

Alaska Criminal Justice Commission

Rehabilitation, Reentry, and Recidivism Reduction Workgroup

The Mission of the RRRR Workgroup is to assess and propose ways to reduce recidivism for people who are justice-involved, including: treatment and programming (both behind the walls and in the community), rehabilitation and incarceration models, and reentry planning.

Meeting Summary

Thursday, May 13, 2021 2:00pm-4:00pm

Via Zoom

Commissioners Present: Stephanie Rhoades, Samantha Cherot, Steve Williams, John Skidmore (serving as proxy for the Attorney General)

Participants: Mike Matthews, Troy Payne, Laura Brooks, Talia Eames, Tony Piper, Don Habeger, Karl Clark, Teresa Capo, Laura Russell, Ray Michaelson, Travis Welch, Teri Tibbett

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

Draft Recommendation – Recidivism Definition

Judge Stephanie Rhoades, Commissioner and workgroup chair, explained that at the last meeting the group had heard a presentation from CSG Justice Center on national trends in documenting recidivism. Since that time, she had worked with staff to try to incorporate some of what the group learned as well as comments on a draft that had been circulated.

Proposed new approach

Susanne DiPietro, executive director of the Alaska Judicial Council and staff to the Commission, explained that Mr. Clement from the CSG Justice Center had told the group that there are many different measures of recidivism, and that having a variety of measures was useful to policymakers because it gave them more information on what was happening in the criminal justice system. The group had also expressed the feeling that having too many definitions was confusing. However, there was really only one definition: the extent to which the people who come into contact with the criminal justice system later come back. That definition could be wordsmithed, but she thought the group could probably all agree on that definition in general.

Ms. DiPietro also noted that DOC has been reporting recidivism historically, and she didn't think anyone would want to discount their efforts, so there should be a way to preserve the work they've done. Therefore the idea with this proposed definition is that everyone would agree on this basic definition, and then DOC could put their measure in their statute (AS 33.30.11 "Duties of the Commissioner"). DOC then can use that measure for their purposes. The same basic definition

would go in the new commission¹ statute, but would use different measures. For example, the new commission may want to look at misdemeanants. The new commission could have more flexibility in the measurement of recidivism, as long as everyone is clear that recidivism generally means people who are coming back into the system.

Ms. DiPietro explained that the new draft of the definition recommendation included the preamble that was similar to what had been circulated before, explaining what the new commission will do. It then explains what is currently in statute, and then notes the traditional versus more flexible methods of measurement, including some information from CSG.

Ms. DiPietro said that the draft then stated the proposed general definition: “‘Criminal Recidivism’ is defined as the extent to which a person previously convicted of a crime subsequently is charged with or convicted of a new criminal offense, or a violation of probation or parole.” All parties would share that definition, but then might measure recidivism in different ways. DOC would then put their measure in their statute. The new commission would use the measure listed. Staff would like feedback on the general approach first, and then the group could look at details.

Judge Rhoades said she thought this was an interesting approach. The workgroup’s task was to come up with a definition that would serve the new taskforce. She didn’t think it needed to apply to any other agency. She wondered whether there was a need to mention DOC’s statute in this recommendation, or whether DOC would just take its own course.

DOC opposition to proposed new approach

Laura Brooks, director of Health and Rehabilitative Services for DOC, recalled that this conversation began because the current statute would be going away, and that DOC was interested in an ongoing statute for standardization purposes. DOC has had issues with organizations using other measures and comparing themselves to DOC. DOC now requires their definition in all contracts for making comparisons and also to adhere to a national standard. She thought this definition was trying to be all things to all people, and the last paragraph leaves it wide open. People are free to perform other analyses of recidivism but she didn’t think other analyses should be in statute. She didn’t think this aligned with what the group had initially been talking about, and DOC could not support it as written.

Judge Rhoades said that her impression was that DOC was in favor of having something in their own statutes, and asked if Ms. Brooks was saying that DOC does not support this even if it only relates to the new commission, and includes the recommendation that DOC continue using their traditional measure.

