

# Alaska Criminal Justice Commission

## Meeting Summary

Tuesday, December 3, 2019

**Alaska Mental Health Trust, Anchorage**

And audio-teleconference

Commissioners Present: Joel Bolger, Samantha Cherot, Matt Claman, Shelley Hughes, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Trevor Stephens, Steve Williams

Commissioners Absent: Sean Case, Kevin Clarkson (John Skidmore served as proxy for AG Clarkson), Adam Crum, Nancy Dahlstrom, Amanda Price (Kelly Howell served as proxy for Commissioner Price)

Participants: Troy Payne, Lizzie Kubitz, Tony Piper, James Stinson, Sarah Stanley, Rebekah Moras, Travis Welch, Kim Stone, Nancy Meade, Don Habeger, Alysa Wooden, Al Wall, Renee McFarland

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

### **Approval of Meeting Agenda**

Judge Rhoades moved to approve the meeting agenda and Commissioner Williams seconded the motion. The motion passed without objection.

### **Approval of Previous Meeting Summaries**

Commissioner Williams moved to approve the summaries of the three meetings in October and Judge Rhoades seconded the motion. The motion passed without objection.

### **Chair Election**

Chair Claman said that he had been asked by folks on the Commission to continue as chair of the Commission and he was willing to do so. Commissioner Williams moved to appoint Chair Claman as the Commission's chair for another year. Judge Rhoades seconded the motion. Chair Claman asked for any other nominations; there were none. Judge Rhoades moved to close nominations, and Commissioner Williams seconded the motion. There was no objection to closing nominations and no objection to reappointing Chair Claman as the Commission's chair for another year. Judge Rhoades expressed her appreciation for Chair Claman's efforts over the past year.

Commissioner Stanfill said she was willing to serve as vice-chair for another year, but her appointment would be up in July. Judge Rhoades moved to reappoint Commissioner Stanfill for another year as vice chair, noting that if she was not reappointed the Commission could deal with it at the time. Commissioner Cherot seconded the motion. Judge Rhoades said that she would be willing to serve as vice-chair if Commissioner Stanfill happened not to be reappointed to the Commission. Commissioner Williams moved to close nominations and Kelly Howell seconded the motion. There was no objection to closing nominations for vice-chair and no objection to reappointing Commissioner Stanfill as vice-chair.

## Report on Risk Factors Related to Criminal Activity

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, said that staff had put together this report pursuant to statute. The legislature's idea was to look at people who are incarcerated or on supervision who have received a risk/needs assessment, to see what the risk/needs profiles are. The assessments used by DOC are the LSI-R and LSI-R:SV. To prepare the report, staff looked at data from LSI-R and LSI-R:SV assessments done between 2002-2018.

The results of this analysis, presented in the first part of the report, were not particularly surprising. The most prevalent risk factors related to substance use and "criminal" acquaintances. This trend held true whether respondents were in custody or under supervision in the community.

The second part of report puts this information in context. The intent of this legislation was to get information on how to fund primary prevention. The report talks about the risk factors in context, and how those things could be addressed to prevent future crime. The legislature was specifically interested in ACEs. A separate DHSS study showed Alaskans have higher ACEs scores compared with the rest of the country, and there is strong evidence from nationwide studies linking high ACEs scores to incarceration.

The report concludes with a discussion and recommendations, listing programs that address prevention for risk factors that are most prevalent. This list gives examples, and is not meant to be comprehensive. The main body of the report is 17 pages, plus there are appendices with further data.

Chair Claman noted that unfortunately no DOC representatives were at the meeting, as he'd like to know their perspective on ACEs scores for people in custody and on supervision.

Ms. DiPietro said that the study was included in statute because legislators wanted to know about ACEs, but actually assessing all people in custody and on supervision for ACEs would be quite a big project, and would need funding. It was also not advised to screen a whole population, because asking about ACEs can itself be a traumatic event. DOC doesn't do an ACEs questionnaire; the LSI-R is more suited to a corrections setting, identifying risks needs in that population. There is some overlap, however, so that was the approach the legislators took to get at the idea.

Teri Carns, Judicial Council staff member, said that the national research does establish a strong association between ACEs and the LSI-R, and that holds true from studies of both juvenile and adult populations. One can't assume that if a person has a high LSI-R score they will also have a high ACEs score, but studies have shown strong correlations.

Ms. DiPietro said that another limitation of this study is that it didn't include any comparison to the general population. It is conceivable that the general population would have the same scores. She didn't think it was likely, but we have no way of knowing that without a comparison group.

