

Alaska Criminal Justice Commission
Meeting Summary

Tuesday, November 29, 2016
Teleconference

Commissioners attending: Greg Razo, Jeff Jessee, Dean Williams, Alex Bryner, Walt Monegan, Stephanie Rhoades, Quinlan Steiner, Kris Sell, Brenda Stanfill, Trevor Stephens.

Commissioners absent: Jahna Lindemuth (John Skidmore from the Department of Law sat as AG Lindemuth's designee), John Coghill, Wes Keller.

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

Participants: Jordan Schilling (staff for Sen. Coghill); John Skidmore, Kaci Schroeder (Law); Bryce Johnson (JPD); Tony Piper, Alysa Wooden (DHSS).

Meeting called to order, introductions, agenda

Commission Chair Gregory Razo called the meeting to order at 4:30 p.m. He noted that this was a public teleconference meeting of the Commission, with a public comment period scheduled for later in the meeting.

Chairman Razo explained that the purpose of this meeting was to consider two reports due to the legislature on December 1. The reports each contained recommendations, but the recommendations would be considered separately from the report; the reports needed to be sent, but the recommendations did not. If any recommendations required further discussion, the issue would be noted for the report but not recommended to the legislature.

Title 28 Report

Chairman Razo asked staff member Barbara Dunham to walk the Commission through the reports. She began with the title 28 report and asked for any objections or comments to the report as a whole, not considering the recommendations. There were none. The next item was to consider the specific recommendations

A. Revision of AS 28 is necessary.

Barbara suggested tabling a vote on this until the other recommendations were considered.

B. License Revocation

1. Keep Administrative License Revocation (ALR).

Commissioner Steiner stated he was not clear on how the subcommittee concluded that both administrative revocation and judicial revocation were necessary. He was not sure that having both was in fact economical, and asked whether the workgroup had considered a blended system combining both elements. Barbara replied that she thought the conclusion of the working group was that each system had its own merits—ALR was more immediate, while judicial revocation allowed a broader scope of revocations. Chairman Razo said that the economics weren't discussed in the working group. Suzanne DiPietro added that while economics weren't discussed, the concept of keeping both processes in place was thoroughly vetted.

Commissioner Monegan observed that having only one system might create a bottleneck problem. He stated that both systems have their uses, and having two systems doesn't overly stress either one. Commissioner Sell agreed, and suggested removing the word "economical" from the report. She thought the flaw with ALR was that it was left in place if the judicial case resulted in acquittal, but that has been fixed with SB91. Justice Bryner suggested eliminating the reference to "economical" and replace it with "effective and comprehensive." There were no objections to retaining this recommendation with this edit.

2. Extend ALR to all mandatory license revocation offenses.

Commissioner Steiner said he was also unsure about this one, and asked what problem this was solving. John Skidmore noted that the purpose of having ALR only for per se DUI offenses is that they are relatively easy to establish a basis for [i.e. a BAC reading] ; other offenses would be less easy to prove and could engender lengthy mini-trials at the administrative review level.

Commissioner Sell said that this would be useful in a situation where someone has committed a serious non-DUI vehicular offense and is released pretrial. She cited a case in Juneau where a driver who was not drunk chased down and attempted to run over JPD officers—ALR would be useful in such situations to give offenders immediate consequences.

Commissioner Steiner said he shared John Skidmore's concerns about additional administrative trials, and noted that the offenses under consideration would be very serious charges. Chairman Razo said that this idea would be noted in the report but not recommended.

3. Keep judicial license revocation.

There was no objection to this recommendation.

C. Ignition interlock devices (IIDs)

1. Eliminate mandatory IID installation.

Commissioner Monegan objected to this recommendation on the basis that it seemed inconsistent with the research that IIDs were effective when properly used. Judge Rhoades stated that in Alaska, IID was not being used to best practice standards when compared with other states. There is no effective monitoring of IID use and no reporting of failures. If it was used in

conjunction with treatment or monitoring as is done in other states, that would be different. The recommendation would still allow for voluntary use for bail or limited licenses. Chair Razo noted that the workgroup had an extended discussion of this topic, with representatives from all relevant agencies, and the discussion really got into the minutiae of IID use. Suzanne DiPietro pointed out that the legislature did not ask for recommendations on this particular point, and the Commission was not obliged to send any.

Commissioner Stanfill said she thought the language of the recommendation needed clearing up- as written, it might be read to mean that IID use should be eliminated altogether. The IID can still be a useful tool. Commissioner Monegan said that it should be maintained, although it was a flawed process and would work better with mandatory compliance checks- there should be consequences for not using it properly. SCRAM is a better option. Commissioner Sell agreed, and thought that the private contractor system was not working. Ultimately she would prefer to use a tool that would “police the person, not the car.”

Chairman Razo suggested that this recommendation be noted in the report but not recommended.

2. Eliminate IID use as a predicate for license reinstatement.

There was no objection to this recommendation.

3. Retain IID as a prerequisite for approval of limited licenses.

There was no objection to this recommendation.

4. Add SCRAM as an alternative prerequisite for limited licenses.

There was no objection to this recommendation, but Commissioner Stanfill pointed out that this recommendation doesn't necessarily flow from #3 and suggested editing #3 to include comparable devices. It was agreed to change #3 to reflect that.

5. Allow judges to impose an IID or SCRAM requirement as a condition of release in some cases.

Commissioner Steiner objected to having this condition imposed on first-time offenders. He was concerned that it would lead to over-programming of low-level offenders and could have the same effect as additional monetary bail. Chairman Razo asked whether this recommendation should be referred to pretrial services instead. He also thought that this recommendation would help address the situation Commissioner Sell had mentioned earlier. Judge Rhoades wondered whether pre-trial services officers would have the authority to set bail conditions.

