

Alaska Criminal Justice Commission

Meeting Summary

Thursday, December 7, 2017

12:00 PM

Snowden Training Center
820 W. 4th Avenue, Anchorage
And audio-teleconference

Commissioners Present: Greg Razo, Joel Bolger, Sean Case, Val Davidson, Jahna Lindemuth, Walt Monegan, Brenda Stanfill, Quinlan Steiner, Trevor Stephens, Steve Williams, Matt Claman, John Coghill

Commissioners Absent: Stephanie Rhoades, Dean Williams (DOC Deputy Commissioner Karen Cann served as proxy for Commissioner Dean Williams)

Participants: Nancy Meade, Clare Sullivan, Devon Urquhart, Gennifer Moreau, Alysa Wooden, Randall Burns, Karen Forrest, Araceli Valle, Heather Parker, Aliza Kazmi, Jordan Shilling, Jeff Edwards, Juliana Melin, Talia Eames, Jeannie Monk, Cathleen McLaughlin, Sarah Perman, Tara Rich, Brandon Biddle, Daniel Quisenberry, Nelson Price, Kim McDowell, Sarah Martin, Megan MacKeirnan, Karen Scroggins

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

Approval of Meeting Agenda

Chair Razo called for a motion to approve the meeting agenda. Commissioner Lindemuth so moved, and Commissioner Steve Williams seconded the motion. Commission Project Attorney Barbara Dunham suggested adding an update on expungement; Chair Razo called for approving the agenda as amended. There was no opposition and the motion passed.

Approval of Last Meeting's Summary

Chair Razo called for a motion to approve the summary of the previous meeting. Commissioner Steve Williams so moved, and Commissioner Lindemuth seconded the motion. There was no opposition and the motion passed.

Pretrial Friday Announcement

Ms. Dunham explained that the Pretrial Enforcement Division (PED) would be putting on webinars to explain the pretrial tool and associated logistics to practitioners. She said she would

email the Commission with the details. Department of Corrections (DOC) Deputy Commissioner Karen Cann said their outreach focus was on the webinar, and PED will do follow-up with specific groups as needed.

Alaska Court System General Counsel Nancy Meade said she has also been doing trainings on the new pretrial provisions in the law as well as SB 54. She recently held these trainings in Fairbanks, Anchorage and Juneau, and will do more in Kenai and Bethel. Chair Razo encouraged everyone to go to a training or webinar or have staff attend; it was important to have a smooth roll out of the new system.

Commission Work Plan

Ms. Dunham explained that the Commission had five active workgroups and two dormant workgroups. If the active groups met every other month, the Commission could have three meetings per months including the plenary meetings. Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, said that she wanted the Commission to be cognizant of its resources. Meetings take preparation time for staff. Chair Razo noted that the Commission's process is to have the workgroups focus on individual items, and then bring more fully-formed ideas to the Commission. He would like to have productive workgroups. He asked to hear from Commissioners about their thoughts on how to proceed with each work group.

Commissioner Case said that the focus of the Arrest and Intoxication Workgroup had been on the need for some kind of alcohol hold at DOC, which was addressed somewhat by legislature in SB 54. The more immediate issue was to his mind taken care of, and he wanted to look at more long-term issues. Specifically, he wanted to look at how law enforcement interacts with people on the street, and whether it was possible to change the initial interaction with people to address drug use, alcohol use, and mental illness more immediately, very early on in the criminal justice process.

Commissioner Steve Williams noted that many of the same members of the Arrest and Intoxication Workgroup were part of the Behavioral Health Standing Committee (BHSC), and the workgroup's focus is on areas where behavioral health issues overlap with the criminal justice system. It also ties into the work of DOC's jail diversion planner, which the BHSC was going to help with. The BHSC is also looking at the UNLV report and Title 12 reform. He noted that Judge Rhoades brought up the idea of combining the two groups, and that idea was put on hold.

Commissioner Case said his only concern with combining the two groups would be overloading the BHSC. Chair Razo agreed, and said his concern was that when he has attended the BHSC, there are so many issues that it is hard for the group to focus on one. He suggested making one issue a priority.

Commissioner Claman said that the reason to create the Arrest and Intoxication Workgroup was to address the pressing issue [of sober holds]. He noted it was possible to be "meeting'd" to death and would support consolidating the two groups. He also thought there was nothing wrong with taking the patient approach. Commissioner Stanfill said she believed the groups could be combined, perhaps with a subcommittee for Arrest and Intoxication. She thought there should be serious consideration of what the groups would prioritize.

Commissioner Steiner said he had no strong feelings either way, and agreed the two groups were related. There is an emergent need to address issues of intoxication, and he knew that the legislature would continue to look at it. He didn't want to de-prioritize it. He also noted that the workgroup had been bringing stakeholders who don't normally participate in Commission meetings into the workgroup. The issue of intoxicated individuals was very much falling on DOC, hospitals, and police, and he wanted to keep them on board because they will bear the brunt. Legislative fixes won't be a whole solution and Alaska will need them to help address this issue.