Judge Rhoades agreed that the top risk factors were no surprise. She wondered if staff looked at any correlation between high LSI-R scores and mental health disorders. She thought that would be another thing to look at to improve programming. People with mental health disorders are more likely to experience criminogenic risk factors than others. They have challenges finding services and accommodation, and are vulnerable to others, all of which relate to many of these risk factors. There

are many people with co-occurring disorders. It is very clear that people with mental health disorders are overrepresented in DOC's population. She thought the comparison to ACEs was interesting, but when comes to prevention programming, she saw a need to think about things from a mental health perspective. There is a huge lack of services for people with mental health disorders, starting from childhood. She thought this might be worth mentioning in the report. She had no problem sending out the reports as is, but wanted to throw the idea out there as she thought there was more to be said.

Commissioner Williams thought this report takes people further down path of what the Commission has talked about before—that we need to be intervening earlier in factors that drive criminal behavior. Not only in the criminal justice setting but in the family unit. He appreciated this work and thought it would help start a conversation about early interventions.

Regarding trust beneficiaries, Commissioner Williams noted that the Hornby Zeller report identified risk factors for the beneficiary population, and thought the report could start there in a discussion of how to intervene for beneficiaries. Ms. DiPietro wondered if the Hornby Zeller report had access to LSI-R scores. Commissioner Williams said they didn't, but they did do an overlay of beneficiaries in DOC, OCS, DJJ, and API custody; there was a high correlation of beneficiaries and contact with those institutions.

Commissioner Stanfill said that regarding the discussion and recommendations section, she thought that if the Commission was going to make a recommendation, the report needed to mention some of the things Judge Rhoades mentioned. The programs listed were all good but the report should mention that it was not a complete list.

Ms. DiPietro said it was not intended to be all-inclusive. Staff did want to highlight some programs that are evidence-based. The legislature did want to know about primary prevention, and things like substance use disorder treatment do prevent criminal behavior. Commissioner Stanfill agreed, but noted it would target a risk factor even if it was not primary prevention. There was a lot of research out there.

Commissioner Stanfill said that she would also point out that the difference between programs that work and programs that are evidence-based is that the latter have money to evaluate their data. She thought there was a lot of good work being done in Alaska, and a lot of it being done in rural Alaska, that was not necessarily evidence-based and did not have funding for evaluation.

Ms. DiPietro noted that the Commission has included in its annual report for the last couple of years that programs should preferably be evidence-based but there should also be space for promising practices that seem right for Alaska. She added that the CDVSA was also funding quite a bit of primary prevention, most of which was evidence-based.

Chair Claman said it sounded like the Commission needed to figure out the next steps for this report and asked when it had to be sent to the Legislature. Commission project attorney Barbara Dunham said that the preliminary results had already been reported in the annual report; the statute requires reporting the findings within 10 days after the start of the next legislative session. Chair Claman said it sounded like there was time then to take it back up at the next meeting, which was on January 30, 10 days after the start of the next session.

Judge Rhoades moved to approve the report, and Commissioner Razo seconded the motion. Judge Rhoades wondered where staff found the model programs that were included in the report. Ms. DiPietro said the Washington State Institute for Public Policy (WSIPP). Judge Rhoades wanted to be sure there was a look at programs that would identify and help people with mental health issues early in life. She was concerned people will see the programs listed in the report and think those are only recommended programs. She wanted to include language to reflect what Commissioner Stanfill was saying, and maybe take language from the earlier reports about supporting promising practices for Alaska.

Ms. DiPietro said that staff was not wedded to any particular programs or recommendations. They were not focused on mental health disorder prevention efforts because that was not what the statute was focused on.

Commissioner Williams said he was comfortable giving staff direction to modify the language in the report, perhaps moving the last paragraph explaining that the list of programs is not exhaustive to above the list so that information is not lost.

Chair Claman said staff should also add language consistent with Judge Rhoades' comments about mental health. If there was not some language about it the report might not be complete.

Judge Rhoades offered to help contribute language. Chair Claman said the report can also incorporate information from the Hornby-Zeller report.

Commissioner Stanfill asked whether the LSI-R asked questions about mental health. Judicial Council analyst Brian Brossmer confirmed that it did. Judge Rhoades added that it did ask but not in a way that addresses the central 8 criminogenic risk factors.

Commissioner Cherot noted on page 10 that past and current mental health treatment is mentioned as the subject of some of the questions, so there is some discussion of mental health in the report but not a lot.

Judge Rhoades observed that the LSI-R is also a self-report assessment so the results probably underreport the prevalence of mental health disorders. Ms. DiPietro said that there was no flag in DOC's database for mental health treatment but staff could see if there is any other way DOC captures data on the prevalence of mental health issues in the corrections population. Commissioner Stanfill said that mental health disorders are often masked by substance use disorders, which people may be more apt to self-report.

