Unit, the majority (73%) had a primary diagnosis of schizophrenia. The most common secondary diagnosis was substance use disorder (50% of secondary diagnoses).

56% of people evaluated were deemed incompetent to stand trial. About 2/3 of all competency cases in 2018 were felony cases. Anecdotally people in Anchorage were reporting that many of these cases were misdemeanors, but that was not true statewide. Ms. Bemben noted that misdemeanor cases also often get dismissed before the process is complete and wouldn't be included in that data. Commissioner Williams also noted that those were felony charges, and that not everyone in those cases would have a felony conviction.

Commissioner Stanfill asked why misdemeanor cases are often dismissed. Ms. Bemben explained that those cases will be dismissed if the defendant is held in custody awaiting evaluation or restoration for a longer time period than the typical or maximum sentence for the offense charged. Judge Rhoades added that there was case law on this point. She wanted to point out that this happens before their case even gets started.

Ms. Bemben added that 72% of people were held in DOC custody while awaiting a competency evaluation. Agnew::Beck's full report (page 18, figure 14) showed that over time, more cases were being dismissed in interest of justice, and fewer defendants were being found competent.

Many people are cycling through the civil and criminal systems. Of the forensic patients admitted in FY18, 48% had a prior civil or forensic commitment to API between FY15 and FY18.

Ms. Bemben explained that addressing these issues was an urgent need. In recent years, five Western US states have been sued for very similar delays and backlogs. When those lawsuits were filed, the states were experiencing the same wait times as Alaska is now. The settlements for those lawsuits required pretty drastic changes and steep fines for failing to meet those requirements. Washington and Colorado have paid millions of dollars in fines. Agnew::Beck estimated that Alaska might be required to pay around $3.4 million dollars for one year's worth of fines under a similar settlement agreement.

Agnew::Beck's recommendations began at intercepts 0 and 1 of the sequential intercept model, calling for increased diversion away from the criminal justice system. There is already a diversion program in the form of therapeutic courts, but many competency orders come from those courts, and it would be better to divert prior to that. On civil side, hospital emergency departments are overwhelmed. Some crisis intervention teams operating within some law enforcement divisions, but their use is not universal.

There needed to be diversion in the form of a crisis stabilization center and increased use of crisis intervention teams. Part of the issue with API is that they have taken on crisis services. Agnew::Beck was working on bringing the Crisis Now model to Alaska with the Trust. In addition to the improved crisis response, they also recommended creating a court liaison program. This was modeled off a program in Connecticut. The liaison compares the court docket with a list of individuals in treatment and coordinates the state response. Commissioner Goldstein suggested that such a person could also cross reference the docket with people in the public guardian program.

For intercepts 2 and 3 (initial hearings and competency evaluation process), Ms. Bemben noted that one problem at this point in the system was that API's forensic psychologists do both competency evaluations and restoration; this is not the case in most states because of the potential for a conflict of interest. There is also limited oversight of the forensic system; most states have external quality control.

Agnew::Beck recommended addressing these deficiencies as well as implementing a statewide competency calendar. Their report detailed the needed resources and next steps as well as cost estimates.

Judge Stephens asked whether the statewide competency calendar would keep track of everyone in the competency/restoration system. Ms. Bemben said it would, and would make sure everyone was tracked. Judge Rhoades said that she was part of the team that developed the coordinated competency calendar for Anchorage, noting it was helpful to have the same practitioners dedicated to this calendar. She thought it made sense to move the project statewide. Currently, API was just treating people in the order in which they come in; there is no triage, and no way to distinguish between felony and misdemeanor defendants.

Justice Bolger said Judge Henderson was coordinating the Anchorage calendar, and suggested discussing the concept with her, Judge Rhoades and Judge Stephens in the near future.

Ms. Bemben explained that restoration is currently a one size fits all approach; other states have multiple levels of restoration services. The restoration process for juveniles is unclear and informal; typically someone from API will just walk over to McLaughlin if asked. It is also difficult to involuntarily medicate people in Alaska, which makes it difficult to restore people.