Commissioner Steve Williams noted that a BHSC meeting was scheduled for December 15. He offered to meet with Commissioner Case beforehand to discuss combining the groups and then have the BHSC look at its priorities.

Chair Razo suggested that each workgroup should report out at the next full meeting; the workgroups should reverify the chair of the workgroup and identify 2018 priorities.

Commissioner Stanfill asked that the Restitution and Restorative Justice Workgroup reconvene; there are restorative justice issues the Commission has yet to address. Chair Razo agreed that it was important to continue to focus on those issues, and said he would chair the workgroup and include tribal leaders as well. Commissioners Lindemuth, Davidson, Steiner, Case, and Stephens wanted to be included in the group; DC Cann volunteered Commissioner Dean Williams as well.

Ms. Dunham asked whether the Commissioners would like a summary report of the activities of the workgroups to keep abreast of what's going on in each workgroup. Commissioner Lindemuth suggested a summary paragraph each month. Commissioner Steve Williams suggested using a standard template each time, as that would be easier to read.

Ms. Dunham updated the group on the work of the expungement discussions in the Barriers to Reentry Workgroup. There had been several meetings, which was warranted given the complexity of the issue. Among other things, the group was grappling with how to balance sealing records for background check purposes but retaining them for law enforcement purposes, and how to approach the issue of restitution payments. She said the group would welcome any Commissioner's thoughts on these or any other expungement issue.

Commissioner Lindemuth agreed that expungement is very complicated. Law supports idea of expungement—people who have been clear of criminal justice involvement for 20 years should have a better chance to turn things around – but she also supported the idea of retaining the record for law enforcement purposes. Aside from that and restitution, there were other hot button issues too, and she would recommend participating in the workgroup. Ms. DiPietro noted that this was not the first time the Commission has looked at this topic; because of its complexity, the final package will be quite dense, and she encouraged the Commissioners to stay abreast of what the workgroup was discussing.

Alaska State Hospitals and Nursing Homes Association Presentation

Jeannie Monk explained that she was the Vice President of the Alaska State Hospitals and Nursing Homes Association Presentation (ASHNHA). She noted that their President, Becky Hultberg, addressed earlier in the year, and the Commission asked for data on the scope of the

problem. They have some now, though it was not easy to get good uniform data. ASHNHA wanted to have some hospital representatives talk to the Commission to present their data, as well as anecdotes. Hospitals continue to report an increase in violence over the last several years. Staff report feeling unsafe in the workplace. ASHNHA believes this is not acceptable, but for many staff, it has become the new normal. Many factors contribute to this problem. She was not here to talk about causes but actions and solutions.

Alaska Regional Hospital

Daniel Quisenberry, the Director of Security for Alaska Regional, explained they had had 80 incidents since the beginning of 2017, 25 in which they called APD. His security team is noticing more reports, but not everything is reported-- their staff now think much of the violence is the new normal. They are trying to shift back to having clear lines on workplace violence. Stress because of this violence over time can cause a lot of anxiety among staff. They have now developed strong patient care contracts. These include expectations they would from anyone in a facility, but the purpose of the contracts is to try to spell this out and make very clear that it's okay to report violence to security. He spoke to the night shift about this last night. Staff still feel there are no teeth behind reporting— they feel that if they report, there won't be any consequences.

Fairbanks Memorial Hospital

Sarah Barton, ICU and ED director at Fairbanks Memorial Hospital, said they had been experiencing many of the same things. They had over 180 reports over the last 18 months. Violence appears to have escalated significantly within the last couple of years. They are encouraging reporting, have instituted mandatory crisis intervention training, and have instituted education as to expectations that staff should not be subjected to violence.

Chair Razo asked what security staffing looked like at the hospitals. Ms. Barton said that Fairbanks has security officers around the clock in uniform; one stationed at the entrance and one making rounds. Mr. Quisenberry said that Alaska Regional also has uniformed officers, some equipped with tasers, with two on roving patrol. The outside area (including the parking lots) has a separate team with 2 officers on duty.

Norton Sound Regional Hospital

Megan MacKeirnan from Norton Sound Regional Hospital in Nome said they have round the clock security. In recent months they have had 194 security officer hours devoted to one-to-one attention for patients with suicidal ideation. They have also seen an increase in violence in recent years. They had 14 reported incidents the previous month and 140 calls for security in that time.

Bartlett Regional Hospital

Kim McDowell, calling from Bartlett Regional Hospital in Juneau, said that it was hard to pull data together on workplace violence incidents, and it was something they were working on. Since September, they have had 21 incidents. In the last six months, staff have been punched, and

patients have flipped stretchers, and thrown heavy equipment (an oxygen tank, for example). They are seeing an increase in the severity of incidents, and are very concerned about staff safety.

Central Peninsula Hospital

Karen Scroggins called in from Central Peninsula Hospital in Soldotna, a 49-bed facility. They have also seen an increase in violence against staff. There is a new indicator for assault from the National Database of Nursing Quality Indicators which they have been tracking since July, in which time there have been 9 assaults on a healthcare worker including sexual assault, as well as biting, kicking, scratching, and throwing equipment. They have a psych safe room, in which they had to lock two patient; the patients became so violent they broke the door.