Chair Claman said the motion would be tabled and put on the agenda for January. If any Commissioner wanted to add language to the report, they should get comments to Ms. Dunham by Friday, Dec. 20, and staff would circulate an updated report for January.

### **Ethics Reporting and Open Meetings Act**

Ms. Dunham explained that she had circulated a memo about ethics reporting and the Open Meetings Act. Staff don't typically get questions about ethics but they do get questions about open meetings. This was intended as a refresher.

For ethics reporting, the chair of the Commission is the designated ethics supervisor, and is the person to go to with any questions about ethics or reports of conflicts or gifts that might fall under the ethics act. The Commission must report quarterly whether the ethics supervisor/chair has received any reports under the ethics act. Chair Claman confirmed that staff check in with him every quarter to see if there have been any report and send the required paperwork to the state—as yet, the Commission has not had anything to report.

Ms. Dunham explained that the Open Meetings Act was intended to ensure that the public work was conducted in public. For the Commission, that means pre-arranged meetings where four or more Commissioners will be present must be noticed on the State of Alaska online notice system, and using the Commission's usual modes of notification (the website and mailing lists).

Any violation of the Open Meetings Act renders the action taken voidable. Ms. Dunham noted that the Commission was an advisory body, and since it did not issue any binding rules or regulations, the enforcement provision of the Act did not have much of an impact as applied to the Commission. Nevertheless, the Commission was a public body and should adhere to the spirit of the law for the sake of the public trust.

#### **Data: Race/Ethnicity**

Ms. Dunham explained that staff would be presenting data to the Commission at each meeting in order to be more responsive to what the Commissioners want to see in terms of data, to help the Commissioners understand the Commission's data, and to hopefully make the process of creating the annual report more effective. The data topic for this meeting had to do with race and ethnicity.

In the course of compiling the annual report, staff had included information on the race/ethnicity of DOC's in-custody population, which showed a racial disparity in that Alaska Natives were over-represented in the prison population when compared with the general population. The report had stated that the Commission wanted to look into this further in the coming year.

Ms. DiPietro handed out a memo from Teri Carns on ethnicity/race data in the Commission's and Judicial Council's criminal justice research. The memo explained how DPS and DOC get race/ethnicity data. The Council has relied on this data since the 1970s. Ms. Carns had talked with Kathy Monfreda who manages the ASPIN database for DPS. DPS gets their race data from DMV, and many people in APSIN have this DMV data. However, the collection of race data is not mandatory and the DMV has stopped collecting race data. There will be more race data missing from DPS's database going forward.

Ms. Monfreda also spoke with Troopers about what they do in the field and generally they do not ask for race unless for some reason the case warranted it. If not, officers were reluctant to ask, particularly for something like a traffic stop where race should have no bearing on the outcome.

Ms. Carns also spoke with Mike Matthews at DOC. Mr. Matthews said the booking officers rely on self-report, observation, or ASPIN. The Court system does not collect race data.

Ms. Carns noted that nationally the Census race data is either self-report or observation. New studies are using DNA in race identification.

Judge Rhoades questioned if Real IDs were collecting race information. Ms. Howell said that Real IDs would be aligned with what DMV is collecting.

Ms. Dunham presented information on race/ethnicity data on PowerPoint, showing a snapshot of the total population each quarter for the last five years, a snapshot of just the Alaska Native and Caucasian population in the last five years, and the share of each race/ethnicity on July 1 of each year for the last five years. She also showed data on the total state population taken from the Department of Labor website. The proportions of each race/ethnicity have remained fairly constant over the last five years, but among those in prison, the Alaska Native population has been growing in proportion to other races.

Commissioner Razo wondered if the Alaska population could be broken down by judicial district. Dr. Troy Payne from the UAA Justice Center said this could not be done quickly; the census and judicial districts do not have the same boundaries.

Commissioner Stanfill wondered if the race data in the prison population could be analyzed by type of crime and Ms. Dunham said it could. Commissioner Stanfill also recalled that the pre-trial risk assessment study showed no racial disparity. Dr. Payne clarified that the AK-2S scale predicted equally well by race. He noted that how race impacts pre-trial decision making is a different question.

Chair Claman asked about the racial disparity data in the Commission's recent bail study. Ms. DiPietro said that the AK-2S is one piece of information and disparity may crop up in other places where pre-trial decisions are made. The bail study looked at release decisions and the pretrial population as a whole. Ms. DiPietro stated staff is taking steps to finish up the analysis on outstanding cases, but that initial results showed the racial disparity was decreasing among people held in prison pretrial. That study is limited and didn't control for other factors.

