

RECOMMENDATION TO THE ALASKA STATE LEGISLATURE BY

THE ALASKA CRIMINAL JUSTICE COMMISSION

Nos. 2-2016, 3-2016, 4-2016, 5-2016, 6-2016, 7-2016

Approved August 28, 2016 and October 13, 2016

Recommendations concerning behavioral health from the Criminal Justice Commission. The following recommendations are all intended to address the behavioral health needs of justice-involved individuals in Alaska. These recommendations were created by the Commission's Behavioral Health Working Group and approved by a majority of Commission members.

2-2016: Pre-trial Diversion for the behavioral health population. The Commission recommends that the Department of Corrections (DOC) establish a voluntary pretrial diversion/intervention option for Alaskans with behavioral health disorders within DOC's new Pretrial Services Program. This option would provide an alternative criminal case processing for Alaskan defendants charged with a crime that, upon successful completion of an individualized program plan, results in a dismissal of the charge(s).

The Alaska Mental Health Trust conducted a study in 2014 which found that Trust beneficiaries account for more than 40% of Alaska incarcerations each year. The majority of those incarcerations are for misdemeanor offenses. On a snapshot day, 65% of Alaska's inmates were Trust beneficiaries. Thus, the purpose of this diversion/intervention option is to enhance justice and public safety through addressing the root cause of the criminal behaviors of the defendant, reducing the stigma which accompanies a record of conviction, restoring victims, and assisting with the conservation of jail, court and other criminal justice resources. This diversion/intervention option shall develop individual diversion plans using a comprehensive behavioral health and criminogenic risk/needs assessment of the defendant to identify and address specific need(s) related to reducing future criminal behavior.

The Pretrial Services Program pretrial diversion/intervention option should create collaborative partnerships with treatment and other types of services in the community which have demonstrated effectiveness and the ability to provide culturally competent and gender-specific programming to the identified needs of the participant.

It is further recommended that the DOC Pretrial Services Program shall oversee and/or administer diversion services using either the *Performance Standards and Goals for Pretrial Diversion/Intervention* of the National Association of Pretrial Services Agencies, or other recognized evidence based standards for pre-trial diversion interventions.

The Commission also recommends that the Department of Corrections convene representatives from the Department of Public Safety, the Department of Law, the Alaska Court System, the Department of Health and Social Services, the Alaska Mental Health Trust Authority, the public defense bar, victims' rights groups, and local law enforcement as well as representatives from tribal and non-tribal community health and behavioral health systems to assist in the development and implementation of the diversion program. DOC and the convened representative should ensure that some Pretrial Services officers and tribal and non-tribal community service providers are trained to work with the behavioral health population and to ensure individuals are 1) swiftly identified for participation, 2) assured service priority and/or timely linkage to appropriate treatment and other services and 3) effectively monitored.

The Commission approved this recommendation unanimously.

3-2016: Allow defendants to return to a group home on bail. The Commission recommends amending AS 12.30.027(b), which involves bail conditions for those charged with crimes involving domestic violence. The statute currently prohibits judicial officers from ordering or permitting a person charged with a crime involving domestic violence from returning to the residence of the victim of the offense for a period of 20 days. This statute affects individuals with behavioral health disorders who, as a result of their disorder, will sometimes lash out at or assault caregivers or other residents in an assisted living facility or similar group home. Under the current statute, these individuals would not be able to return home after committing the assault, and with nowhere to go, the individuals' behavioral health conditions will worsen. Often the victim of the assault – the caregiver or co-resident – is not opposed to the individual returning to live at the facility.

The Commission recommends amending the statute to allow defendants charged with assault on a co-resident or staff of an assisted living facility, nursing home, or other supported living environment to return to that living environment while on bail, provided the victim is given notice and the victim's safety can reasonably be assured.

This recommendation did not receive unanimous approval; Commissioner Quinlan Steiner voted against it, concerned that the proposal did not extend to individuals with behavioral health disorders living in a family home.

4-2016: Information sharing. The Commission recommends that the legislature enact a statute creating a standardized Release of Information (ROI) form. Individuals with behavioral health needs (including those involved in the justice system) often experience delays or gaps in treatment when previous providers impose onerous requirements before releasing information.

The ROI should meet the requirements of Health Information and Portability Accountability Act (HIPAA), Title 42 CFR, and state of Alaska health confidentiality laws. The statute should require that the release be universally accepted by all state funded agencies providing health and behavioral health services within the state of Alaska. This will ensure a swift and confidential information exchange about a person's identified behavioral health needs and the supports required to ensure public safety and to ensure that the individual remains in the community, in the least restrictive living environment.

The Commission approved this recommendation unanimously.

5-2016: Add behavioral health information to felony presentence reports. The Commission recommends that the legislature amend the relevant statutes and court rules to require that felony presentence reports discuss any assessed behavioral health conditions that are amenable to treatment, if such assessments exist, so that judges will have information on a defendant's behavioral health needs at sentencing. The reports should also include recommendations for appropriate treatment in the offender's community.

This recommendation did not receive unanimous approval; Commissioner Steiner voted against it, concerned that the requirement would engender more litigation due to confidentiality issues, or disputes over the content of the reports.

6-2016: Include the Commissioner of DHSS on the Commission. Given the significant number of justice-involved individuals with behavioral health needs, the Commission recommends including the Commissioner of the Department of Health and Social Services as a member of this Commission. Commission members feel that this would allow for easier communication and interaction with DHSS as it implements significant reforms related to justice reinvestment.

This recommendation did not receive unanimous approval; Commissioners Williams, Steiner, and Stanfill voted against it. Some were concerned that there would need to be another seat added in addition to the DHSS Commissioner to keep an uneven number of Commissioners, and that this would generate an unwieldy body with state agencies being disproportionately represented.

7-2016: Amend Alaska's mental health statutes. The Commission requests that the Commissioner of Health and Social Services, in concert with designated ACJC representation, review the proposed statutory changes recommended in the *Review of Alaska Mental Health Statutes* conducted by the University of Nevada Las Vegas (UNLV) under the direction of the Criminal Justice Working Group's Title 12 Legal Competency subcommittee (May 2015).

The UNLV study, funded by the Alaska Mental Health Trust, was commissioned by the Criminal Justice Working Group to review Alaska's statutes concerning competency to stand trial, guilty but mentally ill verdicts, not guilty by reason of insanity verdicts, and involuntary commitment. The UNLV team spoke to stakeholders in Alaska working in the field of behavioral health, studied national best practices and reviewed established and emerging research. The UNLV team then issued a report recommending amendment of key statutory provisions concerning behavioral health.

Since the UNLV report was issued in May 2015, several groups, including the Criminal Justice Working Group and the Alaska Criminal Justice Commission Behavioral Health Working Group, have reviewed the report and agree that at least some of the recommendations in the report should be enacted. However, implementing the recommendations would require a considerable effort on the part of the Department of Health and Social Services (DHSS), and neither working group wished to mandate these changes without DHSS's input. The Commission therefore recommends that DHSS work with the Commission to review the UNLV study.

The review shall include 1) an analysis of the proposed changes, 2) a statement of clear agreement on the language of the proposed amendments that enjoy major stakeholder support, 3) recommendations for how Title 12 and the Title 47 changes would fit into the proposed redesign of the State's behavioral health system and the Department's effort to propose an 1115 BH demonstration waiver to CMS by the middle of 2017. The report should be provided to the Commission no later than September 1, 2017.