

ALASKA CRIMINAL JUSTICE COMMISSION
Meeting Notes from Tuesday, December 8, 2015, 4:00-5:25 PM
East Conference Room, Denali Commission, 510 L Street, Anchorage

Commissioners attending: Greg Razo, Stephanie Rhoades, Walt Monegan, Alex Bryner, Brenda Stanfill, John Coghill, Quinlan Steiner, Craig Richards

Commissioners on the phone: Jeff Jessee, Trevor Stephens, Gary Folger, Brenda Stanfill, Kris Sell

AJC Staff: Susanne DiPietro, Mary Geddes, Giulia Kaufman (ph), Teri Carns

Pew Staff: Terry Schuster, Emily Levett, Len Engel, Melissa Threadgill, Abby Walsh (PEW)

Public: Barbara Armstrong (ph), Nancy Meade, Carmen Gutierrez (ph), John Skidmore, Jordan Schilling, Dunnington Babb, other unidentified persons

Welcome and Remarks (Razo)

The meeting convened at 5:00 PM. Commission Chair Greg Razo, the Commission chair, noting a quorum was present, thanked everyone for making time both during the JRI process and for this special meeting. The meeting was necessary because of the previously-announced timeframe for the release of its final JRI recommendations to the Governor and Legislature on Thursday, December 10, and because not all proposed recommendations brought to the Commission by the Subgroups as yet had consensus. Razo emphasized that it was important to identify all matters on which the Commission could agree so that its report and recommendations could be most effective.

Subgroup Recommendations and Commission Resolutions

Pew and AJC staff, in advance of the meeting, had prepared and circulated a document. The document listed nine specific subgroup recommendations. Prior to this meeting, individual Commissioners had identified those recommendations which would require further discussion.

#1.¹ Resolution/Clarification: Commissioner Richards agreed that the Commission's recommendation would not be contingent on the approval of the Controlled Substances Advisory Committee. The ACJC will forward its report and recommendations to the CSAC.

#2.² DOL Criminal Division Director Skidmore indicated that it was important to keep disorderly conduct (DC) a misdemeanor so that officers could arrest, because it allows for a 24-hour de-escalation. Geddes asked if a jailable violation could be proposed as it would be constitutionally permissible, albeit requiring a statutory fix. Commissioner Bryner said that the ACJC should think it through the two options. A misdemeanor does have collateral consequences. Commissioner Rhoades noted that keeping DC a "B" still requires the appointment of counsel; consider the debacle of Minor Consuming. Commissioner Steiner agreed that a "B" requires the appointment of counsel, and the violation does not. Commissioner Stanfill noted that the DC statute is helpful for LE intervening in DV cases, and she urged sticking with the "B." Chair Razo suggested a 24-hour maximum punishment for DC. DiPietro suggested that the recommendation could leave it up to the drafters with a 24-hour hold as the maximum.

Resolution: The (voting) Commissioners unanimously agree to recommend that there be arrest

¹ Subgroup recommendation: Bringing penalties for heroin into alignment with penalties for methamphetamine and cocaine, and forwarding this recommendation to the Controlled Substances Advisory Committee for its review and consideration.

² Subgroup recommendation: Reclassifying Misdemeanor B offenses, the lowest-level misdemeanor class in terms of severity, as violations, punishable by up to \$1,000 fine, excluding theft offenses.

authority for disorderly conduct but no more than a 24-hour hold or sentence. Drafters will determine if this should be violation or misdemeanor.

3.³ With respect to the commercial sale of heroin, cocaine and methamphetamine, the Department of Law has asked that the threshold amount for a class B felony be 2.5g, rather than 5.0g. Commissioner Bryner asked for more information. Commissioner Sell indicated that she agrees with Law and supports the lower threshold; in her experience, dealers are typically carrying 2-3 bags. She also said that with respect to _____, in her experience, the heaviest user is doing only a gram a day. Commissioner Steiner said meth and cocaine quantities consumed are typically higher, and that the feds perceive 5 grams and lower quantity sales as mitigated offenses. Consequently, he would like to stick with the higher quantity threshold. Commissioner Monegan said that the quantity seized in a bust doesn't always reflect the amount sellers began (a chase) with. Emily Levett of Pew was asked about the relationship between the threshold and the bed impacts of the JRI recommendation. Emily said that there are a lot of inmates in the 2-3 grams range. It was suggested that the threshold could be 3 grams instead. Commissioner Coghill noted he was looking forward to hearing any data regarding the quantities involved in (Alaska) commercial sale offenses.