Dr. Payne noted in all areas of criminal justice that there are racial disparities all over the country. Ms. DiPietro added that the Council had also found pretrial disparity in a study of data from 1999, which was a very robust study with multiple regression analysis. The more recent bail study did not do this and did not look at the underlying offense.

Chair Claman wondered whether the 1999 study should be followed up. Commissioner Stanfill thought the Commission should dig deeper into the data.

Senator Hughes asked about racial disparity in victims and what data is available. Ms. Howell commented that DPS does collect and report victim data.

Chair Claman inquired about the last study AJC did on racial disparities. Ms. Carns noted it was 1999 data published in 2004. It was a costly study. Pretrial showed disparities and sentencing did not. She noted it would take a year to replicate.

Commissioner Rhoades recalled a presentation on data that showed a correlation between having a public defender and staying in jail. Studies can turn up a lot of findings, but she wondered whether this was something the Commission needed to look at.

Ms. Carns said that the study of the 1999 cases used a multiple regression analysis. Many factors were taken into account in this study and it showed racial disparities independent of those

other factors. Ms. DiPietro added that this study was a felony process study and did not look at misdemeanors.

Chair Claman said that at previous meetings the Commission came up with research priorities for the coming year; race/ethnicity data wasn't on the list.

Commissioner Razo stated that it was clear there were racial disparities in a number of arenas in Alaska and the U.S. He also noted there are many different adverse consequences for the Alaska Native population. He stated it is a complicated issue that may be outside the Commission's research capacity. Perhaps the Commission could ask for an organization like ISER to take a look.

Commissioner Stanfill wanted to look at this from an offense-based perspective, looking at violent and nonviolent offenses. She wondered whether the right people were going to jail.

Dr. Payne noted all these questions were answerable, but we would need the right data. He wondered what actionable steps the Commission could take. What would they do with the results? He also noted in Alaska Black people are even more over-represented in the criminal justice population than Alaska Natives.

Commissioner Williams stated these are larger systemic problems in Alaska and may be outside the Commission's purview to address them, though the Commission can help educate the public on this and understand the data. It showed a need to advocate for early interventions moving forward.

Ms. Dunham asked what further data on this the Commission would like to see—she noted there was mention of breaking the data down by offense. In answer to Senator Hughes' question, she noted that the Commission did not receive data on victims. Ms. Howell said that DPS does have victim demographic data in its reports on reported crime in Alaska. She noted that the data typically shows that the victim and suspect race is the often the same within a given case. Senator Hughes said she was interested in knowing more.

Chair Claman wondered what victim data DPS can provide and if it is readily available. Ms. Dunham noted that Ms. Monfreda would be attending the January Commission meeting and this could be addressed. Judicial Council attorney and staff to the Commission Susie Dosik stated that the DOC offender profile breaks down offenders by race and offense class.

### **Public Comment**

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

### **Recommendation Regarding a Resolution on Medicaid**

Ms. Dunham explained that in developing the Commission's research priorities for the coming year, several ideas were identified that did not necessarily require research or a workgroup referral, but that the Commission was interested in discussing. One of these ideas was to recommend that the federal government amend the Medicaid rules so that people in prison could be covered by Medicaid for treatment in prison. Because the Commission's enabling statute limits the Commission to making recommendations to state bodies, this would more likely take the form of a recommendation to the legislature that the legislature pass a resolution supporting this change.

Chair Claman said that Alaska was one of seven states with a unitary corrections system. He attended a conference of the National Council of State Legislatures where those seven states discussed getting Medicaid reimbursement for treatment in prison. They discovered that New York has applied for a waiver to get that treatment covered, and the seven states wanted to make the same request. The avenue to get that done is to have the state authorities talk to the federal legislative delegation. He thought what the Commission could do is ask the legislature to pass a resolution supporting the idea.

Chair Claman said this also related to his recent trip to Phoenix to see their crisis stability centers. Captain Case urged him to go, calling it a game changer. The idea with the Phoenix project is that there is no wrong door—whoever goes to the facility gets seen to, whether their issue is criminal, mental health-related, drug-related, or medical. Officers spent an average of two minutes there, which was the reason they really liked it. If the person has a medical issue, they have nurses; if the person has a mental health issue, they can observe the person for 23 hours, and they also have access to an inpatient facility and psychiatric nurses. This facility was 100% funded by Medicaid through an 1115 waiver, regardless of whether people had insurance.

Senator Hughes said that when she proposed this idea, she was thinking of only of getting coverage for substance use disorder and mental health treatment, not full medical and dental. She thought the Commission could pass a resolution to the legislature with a cover letter to the federal delegation. It could also be sent to the governor and executive branch to ask them pursue what New York has done. She knew that at a federal level, there was a lot of focus on substance use disorders, and thought this might be a good time to try to change things.