Agnew::Beck projected the future need in the year 2026 based on current data; it suggested adding forensic beds to API, implementing jail-based restoration and formalizing the juvenile restoration process. There were immediate steps that could be taken now to achieve these things. In the long term, Title 12 of the Alaska Statutes would need to be amended.

Ms. Bemben explained that jail-based restoration was an option used in other states, and would not be appropriate for everyone. It was for defendants who are high risk but amenable to treatment and not requiring inpatient care. Agnew::Beck's estimate for who would be eligible for jail-based restoration was conservative.

Commissioner Dahlstrom said that DOC has some very difficult people in custody right now. She felt obligated to say that DOC corrections staff was not trained on mental health, and many individuals were not getting the care they need. She was open to discussions on creating a therapeutic space but they were already operating at capacity and she was worried about space.

Ms. Bemben said those points were well-taken. Agnew::Beck worked with Laura Brooks and Adam Rutherford in DOC's Health and Rehabilitative Services Department to determine where it would be best to put people. Most of these individuals are already at DOC anyway, so Agnew::Beck's report lists two alternatives to put these folks with the best staff. Commissioner Dahlstrom asked whether that would be DOC staff or API staff. Ms. Bemben said that would depend; they worked out costs for either scenario. Commissioner Dahlstrom also noted that DOC has a real shortage of providers (this is a problem statewide). Ms. Bemben agreed, and said that the report compares Alaska job benefits to other states, and explores ways to make working here more attractive for providers.

Judge Rhoades asked whether the study looked at outpatient restoration. Ms. Bemben said they looked at some models but concluded it was not considered robust enough and didn't seem promising for Alaska given the provider shortage.

The next part of the study looked at intercepts 4 and 5, covering discharge from the system and community follow-up. The status quo was that there are currently limited discharge options for people who have been found incompetent to stand trial even after restoration; this is especially true for those who are homeless. Alaska also has low rates of restoration compared to other states (44% compared to an average of 70%), and a very high bar for civil commitment.

The population that is not restorable is mostly made up of people whose primary diagnosis is psychosis. They make up 88% of the forensic population and 92% of those found not restorable.

Agnew::Beck projected the demand for discharge options for non-restorable patients through FY2026, estimating that about 70 individuals annually will not be restorable. Agnew::Beck suggested that discharge options for that population should be a combination of civil commitment beds within a Complex Behavior Unit at API, structured residential group homes, and supportive housing units.

For improvements across the system (at all intercepts), Agnew::Beck suggested creating a Forensic Mental Health Coordinating Council to provide oversight over the forensic system, and developing a system for statewide data tracking and reporting. They listed the data points that should be collected on a weekly, quarterly, and annual basis.

In conclusion, Ms. Bemben reiterated that many of their recommendations could be implemented immediately, within the next six months. Some of them could happen tomorrow if people wanted to put in the effort. They also listed the medium-term recommendations that could be implemented between 6 months and 2 years from now, and the long-term recommendations that could be implemented in 2 or more years.

Potential Legislative Initiatives re: DV/SA from the Dept. of Law

Mr. Skidmore explained that Law had been looking at four potential initiatives related to domestic violence and sexual assault (DV/SA).

The first was expanding an existing pilot project of making conditions of bail release readily available to law enforcement in Fairbanks. Judge Stephens was surprised this was not available everywhere; in his district, they send the conditions of release to law enforcement. Ms. DiPietro said that was also the practice in Nome.

Mr. Skidmore said that in most places around the state, bail conditions are not accessible to the officer on the street. Law would like to take the Fairbanks project statewide.

Chair Claman wondered how the pilot in Fairbanks got started, whether it was because of practitioners making a concerted effort, and whether a statute change would be required to take it statewide. Justice Bolger noted that it would need to be a big effort because it would require all of the judges in the state to agree on a common wording for bail conditions. Ms. DiPietro said that there would also need to be some kind of common online repository for this information. Mr. Skidmore proposed that a workgroup look at what would be needed to expand this project statewide.

Mr. Skidmore said Law's next area of interest was to look at Alaska's consent laws. He had spoken to Diane Casto with CDVSA about this and she was supportive. Senator Hughes noted that she wanted to revise the consent laws with HB 49. Mr. Skidmore said he had asked her to hold off on that for further consideration.