Commissioner Steiner maintained his objection. Chairman Razo said the recommendation would be noted in the report but not recommended.

D. Sanctions

1. Reduce first-offense DUI/Refusal min. fine to either \$638.94 or \$600.

2. Allow defendants to offset their fines by the cost of treatment.

Commissioner Monegan asked whether the workgroup considered an option to keep the fine at \$1500 but suspend \$900. Judge Stephens noted that judges can suspend any amount up

to \$25,000 for a first-time offense. Judge Rhoades said the question was whether the minimum should be lower. Judge Stephens said that the current minimum is out of line with other states and it is a great burden on low-income people, especially when coupled with the SR-22 insurance. Commissioner Monegan thought that suspending \$900 would increase compliance; they would have that money hanging over their heads.

John Skidmore proposed instead to expand the second recommendation and include other ways to offset the fines, such as the SR-22 insurance. He noted that the current level of fines seemed to be working, as the DUI arrest rate declined from 2008-2014. He thought there was some inconsistency in the report because it does not recommend changing sentencing in order to let the changes from SB91 play out, but then does recommend changing fines. Chairman Razo agreed that that was an inconsistency in the report. Commissioner Sell agreed to expanding the second recommendation. In the current climate, legislators will not be excited about reducing fines. With an offset for SR-22 insurance, the \$1500 fine would disappear pretty quickly. Commissioner Monegan agreed.

Susanne DiPietro wondered what things exactly would be used to offset fines. John Skidmore suggested the SR-22 insurance, treatment, and the cost of IID or SCRAM. Commissioner Stanfill suggested license reinstatement fees.

Judge Rhoades pointed out that someone who gets Indian Health won't have to pay for treatment and may wind up paying more than others under this idea.

Chairman Razo stated that it sounded like D1 and D2 needed more work. These would be noted in the report but not recommended.

3. *Reduce the mandatory license revocation period for first-time DUI and Refusal offenders from 90 to 30 days.*
4. *Refusal offenders should also be eligible for limited licenses.*
5. *Reduce 'hard' license revocation periods for repeat DUI /Refusal offenders from 90 to 30 days. ('Soft' revocation period remains the same.)*
6. *Courts may still impose a longer license revocation period than the mandatory term.*
7. *Limited license periods for all second or greater DUI/Refusal offenders could be conditioned upon supervision and monitoring.*
8. *Retain IID restrictions (or alternatively, a remote transdermal monitoring or a 24/7 program) for any limited license.*

Brenda Stanfill was concerned about reducing revocation periods for the same reasons as noted above- these may have been working to reduce DUIs, SB91 already made a lot of changes, and moreover this kind of recommendation could be seen as needlessly "light on crime." Commissioner Monegan also noted that officers he had talked to were not in agreement with reducing revocation periods for repeat offenders.

Judge Rhoades noted that the reason for proposing these recommendations was to make it easier for people to keep their jobs—going without a license may be doable for most for 30

days, but after that it gets significantly harder. Judge Stephens noted that research showed that the effectiveness of revocation periods tends to diminish after 30 days. [At this point, Judge Stephens had to leave the meeting for a prior commitment.]

Chairman Razo noted that many of these recommendations seemed not ready to forward. Commissioner Steiner said he also objected to D6 because there was little reason to allow for more discretionary increases in revocation periods if the mandatory periods were not going to be reduced. Commissioner Sell said she agreed it was important to keep people in their jobs, but these recommendations need to be thought out more.

Commissioner Sell said she was in favor of D7. Commissioner Steiner said he was not sure what D7 was trying to achieve. Judge Rhoades said it would be like a PACE or ASAP program for high-risk repeat DUI offenders, and could include accountability hearings. Commissioner Steiner said he still had reservations and wasn't sure what this would achieve.

Chair Razo asked whether any of the remaining recommendations should be kept. There were no objections to recommendations 4 and 8, so those stayed in while the rest (D1-3, 5-7) were tabled.

Votes Concerning the Restitution Report

Chairman Razo asked whether anyone had any specific concerns with the report. Commissioner Sell said she was concerned about Recommendation 4, which would expand the civil compromise option to larceny offenses. She thought it would be fine for a first-time youthful offender, but didn't want to see it turn into a game where offenders buy their way out of trouble multiple times. Commissioner Stanfill observed that larceny was the only offense for which civil compromise was not allowed. John Skidmore added that under the statute, the victim has to agree to the compromise, which will naturally limit the number of times an offender can take advantage of it. Justice Bryner agreed with this, and said he was okay with Recommendation 4. Commissioner Sell said she was satisfied with this limitation and agreed to forward the recommendation.

Commissioner Monegan had a question about Recommendation 8, which would expand PFD eligibility for offenders previously ineligible if they only had a short sentence. What would a "short" sentence be? Barbara said that the workgroup had not been able to agree on what that meant, but decided to let the legislature decide. Commissioner Stanfill said that the workgroup thought this would be something that would take a lot of deliberation in the legislative process so it was best to leave it to them. Commissioner Monegan pointed out that many PFDs will be taken for child support. Commissioner Sell said she was okay with that, and if some money did go for restitution it would be for the greater good. Everyone has heard of people who won't apply for a PFD out of spite.

Chairman Razo asked if there were any objections to approving the report as is. There were none.

Public Comment

Chairman Razo called for public comment. There was none, although Commissioner Stanfill pointed out a typo in the restitution report.

The meeting adjourned at 5:35pm.