Chair Claman thought that the Commission's statutory authorization was to make recommendations to state legislature, administration, and governor only. Ms. DiPietro looked up the Commission's enabling statute, which said the Commission shall make recommendations to those state bodies—there was no mention of federal authorities.

Judge Rhoades said that when this was discussed earlier she didn't think that she was necessarily contemplating sending a recommendation to the federal authorities. She was more concerned with current practices and getting an 1115 waiver for treatment. She noted that people are being held in DOC facilities awaiting competency evaluation or restoration, and for Title 47 holds. She suggested looking at how an 1115 waiver could fund out-of-custody competency evaluations. It might be able to cover medication management, or housing. She was also concerned that people coming out of DOC don't have active Medicaid registration. Both these things were a separate conversation from what Sen. Hughes was talking about.

Senator Hughes said her understanding of 1115 waiver was that it would allow for a variety of things once out of custody; what New York is doing is asking for coverage for people during the 90 days prior to their release. She added that since the Commission can't make recommendations to the federal delegation, it could write a cover letter that would accompany a copy of a recommendation to the state legislature, informing the federal delegation of the recommendation, to keep them in the loop. She thought they ought to know what the Commission thinks. But it would not be making a recommendation to them.

Ms. DiPietro said she didn't see why not. The Commission typically publicizes its recommendations, so she thought an informational letter would be okay.

Chair Claman wondered whether this was ready for a motion, or if staff should draft something for the Commission to take up at the next meeting.

Justice Bolger thought the Commission should take this up at the next meeting after staff puts together a draft recommendation. He also thought staff should check in with DBH on the status of the 1115 waiver as to what exactly will be funded because he believed that status has changed in the last few months.

Commissioner Williams said that nothing in the 1115 waiver allows Medicaid reimbursement of treatment while incarcerated. He agreed with the option of drafting a recommendation to review at the next meeting. Off the top of his head he would imagine this is a way to make it easier to maintain Medicaid eligibility while in prison.

Chair Claman added that it sounded like this recommendation would very specifically be related to people in custody who would otherwise be eligible for Medicaid.

Senator Hughes said that another idea discussed at the Vermont conference was to explore partnering with tribal health and federally qualified health centers. Deputy DHSS Commissioner said that some of the things Senator Hughes had asked about have been submitted to CMS, and are in process. He added that another thing discussed in Vermont was using a savings fund that would be available to cover certain populations. Senator Hughes said they also discussed looking at the idea of social impact bonds.

Chair Claman said that staff would work up a draft recommendation that could be sent to the legislature. It sounded like staff had a lot of information to work from. Ms. DiPietro said it sounded like staff should work with DHSS and DC Wall in drafting something. Mr. Wall said he would be happy to, adding that showing community support to CMS goes a long way.

### **Uniform Criminal Records Accuracy Act**

Chair Claman said that the Commission on Uniform Laws was a national organization that tries to create laws that are appropriate for all 50 states; it is where the UCC (Uniform Commercial Code) comes from. This year they had a convention in Anchorage and voted on a Uniform Criminal Records Accuracy Act. Information on the UCRAA was included in the packet for this meeting to introduce the topic. One of the drafters of the UCRAA will be on hand for the meeting in January, as well as the heads of data for DOC and DPS. This will go on the agenda then, but for now, Commissioners could take their time to look into the Act and its supporting materials.

### **Redaction**

Chair Claman explained the Commission had previously made a recommendation on redaction and wondered if the Commission wanted to re-recommend it. Ms. Dunham said this had been raised when the Commission was discussing its goals for the coming year.

Ms. DiPietro said the Commission had a subcommittee that worked a lot on the topic of expungement and found that this area was impeding rehabilitation and individuals' ability to be productive members of society. The research on expungement led to the recommendation on redaction.

Ms. Dunham re-presented the 2018 presentation on the redaction recommendation. She explained that the workgroup was in favor of maintaining the records, but limiting access to them. Commissioner Stanfill noted it was important the recommendation maintained public safety. Ms. Dunham explained that the term redaction was chosen instead of expungement because redaction does not imply the destruction of records. The purpose was to limit access to the public, as records such as those found on CourtView, even if they reflect a minimal criminal history, can lead employers to assume the worst. Ms. DiPietro commented that the workgroup received testimony even from individuals with misdemeanors saying it was impeding their ability to get work. Ms. Dunham noted that people also testified they had trouble getting into college and going to Canada.