Alaska Native Medical Center

Anne Kreutzer, COO at the Alaska Native Medical Center (ANMC), said that ANMC's campus includes a 167-bed hospital and sees about 60,000 emergency department visits every year. They also have two patient housing facilities. Addressing workplace violence was identified as a top priority for ANMC's leadership in 2015; it seemed to them to be related to increases in drug and alcohol use. They have given their staff crisis intervention training, increased security staff, increased parking lot patrols, and revised security measures. Incidents have continued. One-to-one watch hours were five times higher in 2017 than in 2015. (The hours numbered in the thousands). Assaults have included bites, punches, and spitting. One bite from a patient alone cost lost staff time, two hospital stays for the staff member and \$46,000 in medical costs. Ms. Kreutzer added that it was not always the patients who were the cause; recently a belligerent visitor had to be escorted out of the hospital and then that person sprayed the security officer with bear spray.

Providence Hospital

Nelson Price, head of security at Providence Hospital, said that they have one assault reported every three days (according to the criminal definition). He believes there are more incidents that are not reported; caregivers now assume that assault is part of the job. In terms of responses, they are looking nationwide for best practices. Assaults have created difficulty with recruitment and retention, which is already an issue in Alaska. They are doing what they can, but feel they need outside help.

Ms. Monk described the need for law enforcement assistance. ASHNHA urged law enforcement officers, prosecutors and courts to take hospital workplace violence seriously. They want to change the attitude among staff that violence is part of the job. Violence has negative impacts for facilities—not least that when violence occurs, it diverts attention from other patients, and puts them in danger. Hospitals understand the need to define the difference between intentional and unintentional assaults.

Ms. Monk noted that staff don't report violence for many reasons, including the fact that the criminal justice process is time consuming and intimidating. In explaining their decisions not to report violence, staff also cite the fact that if law enforcement responds to a report of an

assaultive patient, the patient is cited, not arrested, and remains at the facility. In those situations, ASHNHA would like the patient removed from the facility if it is medically possible.

ASHNHA's Legislative Recommendations

Ms. Monk explained that ASHNHA had developed recommendations for the Legislature and for the hospitals. On the legislative side, ASHNHA recommended stiffer penalties for violence against health care workers by including "medical professionals" in the list of enhanced Class A felony sentences in AS 12.55.125(c)(2) and in the list in the aggravating factor found in AS 12.55.155(c)(13). These lists already include emergency responders, and Ms. Monk said it would make sense to include medical professionals as they face many of the same issues.

Commissioner Davidson said that it sounded like the patients committing these assaults are inebriated or suffering from a mental health breakdown. She was not sure that enhancing the sentence would have a deterrent effect on a group of people unlikely to be thinking clearly about the long-term consequences of their actions. She was also worried about the "medical professional" term. That could apply to staff at API, and she didn't want them to have to worry about patients getting felony convictions when they're seeking treatment. She was concerned there could be a chilling effect for people going to hospitals.

Ms. Monk said she recognized that, but ASHNHA also wanted a way for the state to recognize the seriousness of the issue, and the value of health care workers.

Ms. Monk said ASHNHA's second legislative recommendation was to enhance law enforcement's ability to arrest people for a fourth-degree assault in a health care facility. They don't want a mandatory arrest; that idea made the behavioral health staff nervous, because they didn't want to get their patients in trouble. ASHNHA has learned that the reason officers will issue a citation may have to do with the need for a warrant in misdemeanor assaults. She said they understood that getting warrant is not necessarily hard, but they are hearing that when police respond to assaults, that the assaulter will be cited and left with same staff member who was assaulted.

She didn't think these recommendations were magic bullets, but hoped they would to add to the available tools to deal with the problem of workplace violence in hospitals. ASHNHA was planning to take these recommendations to the legislature this session. They wanted help from the Commission in identifying other solutions. As healthcare industry workforce representatives they were not experts in criminal justice; they did not seek to jump into the criminal justice arena but hospitals cannot bear burden of this increasing violence.

Judge Stephens asked what the breakdown was for patients who are becoming assaultive -- were they there for mental commitments or medication-seeking? Mr. Price said that it varies. A lot of the violence is fueled by alcohol or drugs. Patients who may be assaultive because of dementia or a TBI-type trauma are different and not part of the problem they're seeking to address. Ms. Kreutzer said she was surprised how many assaults are committed by visitors, or patients who are cleared to leave but are angry about leaving. Ms. McDowell agreed that it varies;

a large percentage seem to be opiate related or medication-seeking—someone at Bartlett once flipped over exam tables because they were denied antibiotics.

Judge Stephens said that it seemed that the most immediate concern was to change the ability to arrest in these situations. Ms. DiPietro said she understood part of the problem was also reluctance on the part of the victim/staff member to sign the necessary affidavit for the warrant. Commissioner Claman said that it was his understanding that the affidavit is essentially a request for a citizen arrest, and wondered why staff were reluctant to fill it out. Commissioner Case pointed out that if the victim was not willing to participate, there was no ability to prosecute.

