

# Alaska Criminal Justice Commission

## Meeting Agenda

Thursday, August 27, 2020

12:00 p.m. – 4:30 p.m.

Via Zoom

Commissioners present: Scotty Barr, Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Nancy Dahlstrom, Shelley Hughes, Stephanie Rhoades, Trevor Stephens (until 1pm)

Commissioners absent: Joel Bolger (Alaska Court System General Counsel Nancy Meade served as proxy for Chief Justice Bolger), Clyde Sniffen (Deputy Attorney General John Skidmore served as proxy for Acting Attorney General Sniffen), Adam Crum (Deputy Commissioner Al Wall served as proxy for Commissioner Crum), Amanda Price (Special Assistant Randi Breager served as proxy for Commissioner Price), Steve Williams

Participants: Rachel Gernat, Angela Hall, Diane Boyd, Kaci Schroeder, Sophie Jonas, Tony Piper, Al Wall, Laura Russell, Alysa Wooden, Brad Myrstol, Natasha McClanahan, Troy Payne, Adam Barger, Teri Tibbet, Randi Breager, Karl Clark

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

### **Introductions**

Chair Claman called the meeting to order. The agenda was approved without opposition.

### **Approval of Prior Meeting Summaries**

The meeting summaries for March 9, March 31, May 28, July 21, and July 28 were approved without opposition. The May 28 meeting summary would be amended to recognize that Commissioner Alex Cleghorn had become the ANJC designee in lieu of Greg Razo.

### **Annual Report Outline, Deadlines**

Commission project attorney Barbara Dunham walked through the outline of the annual report, noting what data had been reported in the past and encouraging Commissioners to weigh in on any particular data points they'd like to have included in the report. There were data that the Commission is statutorily required to report related to SB 91, but the Commission has also included supplemental data in past reports such as data related to crime rates.

Senator Shelley Hughes thought there was a lot of interest in looking at the prison population in terms of violent crime including domestic violence. She would also like to include crime rates, and perhaps look at the capacity of prisons and halfway houses. Chair Claman wondered whether a discussion on

capacity would be included in the section talking about supplemental data such as crime rates or in the section discussing the prison population data. He recalled that the Commission had had a detailed presentation from DOC at one of the meetings in Juneau earlier this year on facilities that were over or under capacity. It might be helpful to pick snapshot days to see trends. His impression was that there have been changes in terms of whether facilities are over capacity related to the changes in the bail schedule and thought there may be a way to report that.

Dr. Troy Payne with the UAA Justice Center and the Alaska Justice Information Center (AJiC) noted that AJiC now has a dashboard online that has prison populations and capacity (the link for which is [here](#)).

Sen. Hughes thought that the capacity data should be in the section discussing the general prison population. She also wondered whether it would be possible to have projections for the prison population rates in the future based on current rates. Ms. Dunham said that the Commission had reported projections that were made in the past based on 2014 data trends as well as how SB 91 was expected to affect the prison population. Susanne DiPietro, executive director of the Alaska Judicial Council, noted that those previous projections were done with the help of DOC's data analysts and the Commission would have to reach out to DOC for help with that; she agreed new projections would be interesting.

Ms. DiPietro also suggested it might be useful to have a section on how the pandemic has affected the criminal justice system. The various agencies have made a lot of changes. Chair Claman asked if there was any objection to that. John Skidmore agreed that it would be interesting, though he was not sure how much there would be in the way of data or statistics yet. Obviously there has been some impact; he thought everyone was struggling to capture it. Chair Claman agreed that getting good data was always a challenge when less than a year has passed but thought it was worth trying.

Commissioner Alex Cleghorn asked whether the section on crime rates could include information on victims as a whole and victims by race. Ms. Dunham explained that in some instances, data on victims was kept, most notably in the Department of Public Safety's annual supplemental report on sex offenses. For other types of crime, data on victims was not typically collected or reported.