Ms. Dunham explained the recommendation is designed to help people who have made permanent changes in their life and have been crime free for a period of time. The recommendation addresses restitution and victim input. It also takes into account the usual time for an individual to recidivate is usually within three years, though it could be longer for DV. The workgroup considered time to redemption, which is the point when an individual is only as likely to commit a crime as the rest of the general population.

Ms. Dunham explained the recommendation states that minor consuming alcohol and possession of marijuana would be immediately redacted because they have been decriminalized. In SIS cases they would be redacted after 1 year for misdemeanors and 5 years for felonies. For the SIS cases, an individual must have successfully completed probation and judges would consider any outstanding restitution.

Commissioner Bolger said he had been prepared to recommend to the Court System that these should be taken off of CourtView, but there was an objection from DOC. He wondered whether that issue had been resolved. Ms. Dunham said it was because DOC uses CourtView to check PFD eligibility. She thought that DOC had come to an understanding with DPS for a fix but did not hear back from them whether the issue was fixed. She would try to follow up with them.

Ms. Dunham said that for offenses other than MCA or marijuana possession or successful SIS cases, the Commission's recommendation was that a person must submit a petition for redaction to the court. The prosecutor must make an attempt to notify the victim. For misdemeanors, the waiting period for drug offenses would be 4 years and for violent offenses would be 7 years (including DV and non-registerable sex offenses). The waiting period for all other misdemeanors would be 3 years. Registrable sex offenses would be excluded. For felonies, the waiting period would be 10 years. Felony sex offenses and unclassified felonies would be excluded.

A person could redact multiple offenses with one petition, but once granted could not petition again. If a person is denied they can apply again in one year. For violent misdemeanors, felonies, and misdemeanor sex offenses, the court may grant the petition if it is not likely to harm the victim. For other cases, it would be a presumption. The effect of a petition for redaction being granted would mean that a person's criminal record would not be released in a background check and the court system would treat the record as confidential. A person would not have to disclose a redacted offense on an application and could not be convicted for perjury for failing to disclose the offense. The record will remain in APSIN, available for law enforcement and prosecutors. Dr. Payne also noted that there should be an exception so that the records could be used in research.

Ms. Dunham also explained the recommendation included Certificates of Rehabilitation as an alternative to or while waiting for a redaction.

Commissioner Rhoades wondered if a judicial hearing would be required for every petition and if successful, whether people would have to answer yes on an application if they have ever been convicted of a crime. Ms. Dunham said the hearing would be required if the offense was not one of the automatic redaction offenses and a hearing had not been waived by the parties. Commissioner Stanfill said they would not have to disclose the crime on an application.

Commissioner Rhoades shared that she has been doing re-entry work and this is was the #1 issue for reentrants. She wondered how legally one can answer a question about a criminal record and not say they were convicted. Ms. Dosik said that the idea was that a person would be given statutory permission to check “no” on application forms. She noted other states have done this and there must be a statutory fix. Commissioner Rhoades commented this would be an enormous fiscal note and it has to be effective in the community. Ms. Dunham said that some details would need to be worked out by the legislature. Commissioner Rhoades said that examples of what other states have done should be included.

Ms. Dosik summarized a March 2019 University of Michigan study supporting redaction—this research had not been available when the Commission voted to recommend redaction in 2018. Michigan has had a law for expungement since 1983 that is similar to the redaction proposal. The study found 30,000 examples of expungement between 1983-2011. They looked at prior and subsequent convictions and employment history for those cases. They have a five year waiting period, but the law only allows for one offense.

The study found that only 6.5% of eligible people applied for an expungement and received one, which might allay any fears that this would be a large burden on the system. Only 6% of people granted expungement were re-arrested within the next five years, which is a similar arrest rate to the population as a whole. This is consistent with time to redemption research. It should be noted that those in the study were low-risk individuals (because of the eligibility requirements to get expungement in the first place). People granted expungement were more likely to be employed with higher wages; getting expungement was a distinct improvement for them.

Commissioner Stanfill recalled that the Commission had heard a lot of really compelling testimony on the burden of a criminal record, mostly women. They were people who had moved on from criminal activity but then got stuck by this. That also may explain the low percentage of applicants in the study—not many people get to that point. She thought this was an important study, which answered questions the workgroup had in developing the recommendation. Even if a relatively low percentage of people apply for redaction it was still important to have a way to remove those barriers.

Ms. Dosik said that another thing the study found was that people did not apply right away after the 5-year mark, it was typically at the 7-to 10-year mark, indicating that there was some barrier that they ran into that led them to apply for expungement.

Chair Claman asked how the Commission wanted to proceed—did Commissioners want to re-recommend this recommendation?