Mr. Quisenberry said it was his understanding that the reluctance stemmed from fears that there might be some kind of retaliation from the community if a hospital staff person were to sign the affidavit. He gave an example of a gunshot victim who had behaved unpleasantly toward staff in addition to assaulting a nurse; the nurse refused to fill out the form out of fear. Staff also believe there is a lack of consequences for a report, so it is not worth doing. Mr. Price said he also thought it was based on fear of the perpetrator's community – that the identity of the staff member would be spread on social media, etc. The Anchorage community is small enough for such a thing to happen. Commissioner Monegan added that the perpetrator would also have access to police reports with identifying information.

Commissioner Davidson asked if the victim/staff member was needed as a witness at trial, how they would be protected from retaliation. If they were not willing to sign an affidavit, would they be willing to testify?

Ms. Scroggins said that nurses hesitate to sign the affidavit because their name and address would be on a document that the perpetrator could have access to, and despite the signed affidavit, there would be no consequences for the perpetrator. But if nurses thought that something would actually happen [i.e., there were consequences], they would be more willing to sign.

Commissioner Claman said it sounded like hospital staff had two different concerns: getting assaultive patients out of the hospital, and being identified as the victim or being asked to testify later. Chair Razo said he was hearing that the primary concern was de-escalating the violence and getting the assaultive patient out of the hospital. Mr. Price agreed that was a big part of the problem; if the assaultive person is not removed, they continue to be a problem. Commissioner Monegan said another issue was that if the person was brought to corrections and bleeding, they would be sent back to the hospital. Mr. Price said they would only ask to arrest people who were medically cleared to leave.

Commissioner Steiner said ASHNHA might want to consider that if their proposed legislation passed, it would not change that identifying information will be in police reports.

Commissioner Steve Williams noted that retention was an issue in a number of healthcare areas. He wondered how word about hospital workplace violence in Alaska was passed around, and whether the hospitals had any data on retention and assaults. Mr. Price said he was still

working on collecting data and improving data collection. They haven't shared the data publicly, but are looking to do so. Anecdotal reports pass by word of mouth through staff. Ms. Kreutzer said that the vacancy rate in the emergency department at ANMC is higher than that of other healthcare. They "traveling" staff for a trial period—those folks will move on.

Commissioner Steve Williams said he was trying to get sense of scope as related to substance use and behavioral health issues. He was not trying to minimize the legislative approach, but wondered if there had been any success in other states that have gone with that approach.

Chair Razo asked whether ASHNHA's recommendations were final. Ms. Monk said their workplace violence task force has approved them, and the executive committee will decide whether to give final approval next week.

Commissioner Claman noted that the Commission doesn't always move quickly, and asked whether ASHNHA would be moving ahead without the Commission weighing in or whether they wanted to wait on the Commission process. He also wondered whether ASHNHA would be willing to consider any alternative recommendation that the Commission might develop. Ms. Monk said she appreciated the Commission process and wished ASHNHA could wait on the Commission, but ASHNHA's members want action now. They will make a final decision next week. They want to work with the Commission and respect its process but their timeline may not allow for that. Most likely they will proceed, but they welcome any suggestions for improvement. They want to have a public dialogue.

DC Cann asked if there was any way to classify which assaults were driven by behavioral health or substance use disorders. Ms. Monk said that most hospitals have a qualitative way of reporting that kind of information and it was hard to quantify. Mr. Price said the recent increase in violence has made them aware that they need to collect this data in a way that can be used to compare hospitals, and it is something they're working on. Ms. Kreutzer said that a person's behavioral health or substance use disorder may not necessarily be the reason they are in the hospital, and it was hard to categorize an unrelated diagnosis and correlate that with an assault. The data collection for this issue is complicated.

Judge Stephens said he was not used to thinking about security in hospitals. He was not sure about the security situation at the hospital in Ketchikan, and noted that smaller facilities are even less equipped to handle these incidents. He hears about them most often in the context of mental commitments, so no warrant is needed and the hospital is not asking for criminal charge. Ms. Monk and Mr. Price noted that in the culture of caregivers, violence has long been accepted but it is now getting to the point where it's too much to handle.

Commissioner Stanfill said she agreed with Commissioner Claman that the Commission process would take some time. She wanted to look at data and see whether there were any successes in other places. She noted that her son-in-law works in healthcare, and heard from him that it was not just a problem of violent individuals but there were other issues as well, such as a lack of bed space – which keeps people crowded into waiting areas and delays needed behavioral

health treatment. She thought any solutions should not be just about criminalization. Since a lot of this was behavioral health- related she could understand why nurses don't want to press charges.

Ms. DiPietro noted that part of ASHNHA's plan was to implement increased communication between hospital emergency departments, and she would be interested to what they learn from that. In the criminal justice world, a relatively small population is responsible for a large portion of the crime, and might also be true that those who are assaultive are also "frequent flyers."

