

Alaska Criminal Justice Commission

Meeting Summary

Thursday, September 10, 2020

9:00 a.m.

Via Zoom

Commissioners Present: Sean Case, Samantha Cherot, Matt Claman, Alex Cleghorn, Shelley Hughes, Trevor Stephens, Steve Williams

Commissioners Absent: Scotty Barr, Joel Bolger (Nancy Meade served as proxy for Chief Justice Bolger), Adam Crum (Laura Russell served as proxy for Commissioner Crum), Nancy Dahlstrom (Kelly Howell served as proxy for Commissioner Dahlstrom), Amanda Price (Randi Breager served as proxy for Commissioner Price), Stephanie Rhoades, Ed Sniffen (Paul Miovas served as proxy for Acting Attorney General Sniffen)

Participants: Brad Myrstol, Eric Boyer, Tony Piper, Gennifer Moreau, Sharon Chamard, Diane Casto, Kelly Howell, Kaci Schroeder, Karl Clark, April Wilkerson, Travis Welch, Katie Baldwin-Johnson, Becky Bitzer, Buddy Whitt, Alysa Wooden, Troy Payne, Angela Hall

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

Introductions

Commission Chair Matt Claman called the meeting to order and asked participants to introduce themselves. Commissioner Alex Cleghorn moved to approve the agenda and Commissioner Steve Williams seconded the motion. The agenda was approved without opposition.

Summary of Previous Meeting

Commissioner Cleghorn moved to approve the summary of the previous meeting and Commissioner Samantha Cherot seconded the motion. Commissioner Cleghorn noted that the last page described the vote on the recommendation on civil detention, but did not contain the result of the vote. He suggested adding the word “approved” for the result of the vote. There was no opposition to approving the summary so amended.

Crisis Now Update

Commissioner Williams explained that the Crisis Now project relates directly to Title 47 but also had significant implications for public safety. Alaska Mental Health Trust staff had put together a presentation to give the Commission a quick update.

Eric Boyer from the Trust explained the recent history of Alaska’s behavioral health crisis response system. Currently, people experiencing a behavioral health crisis are taken to either jail or the emergency

department, neither of which is the best place to stabilize a person experiencing a behavioral health crisis. Crisis Now is a framework for behavioral health crisis response that has four components: a crisis call center, a mobile crisis team, and a stabilization center that has both 23-hour stabilization and short-term residential treatment. The goal is to have a behavioral health crisis response system analogous to the physical health emergency response system.

Travis Welch from the Trust explained that the crisis call center would be better equipped to handle behavioral health crises than 911— and the call center can call 911 if appropriate. The Crisis Now model uses a “no wrong door” approach, taking anyone who calls the call center or comes into the stabilization center.

Mr. Welch added that the model also allows the crisis response to take place in the least restrictive environment as possible. Data from national studies on the model show that on average out of 100 calls to the crisis line, 90 do not need additional service. Of the 10 that do need additional service, 7 are resolved by the mobile crisis response team without further intervention, while two are stabilized at the 23-hour stabilization center and one is stabilized in short term treatment.

Gennifer Moreau explained how the 1115 Waiver for Medicaid fits in to the Crisis Now model. All of the services that the state proposed to be covered by the waiver went live as of May 21, and became permanent as of last week. Many of the services newly covered by Medicaid under the waiver are components of Crisis Now.

The waiver also covers services such as longer-term chronic residential treatment and long-term community support, so people discharged from Crisis Now will remain stable rather than continually cycling through the system. Right now patients with substance use disorder account for a high number of admissions to the psychiatric ER admits, so hopefully the Crisis Now model will cut down on that usage.

As of now, DHSS has authorized a number of providers of waiver services. Multiple agencies have been approved for 23-hour crisis stabilization, mobile outreach and crisis response, and short-term residential. The 1115 waiver and Crisis Now projects are on parallel tracks, and are mutually supportive. The waiver is also flexible and can be modified.

Mr. Welch echoed how important the 1115 Waiver was to the Crisis Now model—it was the primary mechanism to reimburse providers of Crisis Now services. He provided some statistics to give an idea of what impact Crisis Now could have on the current emergency system. In Anchorage, Fairbanks, and the Mat-Su, several hundred calls per year were for behavioral health crises. Many of those people are currently being looped into the criminal justice system and to DOC. These calls can take twice as long for first responders to resolve as other calls for service.

Mr. Boyer explained that the Trust awarded a contract for the management of the project to consulting firm Agnew Beck. They have workgroups to implement the project in Anchorage, Fairbanks, and the Mat-Su but are also looking at rural areas as part of the longer-term plan, which was identified in the consultation report released earlier this year. The project also has systems-focused teams that are looking at the nuts and bolts of implementation of each of the model’s components. The project will work with providers to support them as they stand up the services.