Dr. Payne added that data is often collected for suspects but not victims. Dr. Brad Myrstol, director of the Justice Center, said that information was available for homicides, which AJiC reported in a [full report](#) and in a [fact sheet](#). He added that Dr. Ingrid Johnson of the Justice Center was currently collecting data for the victimization study. Dr. Johnson expects to finish her study by the end of the year and hopefully report results in the spring.

Ms. DiPietro said that staff could work with AJiC to develop an inventory of what information on victims was available.

Chair Claman noted that the last report had data on auto thefts in Anchorage, and thought it would be interesting to have follow-up on that. He also recalled that the Commission had in the past made recommendations on crisis intervention centers and suggested including an update on the progress on that, noting that some legislation had also been passed.

Ms. Dunham noted that the annual report has typically included a section on savings and reinvestment, although there has not been much to report in the way of savings. She wondered if this should still be included. Chair Claman said he was not hearing any call to remove the section and noted that it was statutorily required.

Ms. Dunham explained that she hoped to receive all material for the report by September 24 and encouraged the Commissioners to send any suggestions to her by that date. She would send the final draft of the report to the Commission on October 1, and the Commission would discuss it at the October 15 plenary meeting. The final report was due on November 1, a Sunday, so it would be sent to the Legislature on October 30. There was time between the October 15 meeting and October 30 for an additional round of revision and a meeting if necessary.

Ms. DiPietro reiterated that staff encouraged Commissioner input into the annual report. She noted there was also a new requirement from HB 49 that the Department of Law provide the Commission with data, which could hopefully be included in this report. Mr. Skidmore said that Law was working on gathering that data and he was also hoping it could be included. The statute required data on the number of reported sex offenses referred for prosecution, the number of sex offense cases filed, and how they were resolved. Chair Claman agreed it would be a good goal to get that data into the report.

Senator Hughes said that she has had inquiries on sex trafficking, as well as labor trafficking, and wondered if there was any data on that being tracked. She was hearing about it from Alaskans and it was also part of the national discussion. She recalled that Covenant House was part of a research project that showed high rates in Anchorage. She wondered if there was anything related that could be put in the report.

Ms. DiPietro said that sex trafficking was a crime, so the Commission's data would show how often it was charged. Dr. Payne said that was not a great way to get at it, since in recent years, there had been only one arrest for sex trafficking. Its prevalence was extraordinarily difficult to measure. Ms. DiPietro noted that could be reported as an issue. Her understanding was that people who study this problem believe it is far more common than is reported. Dr. Payne said that anecdotally, from speaking with prosecutors, the difficulty in charging the crime of sex trafficking is because of the way the statute is written, and it is often easier to prove other crimes. He was not sure there was an easy fix to that. For example, running an illegal brothel was also a crime, and easier to prove than trafficking.

Mr. Skidmore said that the offense of trafficking involves elements that are not easily identified or proven, because they are not objective. Sen. Hughes wondered if there should be a way to look at this problem. She liked Ms. DiPietro's idea that the report could mention that the idea needs to be explored; her impression was that law enforcement officers think trafficking is a much more prevalent problem than people realize. Chair Claman said he didn't hear any opposition to that idea. Ms. Di Pietro recalled there was a task force devoted to this topic, and she thought staff could gather up any available information.

Judge Stephanie Rhoades said that on a different note, it has come to her attention that there are a lot of people with mental illnesses who are assigned to pretrial electronic monitoring (EM) and are not able to maintain the equipment, which has to be plugged in and charged daily. This is especially challenging for defendants with mental illness who are homeless. Also if a defendant is taken to a hospital,

the device has to be cut off, which costs money. PED can arrest them for not charging the equipment or having it cut off, and her understanding was that there have been quite a number of those arrests. She wondered if there was a way to report how many people are assigned to EM, what their assessed risk level is, and how many are arrested for not being able to operate the EM equipment.