Ms. Monk said she wanted to put in a plug for community behavioral health services. The availability of those services definitely has an impact on this issue and AHSNHA supports efforts to get more community behavioral health services.

Commissioner Monegan noted that ex parte and Title 47 orders might help with frequent fliers. Judge Stephens noted that those mechanisms require certain criteria. He agreed with Commissioner Stanfill that this is part of a larger societal problem. He has noticed that mental commitments have been increasing over last few years. Commissioner Steiner said it was the same for the public defenders.

Commissioner Lindemuth thanked the presenters. She noted that everyone on the Commission was a stakeholder in the criminal justice system, and it was helpful to have this information even if the Commission had no concrete action or advice to give right then. These issues fit in with a lot of what the Commission has been talking about. Chair Razo agreed, and noted that coming to the Commission made sense, as the Legislature often wants to know what the Commission's thoughts are. He suggested continuing to participate in the Arrest and Intoxication workgroup, and to keep the Commission posted.

Juneau Shoplifting Project

Ms. DiPietro reminded the Commission that it had approved requesting funding from the Bureau of Justice Assistance (BJA) to fund several programs, one of which was the Juneau Avert Chronic Shoplifting Project (JACS). JACS is intended to address Juneau's issues with chronic shoplifting. The program will take high-risk chronic shoplifters and trespassers and divert them into the program where they must complete a risk assessment, identify a small measurable goal, and participate in anti-shoplifting course. The program involves a risk assessment because it is designed for chronic, high-risk shoplifters. It doesn't want to take in low-risk participants because those people will not need the help of a relatively intensive program. JACS just identified its first participant.

Talia Eames, program coordinator for the Second Chance Reentry program with the Central Council Tlingit and Haida Indian Tribes of Alaska (CCHITA) explained that they were feeling a little behind, but have submitted a proposal to extend the length of the grant. They have hired

a caseworker, and CCTHITA and the Juneau Reentry Coalition donated incentives for participation. The program will have its first class in January.

Ms. DiPietro said the Commission also needed to approve the restructured funding. JACS can get a no-cost extension, and the grant manager, Melissa Threadgill at CJI, doesn't object. The budget also needs an adjustment to include software for case management, and to allow the caseworker to work on other projects if JACS does not need full time attention.

Ms. Eames added that CCTHITA was looking to replace Second Chance with another program; they are worried the caseworker will not have enough to do since the program only accepts high-risk participants.

Chair Razo asked if there was a motion to approve the restructured funding. Judge Stephens so moved, Commissioner Monegan seconded the motion and there was no opposition.

Public Safety Action Plan

Commissioner Lindemuth gave the Commission an update on the Public Safety Action Plan. Since assuming the role of Attorney General, it has become clear to her that public safety agencies were operating in silos. The idea with the Public Safety Action Plan is to have one concrete plan for the whole administration. The plan was rolled out on October 30, but it is meant to be a work in progress; they are adding to it all the time.

She walked the Commission through some of the items on the plan, noting that each could involve an hour-long discussion. Commissioner Lindemuth highlighted the following:

- The first item on the plan was to pass SB 54, which just passed during the special session.
- Pretrial delay: this had been identified as an issue at the Criminal Justice Working Group—a small subcommittee of that group has been working to address pretrial delay. The Presiding Judge issued an order today that address pre-indictment hearing continuances. This should help with the problem, though the subcommittee is also looking at other ways to address delay.
- Concentrating on maximizing existing resources; for example facilitating information flow between criminal justice agencies.
- The Department of Law is asking for more prosecutors (two in Anchorage, one in Bethel, one in Kotzebue) and two new criminal investigators housed at the Department of Law focusing on domestic violence and sexual assault. These investigators will remain with a given case until it goes to trial or is otherwise resolved.
- Creating a statewide domestic violence/sexual assault hotline- there are regional numbers but nothing statewide. The statewide line will likely refer to regional services.
- Increasing trooper presence and improving trooper response times by lifting travel restrictions and focusing trooper retention and filling vacancies. (Commissioner Monegan noted that the retention issues are lessening but still present. DPS officers went to a national conference on this; it is a national problem.)

- Other rural justice initiatives include strengthening the VPSO program and adding telecommunications resources in more jails for remote court hearings.
- Tribal diversion: this program is just starting, and as it ramps up, other areas might get interested. Law will be holding a training on this next year. Tribal diversion will allow villages and tribes to attach consequences to the low level crimes that Law doesn't have resources to prosecute.
- Smartphone technology: Law hopes to use a smartphone app for central evidence collection –particularly for photographic or video evidence.
- Access to treatment: Law supports moving toward treatment on demand and is in the process of discussing that with DHSS.
- Title 47 holds: Law supports a long-term strategy to look at ways to use Title 47 holds and address intoxication and criminal justice interaction. The provision in SB 54 regarding the bail schedule will address some of the issues, but there is also a need to look at more holistic solutions.