The project was currently in the planning phase. As Ms. Moreau had noted, providers were already starting to stand up services, so this was a key time in the project's development. They hope to move into the implementation phase at the beginning of next year. The Trust was committing substantial resources to start up the project's components.

Randi Breager, special assistant to the Commissioner of Public Safety, said she was very excited about this project. She was glad to hear they were planning to include rural Alaska; one of her concerns was that she didn't want rural Alaska to be left out.

Chair Claman noted that Crisis Now had been rolled out in other states, and wondered how much of the cost is borne by Medicaid/the 1115 Waiver in those states. Ms. Moreau said that funding models vary between states, but generally 60-80 percent of the funding was borne by Medicaid. Commissioner Williams said this would allow Alaska to move towards a more complete psychiatric crisis continuum of care.

Rehabilitation, Reentry, and Recidivism Reduction Recommendations

Commissioner Williams said that the workgroup met three times over the summer with good participation, following the sequential intercept model.

1. Crisis Now

Commissioner Williams moved to adopt the draft recommendation that the legislature support the development of the Crisis Now model. Commissioner Sean Case seconded the motion.

Chair Claman suggested adding a reference to SB 120 which provides the legal structure to allow Crisis Now. Commissioner Williams said he was open to including that as a friendly amendment. The new language would read "Therefore, the Commission recommends that the legislature, following the passage of SB 120..." at the beginning of the third paragraph. Judge Trevor Stephens seconded the amendment. There was no opposition to the amendment. There was no further discussion, and no opposition to the recommendation. The recommendation was approved.

2. CIT

Commissioner Williams moved to adopt the draft recommendation that the legislature increase support and funding for the CIT training model for law enforcement. Commissioner Case seconded the motion.

Commissioner Williams explained that the Trust has been involved in expanding use of the CIT model for several years. This recommendation recommends that the Alaska Police Standards Council (APSC) get additional funding, and that the CIT response model be expanded, particularly off the road system. The APSC is currently vetting this training for law enforcement agencies, ensuring fidelity to the evidence-based model.

Chair Claman said this related to Ms. Breager's concern noted earlier about including rural Alaska in improved crisis response models. He noted that if it was not possible to have a full crisis center in smaller communities, having access to other services was important. Commissioner Williams agreed, saying that CIT training would be critical for areas that don't have the full Crisis Now model.

Susanne DiPietro, executive director of the Judicial Council and staff to the Commission, asked whether the APSC currently has funds and if the recommendation was that the funding should be increased. Commissioner Williams said yes, right now the APSC was receiving some funding from the Trust.

There was no opposition to the motion. The recommendation was approved.

Public Comment

Angela Hall from the Saving Our Loved Ones Group (SOLO) said she had also submitted a written statement, which she encouraged the commissioners to read. SOLO is in favor of the second look proposal that would be discussed later in the meeting.

Commission staff attorney Barbara Dunham said that the commissioners should all have Ms. Hall's statement in their inboxes, along with comments from Diane Boyd and Adam Barger, also in support of the second look proposal.

Rehabilitation, Reentry, and Recidivism Reduction Recommendations (cont.)

3. Computer Access

This draft recommendation, to allow people who are incarcerated access to computers, had been discussed at the previous plenary meeting. The Department of Corrections wanted more time to revise the draft to ensure that it would not recommend allowing direct internet access. Commissioner Williams moved to adopt the revised draft recommendation and Commissioner Cherot seconded the motion.

Commissioner Williams noted that this discussion began pre-COVID but was even more relevant now. He hoped allowing access would mean that they can be used to apply for services, especially Medicaid, as an electronic application was absolutely critical for timely processing of the application. Likewise, ensuring reentry coalitions and case managers around the state have access to people who will be leaving correctional facilities was also critical.

Kelly Howell from the Department of Corrections said that this was something they have been focusing on at DOC, and was subject of legislation last session. The legislation was meant to amend the "no frills act" which was very restrictive in what prisoners could do. Advances in technology mean that use of computers is much more ubiquitous and essential than when the bill was passed, and could be used for the reentry process. She encouraged support of this recommendation.

Chair Claman asked if DOC's concerns had been addressed. Ms. Howell said yes, the reference to access to the internet had been removed.

Commissioner Cherot noted that the end of the first paragraph referred to access to legal reference materials and wondered whether that would include access to discovery. Ms. Howell said she thought it would include discovery in addition to online legal research tools.

There was no opposition to the motion and the recommendation was approved.