Commissioner Dahlstrom said that DOC did have some information on that, and she would be happy to get it together. She hadn't personally heard about anyone being hit with a bill because their bracelet was cut off at a hospital, that was something she would want to look into. In the last several months with COVID, the numbers of defendants on EM have increased tremendously, since judges seem to be electing to EM use rather than hold people in jail. Chair Claman wondered if it would be possible to get that information together by the deadline for the report. Commissioner Dahlstrom said she would make every effort.

Judge Rhoades said she had also heard of someone with a psychotic disorder who was assigned a bracelet that talks, and that person ended up decompensating. Commissioner Dahlstrom thanked Judge Rhoades for bringing this to her attention and said she would look into these items and report back.

### **Public Comment**

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

### **ACJC Sunset Date**

Chair Claman said that as staff were preparing the memo for the next agenda item, one piece of research that came out of that was that the sunset statute allows the Commission to continue performing its duties past the sunset date. According to the Attorney General's opinion from the 1990's, circulated for today's meeting, the actual end date is one year later, allowing the Commission to wind up its affairs, and it can continue its work in that time. This also gives the legislature another year to decide what to do with the Commission.

Sen. Hughes wondered if the administration had any comment. Mr. Skidmore said he hadn't analyzed the issue, and would look into it, but didn't want to offer an opinion today. Chair Claman said what he took away from the AG opinion was that there were multiple instances of the legislature taking that additional year to extend various boards and commissions. Sen. Hughes wondered whether that means the legislature would need to fund the Commission for another year.

Ms. DiPietro noted that funding for the Commission is in the Judicial Council's budget, which is part of the judiciary budget process.

Chair Claman asked if it would be reasonable to ask for the Department of Law's current view on this by the Oct. 15 plenary meeting. Mr. Skidmore said it would.

### **Future of ACJC and Approach to Recommendation**

Ms. DiPietro said that the memo that had been circulated tried to take the discussion that the group had had over the course of the last few meetings and flesh out some ideas that were on the table.

If there's anything else the Commissioners are interested in, staff can always look into it. Ms. Dunham noted that the focus of the memo was on the data collection function and how to keep that going. She walked the Commission through the memo, which explained the history of the Commission, options for keeping the Commission's data collection function (continue the Commission as-is, modify the Commission's statute, or use another body to supervise this function), and issues to consider.

Chair Claman noted that if the Commission wanted to make a recommendation on this, the usual process would be to create an ad-hoc workgroup to develop a recommendation to bring back to the full commission. He wondered if the commissioners had thoughts on that process and whether there was interest in having a recommendation ready for the annual report, or if this was something the Commission should discuss later.

Commissioner Cleghorn said he appreciated the memo on the history of the various criminal justice groups, and noted there were parallels to similar bodies relating to Alaska Native justice issues—various bodies doing the work over the years, with some overlap, but little continuity. The lack of continuity makes it hard to be consistent with progress. He thought it was important to have something in statute regarding data collection—it was important to have this body in statute in 2014, has anything changed? Looking back at over 40 years of reports on Alaska Native justice, having groups end and then new groups start really halted progress.

Commissioner Samantha Cherot echoed Commissioner Cleghorn's comments. In terms of a recommendation, she thought it would depend on whether the Commission can continue for another year past its sunset date. If so, there is time. If not, it might be more important to recommend something now. She also noted that one of the other bodies mentioned in the memo hasn't met in over year, and thought that highlighted the value of having a body in statute, with the structure of having a staff to keep the body going.

Sen. Hughes said that to answer the question of what has changed since 2014, she would point to the budget, the drop in oil prices, and the fact that SB 91 was nearly unanimously repealed. During that process, she and Rep. Claman and others emphasized the continued need to do the work that the workgroups are now doing. There is also the auditor's report. She thought things were stacked against the Commission. Whatever happens, it was not all for naught; she thought that idea of rehabilitation has been brought to the forefront. She thought the Commission might have to acknowledge realistically that it will sunset.