Resolution: All (voting) Commission members agreed to the classification of commercial sale offenses involving less than 2.5 grams of heroin, meth and cocaine as class C offenses. The more aggressive measure making the threshold quantity less than 5.0 grams would also be reported out, as the consensus recommendation.

4.⁴ Commissioner Richards reported that Law had requested raising the maximum probation length for a non-sex felony from 2 years to 3 years. This concern was prompted by the proposal for earned credit on probation, and the realization that we could be talking about a relatively short probationary term for an extremely serious offense, such as murder. Commissioner Steiner proposed an alternative, which would raise the maximum probation length to 5 years for only unclassified felonies, since Law's concern is with the more serious offenders. Emily Levett was asked about bed impacts. She indicated that the change/increase could have a bed impact but that it hadn't been determined. She did note that 90% of the offenders who recidivate do so within 2 years, that was the rationale for the proposal. Both Commissioners Richards and Sell proposed that both options be forwarded to the Legislature.

Resolution: The (voting) Commissioners agreed: Both options would be forwarded to the Legislature and identified as alternatives.

5.⁵ Law proposed an exception for DV-related 4th-degree assault, i.e. broadening one of the two circumstances in which an offender can be sentenced outside of a zero to thirty day range for a class A misdemeanor. Commissioner Steiner thought that the broadened circumstance had not been well defined. Commissioner Sell thought the exception was important because DV is so hard to prosecute and victims can become uncooperative. Commissioner Stanfill agreed.

Resolution: The (voting) Commissioners unanimously accepted Law's proposal. In DV 4th degree

³ Subgroup recommendation: Create a tiered commercial drug statute whereby sale of more than 5g of heroin, methamphetamine, and cocaine is a more serious offense (Felony B) than sale of less than 5g of heroin, methamphetamine, and cocaine (Felony C).

⁴ Subgroup recommendation: Capping maximum probation terms at a maximum of 5 years for felony sex offenders; a maximum of 2 years for all other felony offenders; a maximum of 2 years for 2nd DUI and DV assault misdemeanor offenders; and a maximum of 1 year for all other misdemeanor offenders.

⁵ Subgroup recommendation: Presumptively setting a zero to thirty day sentencing range for misdemeanor A's, unless the prosecutor can show that the offender had past similar criminal convictions or the conduct was among the most serious constituting the offense.

assault cases, court can rely on circumstance of past similar criminal history, not just convictions, to exceed 0-30 day presumptive sentencing range.

6.⁶ The subgroup recommendation was to limit the offense categories for which courts would be authorized to refer to ASAP to those mandated by statute, i.e. DUI, refusal, and habitual Minor Consuming. The purpose was to preserve limited ASAP resources so it can be effective; this is necessary because an ASAP referral has become almost automatic and ASAP cannot handle the current number of cases.

Mr. Skidmore, asked to speak on behalf of Commissioner Richards on this point, said that while he agreed with the goal – not to undermine the effectiveness of this limited resource – he couldn't necessarily agree that 1st time DUIs do need ASAP and that 4th Assaults don't. Law's counter-proposal was to change the categories that would be authorized to refer to ASAP to be limited to second-time DUI and refusal, and also for alcohol related Assault 4s.

Commissioner Sell asked whether Law thought (all) 1st time assaults needed ASAP referrals. Skidmore said that the courts can't track whether assaults are alcohol-related related in the same way it can track (past) DVs. Commissioner Bryner suggested a limitation to Law's proposal, i.e. that any second-time assault conviction could made kept eligible.

Commissioner Rhoades responded with a number of observations: ASAP is the only form of misdemeanor probation supervision now available, and it is a limited resource. ASAP was initially created and funded with federal highway money for the purpose of responding to DUI cases. But the cost of 'mission creep' has been enormous, she said, and expressed the opinion that DA's often resolve cases by specifically negotiating/demanding ASAP referrals. Just the driving cases provide enough work for existing ASAP programs. And the program is designed for 1st time DUIs, to offer early intervention. This is not to disagree that there are a lot of alcohol related person misdemeanors, and that a lot of them are DV related. But its not a good idea to resolve DV cases with an alcohol referral.

At this point, Commissioner Stanfill also strongly agreed that DV cases should not be resolved by referrals to ASAP because alcoholism has nothing to do with DV. Its better to create/maintain DV-specific resources. She supports keeping the Subgroup recommendation as is.

Commissioner Richards stated a potential compromise: that while he has no problem with allowing ASAP to maintain services for 1st time DUIs, his department still believes that referrals for assaults should be allowed.

