

Alaska Criminal Justice Commission
Ad Hoc Workgroup on Commission Sunset

Meeting Summary

Thursday, November 5 2020, 1:00 p.m.

Via Zoom

Commissioners Present: Steve Williams, Alex Cleghorn, Matt Claman, Samantha Cherot, John Skidmore (serving as proxy for Acting Attorney General Ed Sniffen), Nancy Dahlstrom, Trevor Stephens

Participants: Troy Payne

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

Introductions

Workgroup and Commission Chair Matt Claman asked if there were any additions to the summary of the last meeting. There were none.

Membership of Guidance Entity

Chair Claman reminded the group that at the last meeting, the group had discussed a collective homework assignment—if there is to be a new guidance entity, what should membership of that entity look like? The Commission statute listing the current 14 members had been circulated before the meeting.

Commissioner Samantha Cherot said that in looking at the current statute and what the commission is evaluating, including the data required to be evaluated, she thought membership should be substantially the same as what's listed in the statute if that same data is to be collected going forward.

Commissioner Nancy Dahlstrom agreed, and added that she knew there were times when the judges have to recuse themselves. She was open to looking at other membership possibilities. She was not sure how to address judges needing to recuse themselves.

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, said that if the judges recuse themselves they typically do so when the Commission is going to recommend legislation, since the judge might need to make a ruling on that legislation should it become law. But if the guidance entity is not going to be making any recommendations for legislation, those circumstances will occur less often if at all. Additionally, the restrictions don't apply to retired or inactive judges.

Commissioner Alex Cleghorn agreed with Commissioners Cherot and Dahlstrom in that the right branches of government were at the table. One thing to discuss might be who designates the representatives; the Alaska Native community representative is designated by ANJC, and the Mental Health Trust representative is designated by the Trust's CEO. The local law enforcement and victims' rights representatives are designated by the Governor—would other bodies be appropriate to make those designations? The victims' representative could be designated by an organization such as Victims for Justice or another well-established organization.

Deputy Attorney General John Skidmore noted that a representative body for law enforcement outside the Governor's office could be the Alaska Chiefs of Police, which represents most law enforcement in the state. For victims' representatives, he thought the most significant statewide organization would be ANDVSA. They are the most expansive organization geographically, but they also only focus on DV/SA crimes. Victims for Justice and the Office of Victims' Rights represent more crimes but don't have quite the breadth or scope.

Mr. Skidmore agreed with Commissioners Cherot and Cleghorn that many seats that are currently designated on the Commission also make sense as representation for a future group. He also appreciated Commissioner Dahlstrom's comments about the judges. He had seen judges refrain from voting on issues other than policy; for example at last meeting they abstained from voting to approve the annual report. He thought the judiciary should be represented, but if three judges are in the group and they all abstain, that's a big chunk.

Mr. Skidmore added that when it comes to looking at law enforcement representation it would make sense to have representation of both rural and urban areas, not just municipal and statewide representatives. Also, the current makeup of the Commission has the Commissioner of DHSS as a nonvoting member, but DHSS plays a significant role in the criminal justice system, both in behavioral health and juvenile justice. DHSS should have a voting seat.

[Judge Trevor Stephens joined the meeting at this point.]

Commissioner Dahlstrom agreed with Mr. Skidmore about DHSS; it was a large department and had a reach in so many things relevant to criminal justice. She also wanted to say thank you to Judge Stephens for the letter he'd sent to the workgroup and that she appreciated the time and effort he put into it.

Commissioner Steve Williams said that he'd gone through the current roster a couple different times in thinking about this. He appreciate Mr. Skidmore's comment about having a rural law enforcement component, which got him thinking about VPSOs and VPOs—having someone at that level of law enforcement was something to consider. He also appreciated the comments about the Commissioner DHSS being a voting member. Regarding judges recusing, he wondered why judges would recuse from non-legislative votes such as for the annual report. He thought judges should be part of the group but participation was important. He wondered if eliminating the recommendation function might help.

Judge Stephens said he was not sure why a judge would abstain from voting on the annual report. He noted that with regard to the annual report vote, he was in court when the final vote came, He had, however, voted on the earlier amendments to the report. Speaking candidly, when the legislature decided that there should be three members of the judiciary, he never really gave a thought to the ethics problem when he was appointed. When the current Chief Justice came in he took a hard look at it, and his bottom line was that active judges shouldn't be voting on potential legislation. Judge Stephens also spoke to Marla Greenstein who is more conservative on the issue. Had he been present he would have voted on the report. Perhaps there's a spectrum of what's appropriate. He had worked on things like the SEJ and three-judge panel recommendations, and under the current view he didn't think it was appropriate to vote on things like that but on other things he would vote. There may be times when he would prepared to vote but the Chief Justice doesn't; if it's a close call he won't vote. He still intended to fully participate in the Commission and would only abstain on votes if he thought it was ethically required.