Ms. Brooks said that in terms of state recidivism, the traditional measure looks at people coming back into the DOC custody. She was not saying no one could look at misdemeanors or other measures, but DOC is in favor of one state definition. DOC would be happy to assist in other

¹ The proposed successor entity to the Commission was originally called a “taskforce” but the legislation introduced calls it a “data analysis commission.” This summer will generally refer to the proposed successor entity as “the new commission.”

calculations. But she was not sure how having multiple measures in statute would be helpful, or why the measures needed to be different from DOC's.

Judge Rhoades noted that the proposed measures would apply only to the new commission. She thought the recommendation makes it clear what the job would be for this new commission, not for any other purpose. She also noted that the new commission's data would not come from DOC alone, and that its reports would not be DOC reports. Ms. Brooks said she appreciated that, but DOC was concerned about how its data is reported.

Mike Matthews, DOC's research analyst, said that part of DOC's concern was that DOC data is very complicated, and calculating recidivism is a little more challenging than people may realize. They want to make sure it's reported properly. The way he read the proposed definition was: "here is the standard, but you can use anything else you want." He was hung up on that part.

Commissioner Steve Williams said that in refreshing his memory about what the CSG presentation said, he noted it was really supportive of using a broader definition than what we've been looking at. He did not really understand why DOC said it was problematic to give a basic definition, and then state how that can be measured. He said that misdemeanor supervision was not really DOC's responsibility, but that was still something that should be tracked. He noted that DOC can set its standard in its contracts. He was surprised at this strong reaction to a basic definition.

Ms. Brooks said it was because it still didn't set a standard. DOC still has a problem with programs saying they have low rates after only six months. Even if people are reporting on misdemeanants, she would still want a three-year standard.

Judge Rhoades said she didn't think a statutory definition would prevent programs from using whatever measure they like. People can report on whatever they want to, and she was not sure you could prevent that. She agreed that the last paragraph was vague and could be left out.

Ms. Brooks said she agreed you can't make everyone use one definition, but it was more about educating legislators on standard guidelines, so they have the ability to ask the right questions when people appear before them in hearings. There was confusion in the legislature on this until DOC started pressing the point.

Judge Rhoades said that the three-year window doesn't show what going on right now—some programs may only need a one-year follow up period. Ms. DiPietro said that she had discussing this issue with Commissioner Alex Cleghorn, and he had asked why three years was the standard, and she couldn't really say why. Most recidivism occurs within one year. She was sympathetic on the legislative education issue, and thought that it might always be an issue.

Mr. Matthews noted that DOC doesn't just report three-year rates; they calculate recidivism in six-month increments. They can track it out further, but after three years recidivism drops off precipitously. He observed that people under felony supervision were people the state has the best opportunity to do something about; after three years, there is only so much influence over their behavior.

Ms. Brooks said that the three-year rate was the standard rate DOC used to compare Alaska to other state. Mr. Matthews agreed that DOC reports these rates to other partners. He thought of it as a solar system, in which the DOC definition was the sun, and other rates were moons and planets. The “sun” was the standard: the rate at which felons return to prison for any reason within three years of release.

Judge Rhoades noted the current statute refers to “inmates,” which would include misdemeanants. Mr. Matthew said he believed that when the statute was drafted, the intent was to say felons. DOC could report misdemeanor recidivism. If people are interested in misdemeanants, a more relevant measure would be to track the number of times they recidivate within three years, rather than just the percentage who recidivate within three years.

Judge Rhoades asked whether the current definition, using the term “inmates” broadly and including one-, two- and three-year rates, would satisfy DOC. That wouldn’t say anything about new convictions, and wouldn’t include people who didn’t serve time. For purposes of the new commission, she didn’t think it would capture the full picture, though that’s what the new commission would want.

Dr. Troy Payne from the Alaska Justice Information Center (AJiC) thought what Mr. Matthews had said was important: the new commission might be interested in more than just a broad percentage; it might, for example, want to look at time to failure. Mr. Matthews was right that a single percentage doesn’t tell the whole story, and Dr. Payne thought that was a reason why the new commission would want to report on the broader phenomenon of recidivism, in the general sense of reengagement with the criminal justice system. For example, he was currently working on DV project that goes beyond just using DOC data. He certainly agreed with Mr. Matthews that the calculations were complicated, and even more complicated when using more than one agency’s data.