Mr. Skidmore said that one thing that jumped out to him was that the data function has consensus. Collecting, analyzing, and distributing data were already tasked to AJiC, and he thought they were an appropriate body to carry that function forward. If information comes from the Commission, it may carry with it preconceived conceptions of the Commission. AJiC's reports have been very helpful. Putting together a steering committee wouldn't be difficult. He thought the most important thing was to find a consensus on this—identifying the common goal and what everyone could support.

Randi Breager from DPS echoed Mr. Skidmore's comments—DPS has been having similar conversations about using an existing body, and also a body that is flexible and can follow trends; it would be best to have a robust team to be able to look at whatever comes up.

Commissioner Sean Case asked the legislators what they prefer in terms of sources of information for considering criminal justice legislation. Chair Claman said it was important to have information that is as objective and reliable as possible. He noted that the Commission's statute requires information to be reported; before, providing the information was voluntary. Legislators ask the agencies for information, and ask people from the University to report on federal data. The broad answer is that they rely on a number of different sources, but accuracy is very important.

Sen. Hughes said that objective information is the starting point. There are also political considerations, and the sense they get as to what the legislators are hearing from constituents as far as what can be done. Along with the data, she was always curious to hear from commissioners, and from organizations working at the ground level. She noted that there could always be a person working in a department that is really on point but eventually they might leave; that was one reason to have the function in statute.

Chair Claman said he didn't necessarily share Sen. Hughes' view that the Commission has been rendered ineffective by the repeal of SB 91. He has heard from some legislators that their impression is that the Commission tells the legislature what to do, although that doesn't reflect reality. He also noted that AJiC was housed in an entity that is facing substantial budget cuts. He thought it was very important for the data collection function to continue. He agreed with Mr. Skidmore that the Commission should find consensus. It may not need to be detailed with every piece hammered out. This was a timely topic for the legislature to consider in the next session, but it may not be critical to include in the Commission's annual report.

Commissioner Case said he would like to see a recommendation sooner than later instead of letting this discussion float into next year. He thought it would be helpful for the Commission to develop a recommendation. He moved to make a recommendation to legislature as a Commission as to what to do with the Commission by the end of the year. Mr. Skidmore seconded the motion. Chair Claman called for discussion on the motion.

Commissioner Cleghorn wondered whether it would be possible to amend the Commission's statute if there were sideboards, and a consensus could be found. The thought the part that the Commission didn't have agreement on was the policy recommendations. Chair Claman thought that getting into the details of the statute would be a challenge. It might be more effective to make a general recommendation. Commissioner Cleghorn asked if there was any consensus that the Commission should move forward without policy recommendations.

Mr. Skidmore said he seconded the motion with the understanding that the Commission should get to consensus by December 3. He was not sure at this point what the common ground should be, and didn't think that needed to be decided today. Chair Claman said he saw Commissioner Cleghorn's inquiry as being whether anyone was still interested in the recommendation function. He asked that if anyone thought that the Commission should have responsibilities above and beyond data collection, they should speak up.

Commissioner Cherot said she did. Commissioner Cleghorn said that the Commission was tasked with both looking at the data and making recommendations based on that data. He wasn't around during

the SB 91 discussion, but has been part of other bodies charged with making recommendations but not decisions. He didn't think Commission was expected to always carry the day in terms of the decision. It was interesting to hear about what is different from when the Commission was formed, but still thought the ability to give recommendations based on data was useful regardless.

Commissioner Case asked whether, in looking at the memo, it was safe to say that everyone was looking the realm of option 3 (data collection function overseen by a new/different group). Chair Claman said it sounded like it could be option 2 (modify the Commission statute) or option 3. He didn't think it needed to be decided today. The question would be considered by the ad-hoc group.

Commissioners Cherot, Cleghorn, Skidmore and Dahlstrom volunteered to be part of the ad-hoc group. Chair Claman thought those four would be representative and effective. He was happy to join in if the ad-hoc group so desired but didn't think it was necessary. Chair Claman said the motion on table was that the Commission would make a recommendation on its future and the future of the data collection function by the end of the year. He thought that would include approval of forming the ad-hoc group to come up with a recommendation for the December meeting. There was no opposition to the motion and the motion was approved.