Bail Conditions Recommendation

This recommendation had been discussed at the previous plenary meeting and had been tabled to address concerns raised by Nancy Meade, general counsel for the Alaska Court System. Commissioner

Case moved to adopt the revised recommendation and another commissioner seconded the motion. Commissioner Case explained that after the last meeting, Ms. Meade had suggested language that was added to the second to last paragraph about why the Fairbanks pilot project hadn't already been expanded (namely the cost and the change was very labor-intensive) He also noted that the final paragraph had been amended to encourage collaboration between law enforcement and the courts to make this change happen.

There was no opposition to the motion and the recommendation was approved.

Victims' Rights and Services Recommendations

Commissioner Williams explained that the recommendations from the Victims' Rights and Services Workgroup were contained in a 6-page document that had been distributed prior to the meeting. The document has contextual language at the beginning explaining the reasoning behind the recommendations. He recognized that former Commissioner Brenda Stanfill did a lot of the work to bring these recommendations forward. There were pieces that the workgroup discussed and pulled out of this document that the group will continue to work on. The recommendations before the Commission today were the pieces that workgroup members agreed were most important.

1. Public Outreach Campaign

Commissioner Williams moved to adopt this recommendation, and Commissioner Cleghorn seconded the motion. Commissioner Williams explained that the workgroup believed it important to note that this would be a statewide public outreach campaign, and would be ongoing, rather than just for a designated month, in order to get continual impact.

Chair Claman asked if there was any opposition to the motion, and there was none. The recommendation was approved.

2. Victim Advocates Working in Partnership with Law Enforcement

Commissioner Williams moved to adopt this recommendation and Commissioner Case seconded the motion. Commissioner Williams said he wanted to highlight that the workgroup wanted to make sure that a simple handout or card would be used to connect victims to services, and there was also significant discussion that there also needed to be electronic resources, so that information for victims to get help would be available in multiple formats.

Chair Claman asked if there was any opposition to the motion, and there was none. The recommendation was approved.

3. Remove Dual Designation from Victim-Witness Paralegals

Commissioner Williams moved to adopt this recommendation and Commissioner [?] seconded the motion. Commissioner Williams said that the core of this recommendation was looking at how the Department of Law is providing these services, noting that victim-witness paralegal caseloads can be

overwhelming. The Commission has heard repeatedly from the community that victims don't know the status of their case, and don't know who to call for services. The idea was to separate the victim-witness and paralegal duties so that the victim-witness coordinators can provide information on case status and services. The recommendation also clear that the recommendation said that the coordinators would not be victim advocates.

Paul Miovas, Criminal Division Director for the Department of Law, said he understood the spirit with which this recommendation was intended, and Law always wants to provide the best services for victims. His concern was that this recommendation would actually have a negative impact on victims. Law has 39 victim-witness paralegals for the entire state. In the last two fiscal years, Law has had to replace 74% of those positions, a significant turnover rate. They only have 10 victim-witness paralegals with more than five years of experience. With their pay rate they are not able to retain these employees. This was something Law was trying to address. He was concerned this proposal would result in a reduction in the classification/pay rate for the people who would become victim-witness coordinators, who would probably be paid at the LOA level, making it more difficult to retain them as employees.

Mr. Miovas continued that the victim-witness paralegals apply for the job to do paralegal work, and he wouldn't want to take that paralegal work away from them. Having more resources would be great, but the Commission needed to think about reality. The only way this would work would be if Law were actually able to add positions at significant numbers across the board, which he didn't think would happen in this fiscal climate.

Mr. Miovas added that the way the recommendation is written, he was concerned that it was pushing Law in the direction of becoming victim advocates. A lot of victim care defaults to the prosecution. Prosecutors do not want to turn into a de facto victim lawyer. A prosecutor's job is to pursue justice, not one individual's agenda. Prosecutors don't always agree with the victim. He suggest removing this recommendation.

Chair Claman said he saw this as more of a funding recommendation, and didn't thing the legislature would want to get into the finer details of how to manage the department.

Commissioner Williams thanked Mr. Miovas for his analysis. He observed that the state's fiscal situation was certainly challenging. He thought the Commission's duty was to recommend what was best for the system as a whole. This recommendation was based on what the Commission heard from victims. The workgroup also heard from Dawn Shewmaker, the victim-witness coordinator in the US Attorney's Office, and the recommendation used portions of her job description. He understood the concerns about position classification and funding, and thought they would need to be addressed, although he didn't know if they need to be figured out in detail in this recommendation.

Commissioner Cherot said she was also concerned about unintended consequences, namely that a lot of discovery that pops up in conversations with victims could delay trial. She would support a second look at the language in the recommendation.

Ms. Breager said she would also support further discussion, recognizing that there had already been a lot of discussion on this and she and Mr. Miovas were late arrivals to the discussion. She didn't think the Commission would want to forward something without regard for foreseeable consequences, and thought the Commission had a responsibility to put forth feasible options.