Questioning the need for a statute

Deputy Attorney General John Skidmore said that he was among those who are interested in the broader universe beyond just those in DOC’s custody. He had wanted something in statute to begin with, but he was now questioning the need for a statutory definition. He understood DOC’s need to refer to a definition, and have a standard to include in contracts and make apples to apples comparisons. But there were a lot of other questions to be answered as Dr. Payne said. Those questions could still be asked without having in statute.

Ms. Brooks agreed, and said that DOC has that additional data, and was willing to share it. The idea of putting something in statute was to say “this is the standard” and be clear about what we are talking about. Judge Rhoades asked what should happen when the current statute goes away. Ms. Brooks said that was the reason why she supported what Ms. DiPietro had said about putting DOC’s definition in DOC’s statutes.

Judge Rhoades recalled that the Commission’s data committee [which met several years ago] was looking at calculating recidivism based on convictions rather than releases because criminal justice reform meant that a significant chunk of convicted people would not be serving time. Mr. Skidmore said he also recalled that. But he was still not certain it needed to be in statute.

Ms. DiPietro asked if the idea would be that DOC could propose whatever statute change it wants for its own statutes, and the new commission's statute would just say that the new commission should "study things like recidivism". Mr. Skidmore said yes, and that the new commission could define recidivism however it wants, and say, "this is not the definition DOC uses, here's why." He was not sure there needed to be another definition in statute aside from what DOC has in order to look at other things.

Judge Rhoades observed that it would be perfectly fine to send back a recommendation that the new commission should not have a definition in its statute, and say DOC put something in its statute if it wants. The recommendation can say that the task force can look at whatever it wants to look at without a definition.

Dr. Payne wondered how much of this was just getting hung up on the word "recidivism." The recommendation could use reconviction, rearrest, and re-offense instead. That would indicate the new commission was reporting something different from DOC. Ms. DiPietro mentioned that she had raised the idea of using the term "post-conviction outcomes."

Judge Rhoades said this was also about funding, and ensuring that the new commission has the capacity to do the analysis it needs to do. She also noted that high-cycling misdemeanants are costly to DOC. She thought this discussion could go one of two ways: either refine the recommendation and try to get to consensus, or abandon the statutory recommendation and hope the new commission will get funded to do the full analysis it needs even if the measures aren't spelled out in statute.

Tony Piper from the Division of Behavioral Health said he didn't think this commission's purpose was the same as DOC's at all. The new commission needs a wider definition to do what it wants, and DOC has a very narrow definition. He was not sure consensus was possible.

Mr. Matthews said he kept hearing that DOC's definition is restrictive, but thought it was the opposite. In looking at remands, conviction and arrest are rolled into the analysis. Judge Rhoades noted it was only for felons. Mr. Matthews said the analysis was possible for misdemeanants but the reason DOC looks at felons is DOC can do more for people who are incarcerated longer. He didn't think there was much that could be done with someone booked on a misdemeanor trespass who only stays for three days. Judge Rhoades said that was probably something policymakers wanted to consider. She said it sounded like the issue was not that DOC can't produce data on misdemeanants, but that it would rather not have the requirement to do so in statute. Mr. Matthew said he didn't see the need for it.

Teri Tibbett from the Advisory Board on Alcoholism and Drug Abuse and the Alaska Mental Health Board said that this may not be the time to decide this. She didn't think the group could come to consensus, and the issue may need a deeper dive.

Ms. DiPietro asked whether DOC would have an issue with the new commission using other reporting measures if it is charged with doing research on recidivism beyond the traditional definition. Would the new commission be free to conduct this research with the data it is given? DOC would be free to say "that's not the definition we use and here's why." She asked if DOC

did not want to prevent the new commission from doing the analysis it wants to do, and just wanted its own statute to refer to for purposes of going before the legislature.

Mr. Matthews said that was a good summary. DOC spends a lot of time explaining to legislators what recidivism is, and it is helpful to say “here is the statute.” Ms. DiPietro asked if it would be better to include the definition in DOC’s statute rather than the commission’s. Mr. Matthews agreed.