### **Domestic Violence Workgroup Recommendations**

Commissioner Case said that two recommendations from the Domestic Violence (DV) Workgroup had been circulated. He wanted to pull the recommendation about community crisis response teams back into committee, as he thought it was too broad. There was no objection.

The other DV recommendation was to make bail conditions accessible for law enforcement. Commissioner Case said this was a thorny problem for law enforcement. There is a pilot program in Fairbanks to have court personnel enter bail conditions in to APSIN, which is working for law enforcement though he couldn't speak for the courts. He noted that that violating conditions of release was considered significant enough that the legislature returned it to a crime after decriminalizing it. It would help to have the conditions listed in APSIN.

Nancy Meade, general counsel for the court system, said that the pilot project in Fairbanks has not been deployed further for a very good reason, and was actually under review. Entering the conditions in APSIN takes a tremendous amount of staff time, and supervisors need to audit the information. Fairbanks is challenged with staff turnover for in-court clerks, and the Fairbanks model requires two in-courts when otherwise the court would only need one. There might be other ways to get around this. Already the court is already sending this information to DOC, and could also distribute it to DPS which is primarily responsible for APSIN. Commissioner Case noted that the recommendation left it open as to the method used, so it didn't necessarily require the Fairbanks model.

Ms. Breager said DPS would be interested in having ongoing conversations about this. It was very important for law enforcement to have access to bail conditions. Chair Claman asked if either DPS or DOC would have the resources to input the data. Ms. Breager and Commissioner Dahlstrom said they wouldn't. Ms. Breager suggested delivering the recommendation to the legislature and it would be up to them as to how to achieve its goal.

Ms. DiPietro wondered if it would be reasonable to add a sentence that the recommendation should or might require additional resources. It sounded like no one was staffed to carry it out but everyone agreed it was a good idea. Judge Rhoades said she thought the Commission's job was to make policy recommendations and the legislature's job was to figure out how to carry out those recommendations and fund them. She suggested adding a sentence to the effect that everyone agrees this is a good idea, and should be funded. Ms. Meade suggested amending the last paragraph to state that the Commission recommends that the courts and law enforcement agencies work together to make this possible.

Mr. Skidmore moved to adopt the recommendation and Commissioner Cleghorn seconded the motion. Chair Claman called for amendments. Judge Rhoades proposed amending the recommendation with something along the lines of what Ms. Meade had suggested. She thought the main problem was the language that the "court system ensure that" this conditions are entered and suggested returning to this at the next meeting with a reworded version. Ms. Meade noted that if there is a statute that says that agencies or courts "must" do something but they can't because of funding, that could be a problem. Judge Rhoades added that there should also be language that this be funded.

Chair Claman suggested tabling the motion to allow Commissioner Case to work with interested parties to reword it, then take it up at the next meeting as an amendment. Commissioner Case agreed and said he would work with Ms. Meade to reword the recommendation. Mr. Skidmore said he withdrew the motion and would work with Commissioner Case and Ms. Mead to refine the draft. He did think it was very important to make this recommendation, it was long overdue.

## **Rehabilitation, Reentry, and Recidivism Reduction Recommendations**

### *Computer Access*

Judge Rhoades said that the first recommendation to come out of the Rehabilitation, Reentry, and Recidivism Reduction was to amend the law to allow people in prison greater access to computers. Commissioner Cleghorn moved to adopt the recommendation and Commissioner Cherot seconded the motion.

Judge Rhoades noted that there was a bill introduced in the last legislative session to do just this. It wouldn't mandate direct inmate internet access, but would allow DOC to use computers to deliver services. This was especially important with COVID, since people can't gather together in a room. Chair Claman noted that COVID was also what prevented the legislature from getting to the bill.