Commissioner Steiner suggested that ASAP referrals aren't necessarily appropriate for first DUI's but are for 2nd DUIs, and there should be [or there is?] a special agency for reviewing alcohol related assaults.

Resolution: Chair Razo suggested that both recommendations be forwarded as additional or majority recommendations because of the lack of consensus with respect to the specifics. The (voting) Commissioners unanimously agreed. However, it will be noted that there was consensus that ASAP services are stretched too thin, and that the Commission is concerned about the lack of resources.

⁶ Subgroup recommendation: Limiting the offense categories that courts would be authorized to refer to ASAP to those currently mandated by statute (DUI, refusal to submit to a chemical test, and habitual minor consuming)

7.⁷ Commissioner Richards asked that both recommendations from the Subgroup be identified as “additional recommendations” and not as the subject of consensus because for legislative consideration” section. However, in response to the concern which motivates these recommendation, he would recommend that funding should be provided for treatment of indigent defendants whenever such treatment has been ordered.

Commissioner Razo stated that rural defendants are particularly negatively impacted by court orders requiring their participation in treatment as such programs are often not available in their home communities and/or are not affordable. He would assent to Commissioner Richards ’ additional recommendation (for more funding).

Commissioner Rhoades noted that the 2nd recommendation (under “7”) relates to how PTRP’s are handled. PTRP’s are haphazardly dealt with in the misdemeanor context. A court will put off an adjudication of a PTRP in order to allow a defendant to go get treatment but a court doesn’t want to do that a second time.

Resolution: The (voting) Commissioners unanimously agreed that all three recommendations will be made. The two Subgroup recommendations would be identified as “additional” (majority) rather than consensus recommendations.

8.⁸ The Commission considered the Parole Board request that the cap on technical revocation time be raised to 30 days for absconders. Absconding had been defined by the Subgroup as failing to report within five working days after the initial release to supervision or if the supervisee fails to report for two consecutive reporting periods.

Chair Razo noted that this request was not vetted through the Subgroup process. Commissioner Richards stated that as this is the only (negative) response made by the Parole Board and the Commission should be responsive to this request. Commissioner Steiner disagreed with the substance of the request because inasmuch as these parole revocation recommendations are an effort to line up with PACE guidelines for technical violations the cap should be 5 days, not 30. Commissioner Sell noted that there are some people who immediately flee when they get out of jail, and that lack of compliance within 5 days is a very good indicator of their intention. Commissioner Bryner asked for the pertinent mental state. Commissioner Stephens noted that only a maximum of 30 days was being requested, and that it was unlikely to result in arbitrary enforcement. He supported the Parole Board’s request. Commissioner Steiner said that PTRPs are filed very quickly for the initial failure to report.

Emily Levett explained that, because the Parole Board alternatively defined abscond as a failure to report for 2 “reporting periods” and different risk levels result in widely varying reporting periods, any approved recommendation should instead specify a concrete time such as 30 days or 60 days.

Resolution: Commissioner Rhoades suggested and it was unanimously agreed by the Commission’s voting members that the maximum time permitted as a sanction for absconding would be thirty days, with absconding identified as failure to report within 5 days or during 30 days of prescribed contact.

⁷ Subgroup recommendation: Stipulating that jail time cannot be imposed because a person failed to complete treatment if, despite having made a good faith effort, they were unable to afford treatment. Additionally, requiring that if a court opts to use jail as a sanction for a misdemeanor who fails to participate in programming, that requirement is subsequently no longer a condition of probation for which an offender can be revoked to prison a second time.

⁸ Subgroup recommendation: For offenders not participating in the PACE program, limiting revocations to prison as a potential sanction of probation and parole to up to 3 days for a first revocation, up to 5 days for a second violation, up to 10 days for third revocation, and up to 10 days and a referral to the PACE program for a fourth and subsequent revocation.

9.⁹ Commissioner Steiner stated that while it is imperative to get rid of dual (parole/probation) supervision, closer scrutiny of the proposal finalized by the Subgroup has led to the conclusion on the part of the PD that the new proposal will likely result in increasing the amount of time revoked offenders spend in prison. Consequently he proposes a fix not discussed in the Subgroup: When an offender is revoked on dual supervision, the offender will automatically get a concurrent reduced period of time removed from the suspended sentence.

Commissioner Stephens said that he agrees that the Parole Board should have the primary supervision, and is unpersuaded as to the need for the fix. Commissioner Sell said that the fix is confusing because it suggests a benefit for revoked offenders.

Resolution: Chair Razo suggested and Commissioners unanimously agreed that Subgroup recommendation be withdrawn as its original proponent was not convinced it would achieve the desired outcome.