Chair Claman noted that Justice Alex Bryner, the former appellate court representative, and Judge Stephanie Rhoades, the current district court representative, were retired. He thought considerations regarding when to abstain were different for active Supreme Court justices, because if they have to recuse themselves for a case it is harder to find replacement.

Chair Claman asked the group for thoughts on having someone other than the Governor appoint the victims' representative and law enforcement representative. Commissioner Cleghorn thought Mr. Skidmore's thought about ANDVSA appointing the representative was a good one. Chair Claman said that OVR was technically an arm of the Legislature, which might militate in favor of ANDVSA. He asked if the Alaska Chiefs of Police would be able to have rural and urban representation. Mr. Skidmore said they represent agencies from all across the state although his suggestion regarding rural and urban representation wasn't necessarily intended to grow the membership of the oversight entity. He also thought DPS representation was important because they were custodians of relevant data, though the group didn't necessarily need 3 law enforcement members.

Chair Claman asked whether there was a consensus that 14 was a good number in terms of representation, along with giving DHSS vote, and having the two appointments made by ANDVSA and the Alaska Chiefs of Police.

Commissioner Williams thought that sounded right, though he wondered whether, since OVR has a broader reach in terms of subject matter, OVR could also be included in the appointment process. He was also fine with way membership currently stands.

Regarding the appointments being made by the administration vs another body, Mr. Skidmore noted that the administration is already set up to make appointments to boards and commissions. But he also realized that politics color the perception of those decisions.

Chair Claman said that when the Legislature was discussing whether to appoint the DHSS Commissioner as a voting member, one concern was whether that would increase the Governor's reach on the Commission; having someone else appoint the two other seats might strike a balance there. It sounded like the group was reaching consensus on the DHSS Commissioner voting, a victims' representative appointed by ANDVSA, and a law enforcement officer appointed by the Alaska Chiefs of Police.

Mr. Skidmore asked whether the oversight body needed three judges. Judge Stephens replied that the three levels of judges provide different perspectives on practice, and also can provide more rural representation. The courtroom experience is different in rural areas compared to urban areas. Mr. Skidmore said that it made sense to have people from different districts, and he agreed they function very differently.

Chair Claman asked whether statutory language should be added that judicial appointments should have an urban and rural mix, or whether it should be left up to the Chief Justice. Judge Stephens said it wouldn't hurt, and Mr. Skidmore and Commissioner Dahlstrom agreed. Mr. Skidmore noted that from his perspective, Ketchikan wasn't necessarily rural, and that experiences were very different in western Alaska. Judge Stephens did not disagree but noted that he does hear cases in places like Prince of Wales.

Commissioner Cleghorn suggested that the language could be broadened to include magistrate judges, which could reach locations without appointed judges. Chair Claman suggested that it could be modified to call for two trial court judges rather than one district court judge and one superior court judge, allowing more room to broaden the geographic perspective.

Chair Claman said it sounded like the group wanted to leave the membership as is but add language calling for attention to be paid to rural and urban representation.

Alaska Judicial Council Capacity

Ms. DiPietro explained that when the Commission was extended, the Judicial Council was given extra funding for staffing. She asked for the minimum possible in the fiscal note. So the fiscal note had some travel money, some overhead for office capacity and supplies, and salaries for an entry-level attorney and a part-time research analyst. That money is now in the Judicial Council's base. When it comes to actually supporting the work of the Commission, things operate a little differently. The Commission's statute says the Commission must meet quarterly, but it actually meets more often, plus there are workgroup meetings. So the level of staffing from the fiscal note is inadequate. In addition to the dedicated staff, Ms. DiPietro, Teri Carns, Susie Dosik, and Brian Brossmer all put in significant time, which varies week to week depending on what's going on with the Commission. So if the new group were to continue with the current level of engagement, including workgroups, policy recommendations, and special reports, she would continue the current fiscal note. If the scope of work were less, just meeting quarterly and looking at data, she could ask for less money. It was hard to be specific without specific details on the scope of work. It was not just about whether the new group would be doing recommendations, but also the frequency of meetings, and what projects they want to work on.

Commissioner Williams said it sounded like the scope of work is the critical piece. Reviewing the statute, he noted that even with weeding out the formal recommendation piece, continuing with the data, research and analysis was not really decreasing the workload much. It made sense to think about the work in terms of reports and analysis rather than whether or not recommendations would be issued. He thought it was helpful to have reports, which can be used by agencies for a variety of things. He thought the new group would still need capacity for that function.

Ms. DiPietro said that one thing the Commission hasn't done that staff have talked about is publishing information more frequently. That could be useful to policymakers and other interested parties.

Chair Claman asked how difficult it would be to transfer day-to-day management to AJiC or another body? Ms. DiPietro wasn't sure, the Council was already set up to support the Commission because the work was similar to supporting the Council. She was not sure about what AJiC would need.