Judge Stephens noted that the language in SB 54 will be included in the bail schedule which will be released tomorrow. He also wondered, in regard to facilitating telephonic appearances from remote jails, whether it would require amending the court rules. Commissioner Steiner said that Alaska tried that before. Part of the problem is the lack of communication between defense counsel and their clients in the jail. If there was a way to improve that, it would cut down on transports because if the defendant can talk to their lawyer, they can waive their presence. Judge Stephens noted that he allowed defense counsel in Ketchikan to use the court polycoms for this purpose, and this was an idea that could be expanded.

Commissioner Lindemuth noted that the opioid task force was now meeting every 3-4 weeks, and a new focus on training drug dogs has helped, as there has been a lot of success there. Judge Stephens wondered if with retraining the dogs would no longer alert to marijuana. Commissioner Monegan said that marijuana was not the focus now, though some dogs were trained on that, as DPS still needed to track illegal grow operations and the like.

Commissioner Lindemuth said that Alaska is working in collaboration with federal law enforcement at an unprecedented level of cooperation. Alaska is seeking a federal high intensity drug trafficking area (HIDTA) designation. Chair Razo wondered if letters of support from the Native community would help with this. Commissioner Lindemuth said it would. Commissioner Claman said he thought members of the legislature would also be willing to write letters.

Commissioner Steve Williams asked how the public safety action plan would work with Commission. Commissioner Lindemuth said she believed the Commission's role was to make recommendations to the Legislature and the Administration. Some things that are already being discussed at the Commission were included in the plan, such as expungement.

Commissioner Monegan noted that there were other items in the plan that could be dealt with internally by the affected agency; for example, the Commission wouldn't need to sign off on the new criminal investigators. Commissioner Lindemuth added that if policy issues need to be

discussed, the Commission would be the appropriate venue. That is also why it's important to have Commissioner Davidson join the Commission. The Governor supports the Commission, which is why Law will continue to bring ideas here to vet them. Legislators kept mentioning need to do this during the special session.

Commissioner Stanfill said she was glad to see the plan included new tools for domestic violence/sexual assault, and hope the plan would involve the Network on Domestic Violence and Sexual Assault and the Council on Domestic Violence and Sexual Assault, as they can contribute knowledge and resources. Regarding tribal diversion, she thought that could tie into the Commission's Restorative Justice Workgroup. Commissioner Lindemuth noted that the plan had been presented to the Council and Commissioner Monegan noted that Council Director Diane Casto will be involved in developing the hotline.

Public Safety in Rural Alaska

Chair Razo said that at AFN that week, they spent over two hours discussing public safety in rural Alaska. In some areas there is a perceived lawlessness. The Alaska Native perspective, almost universally, is that public safety is a huge problem, especially if there is no trooper presence. This creates responsibilities for local leaders they are not trained to deal with. If there are serious issues, people in the villages with no trooper presence just have to wait until someone can come. AFN will have a special session just on this. He thought this was something the Commission should pay attention to.

Commissioner Davidson agreed and said there was also a very common perception in the Native community that Alaska Native women in particular are targeted for violent crimes, and not taken seriously when they report it. This was not just in the rural areas but in the cities as well. To illustrate, she related an anecdote: about seven years ago an Alaska Native woman, not a drinker or drug user, went out dancing with two friends in Anchorage. While out that night, she was punched by a stranger on the street without provocation. She called the police, and their questions were immediately about what she had to drink, and why she let her boyfriend hit her. It took a lot of effort for the victim to convince the officers that she had not been drinking and did not know her assailant. She and her two friends were all Native women and all were attorneys. Her friends collected evidence and offered to be witnesses, but there was no follow up from law enforcement. The reason she knew about this crime: she was the victim. Her perception at the time was that the police thought she was just another Alaska Native woman in the wrong place at the wrong time in Anchorage.

MICS 2 Proposal

Deputy AG Rob Henderson explained that Law was proposing a new Misconduct Involving a Controlled Substance in the Second Degree (MICS 2) offense intended to prosecute high-level drug traffickers. He explained there was already a Class B felony for possession with intent to sell over 1 gram of heroin, or 2.5 grams of meth or cocaine. At the street level, heroin usually sells at .1g, meth at .25g or .5g. The proposed offense would cover possession with intent to sell over 25g heroin and 50g of meth or cocaine. At a dose of .1g, 25g of heroin is 250 user amounts.

Mr. Henderson noted that a lot of cases involving these quantities are currently referred to federal law enforcement. But they can't handle all of the cases, and federal priorities can change. That was why Law was proposing this new statute.

Commissioner Lindemuth said that the criminal justice reform response to the opioid crisis has been about getting users into treatment, but the other half of addressing the crisis is about stopping the flow of drugs to Alaska. Alaska can't afford to ignore this epidemic. She was interested to hear the Commission's thoughts.

Commissioner Steiner said that his concern was about how the quantities were set. He wondered who would be considered a high-level dealer. There have been similar policies in past. He thought the Commission should talk about what made meaningful distinction between mid-level dealing and high-level trafficking; in other words, at what point is someone making a lot of money off of drugs as opposed to just some money.

Commissioner Lindemuth said that with their proposal, the amount would equal 250 doses. Mr. Henderson said that it amounted to almost an ounce. Commissioner Steiner noted that there are some people bringing in pounds.