Public Comment and Adjournment

At 5:20 PM, public comment was requested as to any JRI related recommendation. None was offered. Commissioner Monegan then moved for adjournment, and Commissioner Bryner seconded. As to discussion, Emily Levett noted that she would be forwarding a revised draft report to the Commission for its final approval on Thursday. This report would include the anticipated jail bed impacts. Commissioner Bryner thanked the Pew staff for its hard work, and the Chair for his leadership. The Commissioners voted to adjourn.

⁹ Subgroup recommendation: For offenders who are on parole and probation at the same time, granting the Parole Board primacy when it comes to setting conditions of release and issuing sanctions.

Proposed JRI Recommendations for Discussion

From the Department of Law

1. Current recommendation: Bringing penalties for heroin into alignment with penalties for methamphetamine and cocaine, and forwarding this recommendation to the Controlled Substances Advisory Committee for its review and consideration.
 - a. Law's proposed change: Only forwarding a recommendation regarding bringing penalties for heroin into alignment with penalties for methamphetamine and cocaine if that recommendation is approved by the Controlled Substances Advisory Committee.
2. Current recommendation: Reclassifying Misdemeanor B offenses, the lowest-level misdemeanor class in terms of severity, as violations, punishable by up to \$1,000 fine, excluding theft offenses.
 - a. Law's proposed change: Provide an additional carve-out for disorderly conduct, which would be an arrestable and jailable violation, punishable by up to 24 hours in prison.
3. Current recommendation: Create a tiered commercial drug statute whereby sale of more than 5g of heroin, methamphetamine, and cocaine is a more serious offense (Felony B) than sale of less than 5g of heroin, methamphetamine, and cocaine (Felony C).
 - a. Law's proposed change: Lower the weight threshold differentiating more serious from less serious commercial drug offenses to 2.5 grams.
4. Current recommendation: Capping maximum probation terms at a maximum of 5 years for felony sex offenders; a maximum of 2 years for all other felony offenders; a maximum of 2 years for 2nd DUI and DV assault misdemeanor offenders; and a maximum of 1 year for all other misdemeanor offenders.
 - a. Law's proposed change: Raise the maximum probation length for a non-sex felony from 2 years to 3 years.
 - b. (PD's alternative proposed change: Raise the maximum probation length for Unclassified felonies to 5 years.)
5. Current recommendation: Presumptively setting a zero to thirty day sentencing range for misdemeanor A's, unless the prosecutor can show that the offender had past similar criminal convictions or the conduct was among the most serious constituting the offense.
 - a. Law's proposed change: For DV-related Assault 4's only, changing the circumstances in which an offender can be sentenced outside of a zero to thirty day range when the prosecutor can show that the offender had past similar criminal *history* (as opposed to convictions) or the conduct was among the most serious constituting the offense.

6. Current recommendation: Limiting the offense categories that courts would be authorized to refer to ASAP to those currently mandated by statute (DUI, refusal to submit to a chemical test, and habitual minor consuming).
 - a. Law's proposed change: Changing the categories that would be authorized to refer to ASAP to be limited to second-time DUI and refusal to submit to a chemical test and alcohol-related Assault 4 offenses.

7. Current recommendation: Stipulating that jail time cannot be imposed because a person failed to complete treatment if, despite having made a good faith effort, they were unable to afford treatment. Additionally, requiring that if a court opts to use jail as a sanction for a misdemeanor who fails to participate in programming, that requirement is subsequently no longer a condition of probation for which an offender can be revoked to prison a second time.
 - a. Law's proposed change: Removing both of these recommendations from the "consensus recommendation" section and placing them in the "additional recommendations for legislative consideration" section.

From the Parole Board

8. Current recommendation: For offenders not participating in the PACE program, limiting revocations to prison as a potential sanction of probation and parole to up to 3 days for a first revocation, up to 5 days for a second violation, up to 10 days for third revocation, and up to 10 days and a referral to the PACE program for a fourth and subsequent revocation.
 - a. Parole Board's proposed change: Raise the cap on technical revocation time for absconders to 30 days. (Absconding defined as failing to report within five working days after release to supervision or if the supervisee fails to report for two consecutive reporting periods.)

From the Public Defender

9. Current recommendation: For offenders who are on parole and probation at the same time, granting the Parole Board primacy when it comes to setting conditions of release and issuing sanctions.
 - a. PD's proposed change: When an offender is revoked on dual supervision, the offender will automatically get a concurrent reduced period of time removed from the suspended sentence.