Commissioner Stanfill said that the Sex Offenses Workgroup already had this on its radar.

Mr. Skidmore said that the third topic on Law's list was to look into human trafficking and sex trafficking. A previous commission looked at these issues a few years ago but nothing came of it.

Mr. Skidmore said Law's fourth proposal was to coordinate training statewide for all agencies involved in the criminal justice system. He has been hearing about inconsistencies in training, and thought it would be a good idea to have all parties to criminal cases on the same page. What the Commission is now hearing about communication with victims would be a good example of a topic this coordinated training could cover.

Commissioner Goldstein pointed out that the defense agencies do not have any money for training; that money was taken out of the budget.

Next Steps

Shelley Hughes said she also wanted to push for "Step 2" of HB 49, which involved looking at what's happening behind the prison walls and reentry. She would like to be able to take something to legislators next session. She noted that other states and countries have lower recidivism rates. She thought the Commission could make recommendations on how to do that.

Chair Claman said that the Commission had discussed earlier this year how this body can be most useful. The challenge is to take up issues that the legislature will respond to. The Commission made recommendations that went into SB 91 and SB 54, but had no say in HB 312 or HB 49. He suggested looking realistically at what the best use of the Commission's time might be. He also suggested that Commissioners take a careful look at the Sex Offenses Report, which he was still working through. He suggested making the recommendations around topics that the legislators are interested in.

Judge Stephens said he could talk at length about the genesis of SB 91, and the letter from the legislature requesting recommendations to make significant reductions to the prison population. The reality is that post HB 49, we will have more people in jail for a long time. He thought that what we do behind the prison walls has been a longstanding issue, and was not really addressed in SB 91. If something is a best practice, he thought the Commission should look into it and make recommendations, even if they will be put on shelf and not looked at by the legislature. He hoped that what we are doing behind the prison walls would be on the agenda. He suggested sending the topic to a workgroup to look at what are other states are doing.

Senator Hughes said she understood the frustration with not getting things through to the legislature, but she also thought there was bipartisan support for action on things like behavioral health, and she was ready to take up that banner.

Commissioner Stanfill said that the Commission has always used the subcommittee process and noted that right now the active subcommittees/workgroups were devoted to behavioral health and to victims. The Sex Offense Workgroup was ready to look at consent and

other statutes. She wanted to keep being the body that would take a deep dive into the research and make recommendations.

Chair Claman suggested that for the next meeting, the Commission would identify the key policy areas to look at in the year ahead.

Ms. DiPietro reminded the Commission that it was charged with making recommendations for reinvestment. There are no savings to be spent, but regardless of that, the Commission can still talk about recommendations for areas that should be funded. Ms. Dunham noted that she had included last year's recommendations for reinvestment in the draft of this year's annual report as a placeholder. Ms. DiPietro reminded the group that last year's report made recommendations for principles to be followed in reinvestment and suggested funding categories of how reinvestment should be spent. She suggested that the Commission could look into put dollar amounts on things.

Judge Rhoades noted that there was also the Results First study, which looks at what is effective in terms of behind-bars treatment. There is a lot of work that the Commission could do based on what has already been done.

Commissioner Williams said he echoed those remarks. The Commission has already made evidence-based recommendations that would address a lot of what has been discussed at this meeting. He suggested looking back at those. He didn't want to create recommendations just for that sake.

Chair Claman noted that Appendix C and the text of the draft annual report both included information on recommendations the Commission has already made. He suggested that the Commissioners spend time prior to the next meeting looking through the draft annual report.

Annual Report Rough Draft

Ms. Dunham explained that she had circulated a draft of the annual report. The draft was a skeleton and would be fleshed out; there were placeholders for data that would be added in once that information was provided by the agencies. She encouraged the Commissioners to look at the draft report and let her know if they had any changes or additions to suggest.

Chair Claman noted that Commissioners should also provide or update their biographies for inclusion in the report.

Scheduling Staff

The Commission's next meeting would be October 7 (already scheduled); the Commission agreed to meet again the first week of December, probably the 3rd. For subsequent meetings the group suggested that Barbara propose meeting dates based on the previous years' meetings