Judge Rhoades said that if you look at the duties and functions of the new commission, implicit in that description is you will define what you are talking about within the various reports.

Public Comment

Judge Rhoades noted there were comments in the chat section.

Talia Eames of the Central Council Tlingit Haida Tribes of Alaska wrote to advocate for counting misdemeanors because today's misdemeanants are often tomorrow's felons. It was important for smaller communities to track misdemeanor recidivism to best determine where to focus intervention points and limited resources.

Teresa Capo of the Bristol Bay Native Association Reentry Task Force wrote that courts, lawyers, and communities related to reentrants should all know recidivism is generally related to "within three years."

Recidivism Cont.

Mr. Skidmore said that he has been in favor of a broader definition, and is interested in looking at misdemeanants, how often people recidivate, and other questions. He didn’t think it needed to be in statute however. He agreed with Judge Rhoades that the Commission didn’t need to tell DOC what to do in its statute. He moved to recommend that the new commission shouldn’t include a definition in its statute, but allow DOC to introduce its own statute.

Judge Rhoades said the effect of this would be to essentially withdraw the recommendation to put a definition in statute. Commissioner Williams objected to the motion for purposes of discussion. He said the issue with withdrawing the recommendation is that it would not give any guidance to programs and services. DOC will have the same problem with programs using different ways of tracking recidivism. It would essentially be the status quo.

Commissioner Samantha Cherot said she liked the definition as written in the draft as well as the measures listed, and thought they did set a standard. She thought the draft was helpful and should be a reference for the new commission. It might not need to be in statute, but it should be used.

Motion – The new commission should adopt the drafted definition, but it should not be put in statute.

Mr. Skidmore said he agreed. He amended his motion to recommend that the new commission adopt this recommendation, but not in statute.

Judge Rhoades said the effect would be to withdraw the recommendation that recidivism be defined in statute, and recommend that definition provided in the draft be used by the successor entity to the Alaska Criminal Justice Commission. Commissioner Cherot said the measures should be included too. Judge Rhoades agreed. She also thought that the timeframes of one, two and three years should be added. The last paragraph should be deleted.

Mr. Matthews suggested leaving out a reference to time frames, and leave that up to the new commission. Looking at six months could be important. Dr. Payne added that conversely, five years could be important. The timeframe should be set by the research question.

Judge Rhoades asked if there was agreement to take out the existing reference to a three-year timeframe. Mr. Skidmore agreed, and said the timeframe would be up to whoever is doing the research.

Don Habeger from the Juneau Reentry Coalition said the reference to legislation should be taken out of the draft. Mr. Matthews wondered whether “including by not limited to” should preface the list of measures. Mr. Habeger disagreed thinking the standard should be clear, while Ms. Tibbett thought more wiggle room was better. Dr. Payne said the broad definition provided room enough to allow for other analyses if necessary.

Judge Rhoades asked if there was any objection to the motion, with the draft subject to non-substantive editing prior to going to the full Commission for consideration.

Commissioner Williams objected. He said he appreciated the wordsmithing and the compromise that was reached today. But beyond the new commission, Alaska is going to keep having these conversations over and over again. He would prefer to get to a place where Alaska can have a definition that people could point to as a minimum standard. Research questions can always go broader. But he appreciated everyone’s work, and thought this was a step forward.

Judge Rhoades said she appreciated Commissioner Williams’ remarks, and thought that everyone had probably wanted to get to consensus, but she also thought consensus was out of reach. She noted this still has to go to the full commission, so this may not be the last word. There is only so much work that a subcommittee can do.

Wrap up

Judge Rhoades said that she and staff would edit the draft to reflect this discussion and get it back to the workgroup well before the plenary meeting on the 25th.

Judge Rhoades said the only agenda item outstanding for this workgroup was the release of information (ROI) issue, and she wondered if the workgroup still wanted to work on it. She noted that the Commission has already made a recommendation on it. She asked if the group thought it needed to spend any more time to make separate recommendation for reentrants only. No one thought so.

Judge Rhoades thanked the workgroup for its time and hard work. She recalled that the group had walked through the sequential intercept model, and thought that it had covered all of the ground it could cover. The Commission will begin to wrap up in July.