Judge Rhoades wondered whether there was political will in the legislature to take this up, whether re-recommending it would help, and whether it would help to add information about this new study. She was hesitant to re-recommend the exact same thing. There were many other recommendations made by the Commission that have not passed, such as the recommendation to allow people in assisted living facilities return home on bail after an assault charge.

Chair Claman said that from his perspective as a representative, he was not sure that other similar proposals were received warmly in the legislature. This was a project that an interested legislator needed to take on.

Commissioner Williams noted that the next legislative session would be in year two of the two-year cycle. He wondered how the Commission should prioritize previous recommendations and whether it was plausible the legislature would take this up.

Ms. DiPietro said that typically when the Commission issues recommendations, the supporting documentation notes the rationale and evidence base for the recommendation; it might be worth updating the recommendation with new research, which the recommendation would have included originally had it been available at the time.

Commissioner Razo agreed with that, and suggested including the new research in the annual report's list of recommendations not previously acted upon. He also agreed that it didn't make sense to press the issue with the current legislature. There was likely some criminal law fatigue.

Chair Claman said he typically thinks of bills as 1, 2, 4 or 6-year projects. He thought redaction was a 6-year project.

Judge Rhoades moved to include the new research in next year's annual report in line with what Commissioner Razo suggested. Commissioner Razo seconded the motion. There was no objection and the motion passed. Chair Claman suggested that if any other relevant studies came out in the meantime, those could be included too.

### **Truth, Racial Healing and Transformation Project**

Liz Medicine Crow, executive director of the First Alaskans Institute, thanked the Commission for the opportunity to speak and said that she was Haida/Tlingit and hailed from Kake. Barbara Blake, policy director with First Alaskans, said she was from Prince of Wales Island and was Tlingit/Haida and Athabaskan.

Ms. Medicine Crow also thanked Commissioner Razo and the Commission for inviting her to moderate the recent victim listening session at AFN. She was accompanied by the rest of the staff from First Alaskans to share information on a new project with the Commission and make an invitation.

She explained that First Alaskans was a statewide nonprofit and foundation, focusing on a vision for progress for the next 10,000 years. They seek progress that is transformational and enduring. They would be celebrating their 20<sup>th</sup> anniversary next year and were looking for partners for investing in the next 10,000 years. She knew the Commission had been addressing heavy and hard subjects, and she thought the Commission and First Alaskans could join together in partnership. She was at this meeting to talk about their Truth, Racial Healing and Transformation (TRHT) project.

TRHT was a project that grew out of First Alaskans' endeavors to foster racial dialogue. When Alaska had its 50-year celebration of statehood, First Alaskans asked whether that was indeed a moment for celebration for the Alaska Native Community; they went around the state to listen to what people had to say about it. They resoundingly heard that racism, discrimination and bigotry were still happening, and this was something Alaska was just not dealing with. They wondered whether, if they were motivated and could organize, they could really talk about these issues.

Alaska Native communities have almost insurmountable challenges. First Alaskans wanted to start a dialogue which a healing and policy-based approach. They created the racial dialogues to talk about the most difficult things to talk about.

Ms. Medicine Crow said she knew the Commission had been looking at racial disparity data, so this was something the Commission was already thinking about. But you cannot make progress if you're only looking at numbers. She thought this was an opportune time to offer an invitation.

She explained that the TRHT process was similar to a truth and reconciliation process. But in order to reconcile, one has to start with a good relationship, and that's just not this country's history and not Alaska's history. First Alaskans decided to call their project Truth, Racial Healing and Transformation because that's the vision, goal they were working towards. They are placing healing at the center of the project; they want to start healing on a personal, organizational, and state level. One cannot have justice without healing.

They are going to be hosting a series of six tribunal forums across the state. They will be inviting communities to share their truth and think about solutions, and ways to transform. They were also creating a growth fund for communities to use to continue this same process on a smaller scale.

Ms. Medicine Crow said that people have been talking about needing something like this in Alaska for a long time. It is a process that requires reflection. Participants need to be able to listen to other people and accept what they say as their truth. First Alaskans wants to create an historical context, to know more about how we got to where we are today; they will look at the legacy of the state, the church, etc. It would not be about shame, but a way to begin healing.

First Alaskans has been getting guidance on this around the state, having conversations with healers, churches, state agencies, and others. This effort was also linked to a national effort to use a healing-based process to develop a human-centered society. Ms. Medicine Crow said she knew that it was time for truths to be told, and time for wrongs to be righted.

Ms. Blake explained that the policy portion was where First Alaskans hoped that people like those present today could step in. No one person is an expert in everything. But with the expertise of many policymakers on board, this process could actually create a chance for change to take place. They didn't want people to share their pain, open old wounds, and leave unhealed. They were hoping that with a variety of policymakers on board as accountability partners, they could identify opportunities for change. If the Commission was willing to sign on, they should let First Alaskans staff know.