Commissioner Dahlstrom said she had concerns with this. There had been a bill that would introduce tablets. There are some fine lines between tablets and computers; she was concerned that prisoners having internet access would create new victims. She was supportive of giving them access to tablets with specific apps or tasks such as applying for Medicaid.

Judge Rhoades said she was confused because had there had been a DOC representative who she thought approved this draft recommendation.

Sen. Hughes thought there were ways to confine access to get around this, technologies that could be employed.

Commissioner Dahlstrom said that her other concern was that DOC's facilities are very old, and need rewiring. She has looked into this and it would take years. She would ask to pull this recommendation and talk to Laura Brooks. Chair Claman said the Commission could return to the recommendation at the September 10 meeting.

Judge Rhoades noted the purpose of the recommendation was not to specify how to do this, but to address the "no frills bill" that prevents the use of computers and tablets. The purpose would be to remove that bar, not to dictate how DOC should regulate computer use. She was not opposed to postponing consideration so DOC could get internal alignment on this.

Commissioner Dahlstrom observed that when the no frills bill was drafted, computers were considered a luxury. Now they are essential to modern life. Officers have to be in the room at all times when a prisoner is using a computer. They don't want the prisoners to disassemble them to make weapons. She wanted to take a further look at this, and wanted to be sure she didn't have any safety concerns.

Chair Claman noted that the legislature doesn't have the ability to micromanage state agencies—new legislation would need to give the department substantial regulatory authority. Commissioner Cleghorn withdrew his motion. Chair Claman said this would will be back on the agenda for September 10.

#### *Civil Detention*

Judge Rhoades explained this recommendation was a policy statement that people who are on Title 47 should not be held in DOC facilities unless awaiting transportation to an appropriate facility. She moved to adopt the recommendation. Commissioner Cherot seconded the motion.

Commissioner Cherot proposed an amendment. The recommendation stated that people under Title 47 holds should only be in DOC facilities while awaiting transport. She proposed stronger language—"awaiting immediate transportation"—because "waiting for transportation" can be indefinite; people in this population can be and have been held for a long time. She also suggested adding "to be arranged by DHSS."

Judge Rhoades seconded the amendment. There was no opposition to the amendment. The amendment was adopted. Chair Claman called for discussion on the motion as amended.

Commissioner Dahlstrom said she was not opposed but wanted to know DHSS's opinion. DOC has had instances of people in this population waiting in DOC facilities for a long time and it's not a good situation.

Laura Russell from DHSS said that Title 47 already called for DHSS to arrange transportation so she didn't think that addition was necessary. As far as adding "immediate," she thought that the phrase "as soon as is practicable", which was already in there, was sufficient. Immediate might not be possible, and she thought "as soon as is practicable" was better and clearer.

Chair Claman noted the Commission already adopted the amendment. Judge Rhoades agreed that “to be arranged by DHSS” was not needed. Commissioner Cherot moved to reconsider the amendment, and Judge Rhoades seconded the motion. There was no opposition to the motion to reconsider. Judge Rhoades moved to amend the amendment by striking the words “to be arranged by DHSS.” Chair Claman noted the amendment on the table was just to add the word “immediate.”

Ms. Russell said that DHSS did not support the amendment because they considered it redundant. Sen. Hughes agreed it was redundant.

Chair Claman asked if there was any opposition to the amendment among voting members. Ms. Mead said that as proxy for Justice Bolger, she was abstaining. The Commission observed that Judge Stephens had not been present since 1pm. The other voting Commissioners present had no objection to the amendment and the amendment passed.

Chair Claman called for discussion on the main recommendation, as amended. Ms. DiPietro asked if the group wanted to use the phrase “suffering from a mental disorder” and wondered if the more usual phrase would use the word “experiencing.” Judge Rhoades thought that in this case the word suffering was apt, and noted that no one from the Mental Health Trust opposed the wording in the workgroup discussions.

There was no opposition to adopting the recommendation with Ms. Meade also abstaining from this vote. The recommendation was approved.

The meeting adjourned at 3:12 p.m.