Mr. Miovas added that the part of the recommendation that suggested Law conduct a reevaluation of needed resources and employees was something Law was constantly doing, and they have had a lot of conversation about this exact thing already.

Chair Claman said he was hearing some support for bringing this back to the workgroup, and noted the Commission could vote on the recommendation now or the motion could be withdrawn; either way it could go back to workgroup.

Commissioner Williams said that if this were to go back to the workgroup, he would ask for active and consistent participation in workgroup, particularly from the Department of Law. The workgroups put in a lot of work to create well-intentioned recommendations and then find out later that there are other pieces to consider. Individuals who work in victim services have been active in the workgroup and see this as a need. He would like some commitment, so that the workgroup can come back with something well informed. He understood that there had been a lot going on.

Mr. Miovas said he would be actively involved in discussing this and have conversations about this at Law. There were a lot of things going on, but this was a very important issue, and he wanted to be kept involved. Ms. Breager said she would also commit to joining the conversation, noting that she only recently became the proxy for this group.

Commissioner Williams asked whether, if he took the recommendation off the table today, there would be an opportunity to reconvene the workgroup and then bring a revised recommendation back to the full Commission, or if the group would need to wait for another year.

Chair Claman said the next meeting would be on October 15, and that meeting's primary purpose was to review the annual report. He noted that previous recommendations were worked on between the previous meeting and this meeting and then came back and passed with no opposition, so it was possible to get done for this annual report.

Commissioner Williams asked if Ms. Breager, Mr. Miovas, and Commissioner Cherot would all be able to get together before the October 15 meeting. All three said yes. Commissioner Williams said he withdrew his motion regarding recommendation three, and would schedule a meeting in the very near future for the workgroup to look at this recommendation.

Youth Justice Recommendations

Commissioner Cherot explained that the Youth Justice Workgroup met several times over summer, and the group included commissioners Cleghorn and Barr, along with other stakeholders. The

group also heard testimony from members of SOLO on the effect of long term incarceration of youth, and from the organization Human Rights for Kids.

Included in the materials for today's meeting were a memo circulated with background prepared by Renee McFarland, as well as a legislative blueprint from Human Rights for Kids. The workgroup discussed three proposals from the blueprint that did not reach consensus. The materials for today also had the minutes of the last workgroup meeting which outlined those proposals and the positions of everyone in the workgroup.

She encouraged the Commission to let her know if there was any appetite for additional discussion of the proposals that did not reach consensus. There was a lot of movement on this topic around the country. Children are very different from adults, and less culpable. She thought it was possible the group could have made progress on setting a minimum age for the discretionary waiver. She encouraged the commissioners to read the materials distributed today. The workgroup did a lot of work, but really only reached consensus on the safety valve provision.

Second-Look Parole Provision

Commissioner Cherot explained that there had been a lot of support in the workgroup for a parole provision that would allow people who had been given long sentences as minors to be eligible for parole after serving 15 years of incarceration. The Departments of Law and Corrections didn't object to the recommendation going to the full Commission. Commissioner Cherot moved to adopt this recommendation, and Commissioner Williams seconded the motion.

Commissioner Cherot explained that the draft recommendation contemplates that if a person commits offense prior to age 18 and is given a lengthy sentence upon conviction, that person would be eligible for parole after serving 15 years. It does not mean the person would automatically be released, just that they would be eligible to go before the parole board.

Mr. Miovas wondered whether, if this were to be passed, it would be located within the discretionary parole statutes, or would be a new provision. He thought he and his colleagues would support this provision with the caveat that they would want the same possibility for the ability to argue for parole restrictions for egregious circumstances that exist in the discretionary parole statutes; he would feel better if they could address outliers that way.

Commissioner Cherot said the workgroup hadn't discussed where the statute would be located, and assumed that if there were any legislation on this, it would be something to discussed with the legislators.

Chair Claman wondered as a practical matter how many crimes this would apply to. Commissioner Cherot said it would apply to more serious offenses that are autowaived—unclassified, A, and even B felonies can carry long sentences depending on priors. The discretionary waiver cases would also be the more serious crimes. If a person was convicted of homicide as a child, under current law that person would not even go before parole board until they had served 30 years. Mr. Miovas noted that certain sex offenses carry mandatory consecutive sentences which can make for very lengthy composite sentence.

Chair Claman asked if there was any opposition to this recommendation. Ms. Meade said she would abstain from this vote on behalf of Chief Justice Bolger. Judge Stephens said he would also abstain.

There was no opposition to the motion other than the two abstentions. The recommendation was approved.

Future Meeting Dates and Tasks

The next plenary meeting set for Thursday, October 15, was scheduled to start at 1:00 p.m.