Alaska Justice Information Center (AJiC) Capacity

Dr. Troy Payne, director of AJiC, said he thought that was a fair question, and again, capacity needs would depend on the scope of work. He could come up with a budget if, e.g., 50% of AJiC's time were to be devoted to this new project, but he would need to know what they're doing. At this time, AJiC was not really set up to provide support for a body like this— it lay outside of AJiC's core competency. But AJiC can do data analysis. What AJiC has already done with the Commission is in collaboration with Judicial Council

staff. He thought the focus should be on what needs to be done, then the group can go from there in terms of who would be the most appropriate to staff that effort.

Commissioner Williams asked if the bulk of support for a future entity were to be shifted to AJiC, whether AJiC would need at least some additional resources. Dr. Payne said yes, as AJiC doesn't have idle capacity right now. Commissioner Williams said that was his impression from the last meeting, and that it seemed like AJiC and the Judicial Council have worked out a collaboration. Dr. Payne said that was true. Thinks like coordinating meetings and arranging for travel, lunch, and materials can be a full time job—one that would be outside the job description of current AJiC employees or would require a new employee. So either AJiC would forgo doing some of the other things it was currently doing, or it would need additional resources. It wasn't a zero-cost idea. He noted there are entities similar to AJiC in other states that do half of their work at the direction of the legislature, and half special projects of their own initiative.

Chair Claman said it sounded like the question was whether to move duties to AJiC or the Judicial Council or use the existing relationship between the two. Commissioner Williams said it sounded like the current structure was the most efficient, and that collaboration happens as needed.

Mr. Skidmore said it was a difficult question. He agreed that the administrative part is not what AJiC is set up to do. But he also thought they're better set up to do the research part. Other entities are already supplying information to them, and it made more sense to have one clearinghouse for state data. There was also value in having an entity that exists outside of one of the three branches of government.

Next meetings

Commission project attorney Barbara Dunham noted that Commissioner Dahlstrom needed to leave early and suggested scheduling the next meetings at this point. The next two meetings were scheduled for Tuesday, November 17 from 10 am to 12 pm, and Tuesday, December 1 from 10 am to 12 pm.

[Commissioner Dahlstrom left the meeting at this point.]

Recommendation Function

Chair Claman said it sounded like the big question is whether to keep the recommendation function. Commissioner Cherot said she thought there was value in the recommendation function. Noting that the original purpose of the recommendation function was reform, she expected that if the recommendation function were retained, it would be narrower. Even without recommendations, the Commission should continue to evaluate the same subjects.

Commissioner Cleghorn said he also still saw value in the recommendation function. The point Ms. Cherot raised was an interesting one. If the recommendation function was narrower, would that be more palatable? Right now it was pretty broad.

Mr. Skidmore said that any kind of recommendation function moves into policy territory rather than just looking at data, and can be seen as non-objective. He thought the most helpful function was to gather data and report it, without any kind of agenda. If an entity is making recommendations, it might be seen as having an agenda. He wanted to see an entity that would last beyond one or two administrations, something that becomes a significant part of the state's functions.

Commissioner Williams said those were valid points, though he still fell on the side of having recommendations from a broad cross-section of organizations based on data. He recognized that created tension but thought these were healthy conversations. At a base minimum, having an entity in perpetuity might be overly ambitious but having a diverse group to look at data for the use of various parts of state policymakers was important, and he didn't want to sacrifice that for the recommendation function. He also wanted to add that the marijuana fund exists and thought that a group like this should make recommendations regarding how to spend that money. He thought that without that, what would happen was that individual departments would advocate for its use for their own ends.

Judge Stephens explained that he had said what he wanted to say about this in the memo that he sent. He would defer to others as to political realities. He thought there was a real benefit to having balanced, thoughtful, evidence-based recommendations with input from all the relevant players. Regarding the marijuana funds, he noted that the three agencies given the funds had never been directed to be coordinated about its use. More coordinated discussion could be helpful. He thought Alaska would be back where we were in 2015 in a couple of years, and at that point the Legislature might want input on how to get out of that.

Public Comment

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

Next Steps

Chair Claman said that Commissioner Williams and Ms. DiPietro had been working on proposed changes to the statute. Commissioner Williams said that they were really just a first stab at taking a look at what needs to be reworded, deleted or added—a starting point for discussion. They might tweak it based on this conversation. Ms. DiPietro noted that looking at the language will help this discussion be more concrete.

Commissioner Cleghorn suggested the ability to make recommendations “if invited by the Legislature.” That way a recommendation function wouldn't need to be added to the statute later if the Legislature wanted a recommendation. Ms. DiPietro said that was similar to how the Judicial Council operates. Dr. Payne said it was also similar to how the Washington State Institute for Public Policy operates. The legislature sends WSIPP questions about specific policy changes, to be reported back on a particular time frame. The data access part of the statute for such a function could be drafted as “use for policy analysis”. One of the limitations of the existing structure is that the Commission is receiving and analyzing data for the purpose of criminal justice reform, a limitation.

Chair Claman said that was something the group could look into before the next meeting.