Judge Stephens wondered whether it would be helpful to look to the *Pocock* decision [an Alaska Court of Appeals opinion from 2012], which looked to federal law to determine whether the quantities at issue were considered small or not.

Deputy AG Henderson noted that the federal cutoff is over 100g; under 100g will result in a sentence of under 5 years. The suggested amounts were in part based on his experience as a drug prosecutor. This proposal would not cover a huge number of cases. These are cases where a lot of money is involved, and it involves more of a criminal enterprise.

Commissioner Claman said he understood that most drug prosecutions at this level have involved federal law enforcement because they had more resources. He was troubled that the federal break is at 100g and this proposal is at 25g. He recalled that when he clerked in a federal court in El Paso, big drug cases were measured in tons. He was also concerned that a bill with this proposal would wind up getting "Christmas treed". He wondered if Law considered this a priority for the legislative session.

Commissioner Lindemuth said she expected many proposals in the upcoming legislative session on criminal justice issues. The opioid crisis is a priority for the Governor.

Deputy AG Henderson said that the state will always partner with the federal authorities on big drug cases. Commissioner Lindemuth said the federal authorities will take the cases they want.

Commissioner Monegan said that he could bring in Captain Mike Duxbury, who has a lot of experience in state drug enforcement, and have him speak to the Commission about quantities. He also noted that heroin can be cut with very small amounts of fentanyl which can be deadly.

Ms. DiPietro asked if Law had looked at what other states had done in this area. Deputy AG Henderson said a lot of states look at purity as well as quantity, and he didn't think there was interest in going in that direction. All states do things differently. Ms. DiPietro said that it makes a

lot of sense to have an A felony MICS offense, and though that it sounded like the issue was where the cutoff quantity is set.

Deputy AG Henderson explained that .1g of heroin will go for about \$50 in Anchorage, \$100 in Juneau, and \$400 Bethel. Judge Stephens agreed, noting that the economics can be staggering. In Southeast Alaska they are seeing people bringing drugs in body cavities—people who have no connection to the local community.

Chair Razo asked what action the group wanted to take. Commissioner Coghill said he was interested in Commissioner Monegan's suggestion. He thought a recommendation should come from the Commission after hearing a report from Captain Duxbury or someone similar. He also thought having a class A felony MICS offense was a good idea, and was just wondering about the amounts. He also wondered if Alaska had a class A offense, whether there would be fewer federal prosecutions.

Commissioner Monegan noted that troopers just found 6oz of heroin in Southeast Alaska. He thought that if Alaska was not invested in tackling this issue, federal authorities may not want to invest in Alaska. He thought it was important to send the message that Alaska doesn't want these drugs.

Commissioner Coghill agreed and said it was important to put those signposts up. He wondered if there were existing aggravators that achieve what Law was looking for. Deputy AG Henderson said there are aggravators on small and large quantities and case law to interpret those aggravators. A new MICS 2 classification could be similarly aggravated/mitigated. Judge Stephens noted there were also aggravators for transporting drugs, and commercial operations.

Commissioner Lindemuth said she was not sure the Commission would find consensus on an exact threshold quantity. She proposed that the Commission just recommend enacting a Class A felony and suggest that the legislature solicit testimony on where to draw the line.

Commissioner Monegan moved to adopt Commissioner Lindemuth's proposal, and Commissioner Case seconded the motion. Chair Razo called for discussion.

Commissioner Claman noted that the Commission often looks into what other states do, and said he would like the Commission to do that in this instance. Chair Razo said that another option is to hold a special meeting to discuss just this proposal, as it sounded like some Commissioners wanted to have more information. The Commission could call a telephonic meeting in January.

DC Cann said she would like to have more information. Her concern was that leaving the recommendation wide open as to threshold quantity was not much of a recommendation. Chair Razo said the Commission could get research on the threshold quantities. Commissioner Coghill said he seconded that idea—sitting through an open legislative process is painful. He also noted that the Commission is about evidence-based approaches, something the legislature appreciates.

Commissioner Lindemuth said she would be fine with that, and suggested also adding a discussion about how to address situations requiring mandatory release where the defendant has serious out-of-state criminal history that isn't considered by the risk assessment tool.

Commissioner Claman said he didn't get sense that people were worked up about that issue. He thought it was addressed by the change to the 48-hour hold in SB 54. He also wanted to give the tool a chance to work, and was reluctant to change things at this point. Commissioner Lindemuth said she didn't think the 48-hour old addressed this. The question was whether the judge can do anything about mandatory release in those situations – this was something that was not anticipated until after the tool was developed.

DC Cann said that DOC will be tracking the out of state criminal history, and it can be evaluated for later inclusion.

Commissioner Monegan withdrew his motion.

Commissioner Claman suggested that the January meeting look only at the Class A felony MICS 2 proposal. Chair Razo agreed and the Commission decided to schedule a meeting to discuss the Class A felony MICS2 proposal in early January.

