Alaska Criminal Justice Commission
WORKGROUP ON ARREST AND INTOXICATION

Meeting Summary
October 6, 2017, 12:00-2:00 PM

Denali Commission Conference Room
510 L Street, Suite 410
Anchorage, AK
And teleconference

Commissioners: Sean Case, Joel Bolger, Steve Williams, Stephanie Rhoades, Quinlan Steiner, Walt Monegan

Participants: Anne Kreutzer, Vivian Echavarria, Jeannie Monk, Natasha McClanahan, Claire Sullivan, Nelson Price, John Skidmore, Randall Burns, John Papasodora, Laura Brooks

Staff: Barbara Dunham, Susanne DiPietro

Workgroup focus and relationship to Criminal Justice Working Group

Commissioner Sean Case began by explaining the purpose of the workgroup. He said he didn't want to cross paths with any other efforts in this area and wanted to narrow down the issues and define the problem. He thought this issue started with the changes to the bail schedule, which removed the "sober hold" in some districts (others didn't have it). In the districts that did have it, it was used by law enforcement officers to hold those who were under the influence but not incapacitated. They would be held until sober (typically until a .02 BAC).

Without the sober hold, there is a gap for those people who have been arrested and are under the influence but are not incapacitated and therefore don't fall under Title 47 holds. If they are in the OR release category or cited and released, law enforcement doesn't have the authority to take them anywhere.

Barbara Dunham noted that the Criminal Justice Working Group had also expressed interest in tackling this and the larger Title 47 issues. Justice Bolger [co-chair of the Criminal Justice Working Group] said that the intent was to defer to this workgroup and see what happens here.

Judge Rhoades suggested putting off discussion of how this group fits into other efforts to the end of the meeting until the issues have been more fully fleshed out. Commissioner Steve Williams agreed.

Input from hospitals

Anne Kreutzer, COO of the Alaska Native Medical Center (ANMC), said they have been working with APD to understand why they were seeing an increase in intoxicated patients in the Emergency Department and an increase in assaults on staff. They have staff quitting because of this problem. They are seeing 10 to 15 of these patients per day in a 20-bed ED facility. Often the patients are suicidal which requires one-to-one staffing. If they can't get them into API, they have to admit these patients to the

hospital which is not something they're really equipped for. Their tribal health partners are seeing the same problems. She has heard from other hospitals and all are feeling overwhelmed and their staff feel that they are not working in a safe environment. The Providence Psych Emergency Department is always at capacity.

Nelson Price, chief of security at Providence, said that the Anchorage hospitals were now on a no divert policy, meaning that no hospital can turn away anyone dropped off for emergency medical services. (There were times in the past when all three hospitals were on divert and therefore there was no place for people needing an ED to go; the hospitals jointly agreed to this policy.) The Providence ED is now overflowing, with ED patients in the waiting area and other areas of the hospital. They have also seen an increase in code greys (code grey indicates a security risk) over the last 18-24 months. He wasn't sure it was due to the change in the bail schedule or SB 91 but thought it was part of it.

Ms. Kreutzer said that in terms of numbers, drug and alcohol patients are usually around 10 per day, with an increase over the past few months, plus around 10 psych patients who they are holding until a more appropriate placement can be found. The latter category requires a one-to-one behavioral health observer and often a security guard as well. They now have a security guard full time.

Vivian Echavarria, VP at ANMC, added that the hospitals always managed some alcohol withdrawal patients, but what is new is that they are now seeing an increase in violence to the extent that they are losing doctors and staff because of it. The violence is disturbing to other ED patients and the ED is not designed to handle the numbers of patients they are seeing.

Ms. Kreutzer added that the hospitals didn't know about the change to the bail schedule and they weren't prepared. Commissioner Case asked her how the patients were getting to them. She replied that it was a combination of AFD, APD, and some walk-ins. On a recent day they had 7 from AFD and 3 from APD. Mr. Price added that they were seeing the same ratio in terms of people brought it—the patients have a mix of alcohol, drug, and psych issues.

Commissioner Case asked what the charges were for people brought in by APD. The hospital representative said they didn't have that information. Commissioner Case asked whether they were able to go elsewhere or whether they needed to stay in the ED for medical care. Ms. Kreutzer said they all needed to be evaluated. After that some would need medical care but not everyone needs to go to the ED to sober up.

DOC process

Commissioner Case asked if the hospitals were holding on to patients who would have previously gone to DOC for booking. The hospital representatives replied with an emphatic yes. They added that they often can't release these patients because of liability. Commissioner Case noted that DOC's concern was that if a patient was cleared by an ED to go to DOC custody that patient (now an inmate) could still be a problem. He wondered what standard was usually used to clear a patient for release to DOC custody. The hospital representatives said that no one standard was used because each person's tolerance is difference.