Ms. Medicine Crow said that becoming an accountability partner was a way to show that you care, and want to be part of shaping a different legacy. Organizations in Alaska have a legacy of impact

on Alaska Native communities; this was an opportunity to own that legacy and change it to the one we want it to be.

Ms. Medicine Crow added that when she was moderating the listening session, she found it eye-opening for a couple reasons. One is that it created a space for people to tell their truth, but there was no way to do anything about it. One woman who spoke said she would have healed if she had not reported. That started a conversation. It became apparent that there was an opportunity to combine powers. She assumed the Commission had already received similar painful testimony. She really wanted to focus on the experience that the person giving testimony will have, and to make sure they would have access to healers, counselors, and faith-based practitioners after speaking up.

Ms. Medicine Crow observed that much of the time, policymakers are focused on emergency situations, which often means dealing with symptoms. It means a lot of time spent looking at a problem without getting to its root. First Alaskans wanted to use the TRHT process as a way to start on road to intergenerational healing at the roots. It was an opportunity to approach things in a different way. Triage thinking has not rendered results in the past; they were trying to be smarter about what they were doing. She invited the Commission come alongside First Alaskans to join them on the THRT path. The process was open to everyone.

Chair Claman asked where and when the tribunals would be. Ms. Medicine Crow said they were in the process of planning that; the most important consideration was not to interfere with the harvest and fishing. They should be scheduling them in the next month or two. She added that part of the role of an accountability partner was to be present to witness the tribunals. It would involve training.

Chair Claman wondered whether First Alaskans was interested in having the Commission itself or Commissioners as individuals participate as accountability partners. He was not sure about the Commission's statutory authority. Ms. Medicine Crow said that they were interested in the participation of both the Commission and the individual Commissioners. She also noted that the Commission could always try to change the statute.

Commissioner Razo said that in the Commission's discussion earlier that day, the Commission looked at the data and saw a tremendous disparity, and concluded that it was the product of a systemic social problem, too big for the Commission to deal with. He thought the First Alaskans were starting a very timely conversation, and offering at least an approach, a way to come together as a group to help tackle an insurmountable problem. The Commission also talked about ACES and risk factors earlier in the meeting. The TRHT process gets into where that comes from. He would be supportive of Commission getting involved.

Commissioner Stanfill said that she had been honored to be at victim listening session at AFN with Ms. Medicine Crow. She thought that hearing the pain of the young lady who spoke was one of the hardest things to listen to over the course of all of the listening sessions the Commission had done. She thought that this was something everyone needed to be engaged in. She would also support the Commission's participation or would be involved as individual.

Ms. Medicine Crow said that Alaska has huge social issues that have uniquely Alaskan solution. The old question of how do you eat an elephant in Alaska would be translated to how do you eat a whale? The answer: one bite at a time. By community. It was an ancient technology that could be

applied to tackle hard problems. Things won't change if everyone stays in their comfort zone, and considers ideas in a vacuum.

Chair Claman said he appreciated all the work First Alaskans has done. He said the Commission would look at whether it can formally be an accountability partner; he would also welcome participation as a group or individual. He noted that at the listening session he attended in Bethel, he experienced the same frustration of hearing about people's concerns but not being able to do anything.

Ms. Medicine Crow said that she there might be a way to link ongoing efforts, as a way to move forward. She noted that First Alaskans also offers Alaska Native governance and protocols training, as a way to demystifying the complexities of working with Alaska Native communities.

Commissioner Razo noted that the concept of the TRHT process was widespread, he recommended googling it, as there was a lot to read up on.

Commissioner Williams echoed what Commissioner Razo said about facing the weight of racial disparities; it feels tremendously overwhelming and daunting. He thought this was a way of comprehending how we got to where we are, and a way to create change. Not seeing change can contribute to overwhelmingness of racial inequities. Until everyone understands the history and truth of what others experience, things won't change. He liked the idea of thinking about the next 10,000 years, and what we want society to look like. He would also like to participate as individual or with the Commission.

Ms. Medicine Crow said she often hears policymakers talking about getting upstream of an issue. But in order to really get upstream, you need to go to the headwaters, otherwise there's always more upstream. If Alaska was not thinking about its legacy, the numbers won't shift. Policymakers should recognize that there are people behind the numbers. This process was about moving at the speed of trust. If there is no trust, things won't move forward.

### **Next meeting**

Ms. Dunham reminded the Commission that the next meeting would be on January 30 in Juneau, and that the meeting would take place early in the day so that everyone would have the chance to participate in the reentry simulation.