Clemency

Commissioner Lindemuth said another item on the action plan is clemency, and Law had provided an amended draft of the recommendation the Commission had looked at earlier in the year. She didn't think there was any need to describe or recommend any specific process, and that the Commission could just tell the Governor to move forward with clemency. The Commission's recommendation would not include the attachment included with the previous version. The process the governor is working on will look a little different.

Chair Razo said he thought the Commission had already agreed to recommend restarting the clemency process. It was the Governor's province to decide how to go about that, but it sounded like the Governor wanted the Commission to weigh in on going forward.

Judge Stephens moved to adopt the recommendation as amended by Law, and Commissioner Lindemuth seconded the motion. Ms. Dunham suggested edits for the last line and there was no opposition to adopting the recommendation as amended.

Chair Razo noted that Justice Bolger informed him that he has decided not to vote on some statutory measures to ensure he was conforming to the judicial code of conduct.

50-State Summit Report

Commissioner Claman reported that he attended a 50-state criminal justice summit along with Commissioners Case, Dean Williams, and Steve Williams. It was inspiring to attend especially after the special legislative session. All states are recognizing that they can't keep spending money on prison, but each state is looking at approaching the problem differently. North Carolina got more aggressive with probation and parole, which helped with recidivism. The governor of Kentucky was looking aggressively at expungement. Alabama had work to do as it had twice the number of prisoners as beds. There is work to be done in Alaska, but he thinks Alaska is making progress. He provided an interesting graphic from the summit on national data on the homicide rate compared to the drug overdose rate. It was a reminder that opioids are national crisis. He has asked for similar numbers for Alaska from the Bureau of Vital Statistics.

SB 54 Recap

Ms. Dunham explained that staff had provided a comparison of SB 91 and SB 54, and she was happy to discuss any individual provisions with the Commissioners if they so wished. Deputy AG Henderson suggested revising the Practitioner's Guide in light of SB 54 as many people use it.

Ms. Dunham explained that SB 54 also gave the Commission two new tasks. First, the Commission was directed to collaborate with DPS and local law enforcement to train law enforcement officers throughout the state on SB 91 and SB 54. Commissioner Claman said that the intent behind that language was that the Commission should conduct webinars.

Ms. Dunham explained that the second task was to study the behavioral health and other risk factors of offenders in Alaska's prisons, and to include that data in the annual report. Once the Commission sunsets, the study would be continued by the Alaska Judicial Council.

Public Comment

Tara Rich from the ACLU asked what the impetus was for the MICS 2 proposal. Was it a particular case, perhaps one declined by the federal authorities? Deputy AG Henderson explained that it was not just one case but the fact that the federal authorities are just unable to take all cases. To his mind the proposal was simply a recognition of a gap in the law. Ms. Rich wondered how many cases this would cover. Deputy AG Henderson said that Law was collecting that information now; and thought it wouldn't be a huge, maybe 100 or 200 cases. Commissioner Lindemuth said it was also among the governor's priorities. It hasn't yet gone to the legislature; Law wanted to bring it to the Commission first.

Ms. Rich said she would echo Commissioner Claman's warning that once at the legislature, confined recommendations are at risk of expanding. Chair Razo said he agreed. He also noted that after AFN, he went with AFN Director Julie Kitka to speak to folks at the national FBI headquarters. There is a belief in the Alaska Native Community that trafficking enterprises take advantage of the remoteness of Alaska to take advantage of Alaska Natives. They wanted to stress to the federal authorities that Alaska Natives wanted drug trafficking enforcement to be a priority, and offered the FBI resources to overcome the hurdles of not having a law enforcement presence in all areas. That may be another part of the solution.

Chris McClane of the Fairbanks Reentry Coalition wanted to let the Commission know about the positive developments in reentry, as there is a lot of negative news about criminal justice. They had a symposium on housing yesterday, and are making strides in communication and problem solving among stakeholders. They are communicating with other coalitions. They just completed their readiness assessment, and are looking to engage the public. The Fairbanks reentry case manager has full caseload, and is now known among prisoners as the person to contact for reentry. They have had successes getting housing, clothing, household goods, and counseling for reentrants. Chair Razo encouraged him to send a written report to the Commission if he could.

Ms. Dunham explained that Jeremy Palmer, and inmate in a DOC facility, had written to the Commission asking to start a program talking to at-risk youth. Commissioner Steiner noted that similar programs in the past, such as the scared straight program, were known to actually increase recidivism. DC Cann observed this problem with a similar program in a prison in the lower 48. The

issue was the kids taken into the facility didn't think prison was that bad, and they also met a bunch of people they already knew.

Future Meeting Dates & Tasks

The following meetings had already been set:

Barriers to Reentry: December 11 at 9:30, Denali Commission Conference Room

Behavioral Health Standing Committee: December 15 at 8:30, Alaska Mental Health Trust

Sex Offenses Workgroup: January 12 at 9:30, Location TBD

Chair Razo reminded the Commissioners their task was to work on plans for each workgroup in the coming year.

The February meeting was set for February 6 in Juneau, tentatively to take place between 10:30 and 3:00.