Laura Brooks from DOC explained that DOC facilities do not have anywhere near the medical capability of hospitals. For intoxicated arrestees, DOC has a new process this year. Previously, anyone who was at a .3 BAC or higher had to go to the hospital. The new process is based on the inmate's

physiology and immediate needs, not on a particular number. They look at the inmate's ability to stand and breathe. If a law enforcement officer brings in an intoxicated arrestee, DOC will screen them before they are booked and send them to a hospital (not book them into custody) if they don't meet DOC's standard. If an inmate has been booked into custody somewhat intoxicated but then worsens, or is failing on withdrawal, they will send them to the ER (the inmate will still be in custody at this point). They treat inmates and Title 47 holds similarly.

Bail schedule and legal considerations

Commissioner Case noted that the bail schedule sets monetary bail for misdemeanor assaults and second-time DUIs but most other misdemeanors are OR release unless the arresting officer calls a magistrate. The people he is concerned about are those who are between a .08 and a .3 BAC who are to be released OR- he is not sure what to do with them.

Commissioner Quinlan Steiner asked whether Commissioner Case was including non-criminal people who are intoxicated in public in that group. Commissioner Case said that APD will try the same channels with those people—try to get them home or someplace safe. If they don't have a place to go and are around a .2 or above they will call the Safety Patrol.

Judge Rhoades noted that the latest version of the bail schedule explicitly mentions intoxication and directs officers to call the magistrate and ask for a condition that the defendant be released when sober. Commissioner Case said that it is not as easy as it sounds in practice, as getting a magistrate to hold them with conditions can be very challenging, and some magistrates do not want to hold someone solely based on their intoxication. Typically these magistrates will require some link between the crime charged and the defendant's intoxication.

Judge Rhoades asked if the magistrate does not order the defendant to be held, whether those defendants would be held under Title 47. Commissioner case said no, they would be taken to the ED. They don't fall under the Title 47 statute because they are not incapacitated. Judge Rhoades said she thought subsection (a) applies to intoxicated people while subsection (b) applies to incapacitated people. She wondered whether the steps listed under (a) were being followed, and whether this was a systems problem or a legal problem.

Ms. Kreutzer said her reading of the Title 47 statute was that intoxicated persons were to be taken to an ED, but the EDs are overwhelmed, or to DOC, where they may be refused because of their state of intoxication—to her, this was a systems issue.

Commissioner Case said that APD's initial contact with a person is an arrest. They will take someone home if they fall under (a) of the Title 47 statute but they consider it a different case if the person is an arrestee.

Randall Burns, director of the Division of Behavioral Health (DBH),added that the emergency commitment statute for intoxicated persons (AS 47.37.180) is not used at all as it is outdated and doesn't reflect the current reality.

Justice Bolger asked whether, in the case of a person who was held in the hospital under title 47 for incapacitation, if there was a mechanism for holding that person if they were no longer incapacitated but still intoxicated. Mr. Burns said that there was no legal mechanism, it would be up to the hospital and what their policy is.

Judge Rhoades said that she needed to put on the table that the behavioral health population ad DOC has been overrepresented for decades. Jail is not appropriate for them if there is no risk of harm to the public. These are sick people and they shouldn't be in DOC custody; there is a reason that DOC is supposed to be the last resort.

Commissioner Case said that in the case of someone who is a first-time DUI, has a .18 BRAC, and is functional enough not to be a Title 47 hold, that person is an OR release, and the Safety Center won't take them. There's no where for them to go. Judge Rhoades said she found it difficult to believe that the magistrates won't order those people to be held if they were called. Commissioner Case noted that of the 18 most recent arrests for DUI, 12 were OR released.

Justice Bolger asked why, if a person's BRAC clearly indicated they should be held, that wasn't just on the bail schedule. Judge Rhoades said not all the presiding judges agreed on what to do in that scenario, and that was a question for them.

Assaults and hospitals

Mr. Price said that the hospitals were just not equipped to handle these new security concerns. They want to protect the community at large by caring for these patients but at the same time this makes things more unsafe for hospital personnel and other patients.

Natasha McClanahan, representative of the Alaska State Hospitals and Nursing Homes Association (ASHNHA), said she had heard there was a problem of assaults not being filed because the officers couldn't get the paperwork on it. Ms. Echevarria said that was true and staff also feel that there's no point in calling assaults in (to APD) because nothing would be done. Commissioner Case noted that the newest bail schedule allows APD to take assaultive patients into custody.

Ms. Dunham asked whether an intoxicated person brought to a hospital wants to stay once brought there. The hospital representative said there was a mix. Some people are repeat customers who want a warm place to stay but don't need to be there. Some need to be there but don't want to say.

Mr. Price said he thought the increase in assaults was due to intoxicated patients.

Safety Center and alternatives

Mr. Burns said that DBH routinely gets inquiries as to whether there is a public treatment facility to take people to, as the title 47 statute suggests, and the answer is no, aside from the Anchorage Safety Center, which isn't really about treatment. He agreed it was a systems problem. There are only 14 beds at the Ernie Turner center for withdrawal management and APD can't be expected to drive someone over there only to be almost certainly turned away.

Commissioner Steiner asked Mr. Burns who gets picked up by the Safety Patrol. Mr. Burns said anyone who was under a .3 BAC, intoxicated, and not on the barred list. The Safety Center has about 100 spots. Commissioner Case added that it was usually people who were homeless.

Commissioner Steve Williams asked how often the Safety Center was full. Commissioner Case said he was not sure. AFD and APD will both transport people there if there is space.

Commissioner Rhoades suggested talking to the Safety Patrol to get information on drivers of this population.

Mr. Price noted that in previous discussions someone had mentioned creating a separate space to put this population that had both medical and security staff. Ms. Dunham added that it had been Commissioner Walt Monegan's idea to create an enhanced version of the safety center. Staff had been discussing enhancing the center by providing food and linkages to services.

Judge Rhoades said that was only addressing half the problem, as once diverted to such a place people would need an option for intermediate (withdrawal management) treatment. She thought it would help engage people and divert them to treatment but there has been a longstanding need in Alaska for intermediate services.

Data and next steps

Commissioner Case asked about data and what was needed to understand more about this problem. Judge Rhoades said that it would be nice to have APD information on specific cases and hospital data on who they're seeing: who referred or brought problem patients in, what their needs where, what the result was of their stint at the hospital.

Commissioner Case said that would be a challenge for APD as an in-depth case study would take time. They are looking for a more urgent response. Ms. Kreutzer said the hospitals would have the same challenge.

Commissioner Monegan noted that the Safety Patrol had done a study of 19,000 and found that 90% of their calls were for about 10% of all the people served. In other words, there was a small group of frequent fliers. He would expect the numbers to be roughly the same now.

Judge Rhoades noted that Clitheroe had tried to serve this exact group of people with long-term treatment but they had trouble getting them interested in participation and they needed legal representation for a commitment; the program failed. She said the Anchorage Homelessness coalition likely had similar data. It would be hard for the Commission to take action without data, though the Criminal Justice Working group might be able to take more immediate action.

Mr. Burns said that the Clitheroe project also suffered from a staffing problem and finding quality treatment providers for this population was always a challenge. He said that DHSS is working on these things with the 1115 Medicaid waiver but that will take at least two years to come on board and a more immediate solution is needed.

Commissioner Case asked if there was a need to get a legal opinion on these issues. Ms. Dunham said that the statute provided for taking people to a facility and that an additional legal mechanism would not be necessary if they went and stayed voluntarily. Commissioner Case noted that people were not always happy to be taken places by law enforcement officers.

Justice Bolger said there seemed to be a gap in the statutory scheme as there was no provision to hold people brought under protective custody pursuant to subsection (a) of AS 47.37.170, and there was also a gap for those people in the bail schedule. He noted that he had been in places where there was a sober hold policy in place and that tended to create inertia (in terms of finding better solutions.) He though there was an opportunity to create a mid-level quasi-custody mechanism, whether criminal or civil.

Commissioner Williams said he thought that it came back to needing data. He had a sense from this discussion that the populations at issue have been changing from a largely alcohol-based diagnosis

to a poly-substance and mental health diagnosis. The group needed to know what the drivers were. There were other studies out there on high utilizers of these systems that he thought the group could take a look at. He also wanted to know the flow of people and the processes that got them from one place to another. How many magistrates were being called for alternate bail? What's happening with the tools that exist? He noted that other communities in Alaska have tackled this issue, such as Bethel, where a new sobering center helped reduce ED usage and Title 47 holds.

Mr. Price asked who was funding the sobering center in Bethel. Mr. Burns said it was DHSS, using an allocation from last year. A similar center was about to go online in partnership with the TCC in Fairbanks. It took over a year to get over community objections to the placement of the center. Mr. Price asked how those facilities were different from the one in Anchorage. Commissioner Williams said they had more social services and used their revolving door model to build a therapeutic relationship with high utilizers.

Judge Rhoades said on that note she would like to know if these problems are statewide. Mr. Burns and Ms. Kreutzer said they thought it was.

Ms. Kreutzer said it would be worth looking at whether a cost-benefit analysis of the sobering centers would prove that they were a cheaper alternative than hospitals or DOC. Judge Rhoades said data from hospitals would be needed for that.

Ms. Kreutzer said that it might be possible to query the provider notes in the electronic records to get a sense of the problem, or they could create a new field. Data collection should be thoughtful and methodical. Commissioner Case said that he had similar issues with APD data, and that he would look to see what he could come up with easily.

John Skidmore asked whether the court system could track the number of calls to magistrates. Justice Bolger said he wasn't sure. Mr. Skidmore said it would be worth checking to explore all avenues for data sources.

Mr. Burns said that ASHNHA collects ED data, and that something may be gleaned from that. Jeannie Monk said the state manages that program now, in the bureau of vital statistics. They have a lag but would have data through 2016.

Judge Rhoades suggested collecting data going forward. Ms. Echevarria said she had the same thought, and that it could even just be a one week snapshot if everyone committed to it. Ms. Dunham noted that if the data was collected, the Judicial Council could analyze it.

Commissioner Steiner suggested creating a flow chart of decision points at each step in the justice system to help drill down to the root of the problem and identify what data was needed. There was a need to tease out the different populations affected.

Public comment

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

Next meeting

The group agreed that those with access to data would look to see what they had and set a meeting date when that data was identified.