

Meeting Summary

Alaska Criminal Justice Commission Sentencing Workgroup

May 16, 2018 1:30-3:30

Denali Commission Conference Room, 510 L Street, Suite 410
And Teleconference

Commissioners: Joel Bolger, Quinlan Steiner, Brenda Stanfill, Trevor Stephens

Participants: Josie Garton, Paul Miovas, Tracy Dompeling, Heidi Redick, Dennis Weston, Christina Allison, Matt Davidson, Barb Murray, Kaci Schroeder, Debbie Banaszak, Pam Cravez

Staff: Barbara Dunham

Juvenile auto-waiver

Quinlan Steiner explained that the workgroup's discussion of the juvenile auto-waiver statute stems from a white paper issued by DJJ a few years ago that explored the idea of modifying or getting rid of the auto-waiver. In previous meetings the group had discussed raising the age of DJJ's extended jurisdiction to 26, because if juveniles who commit serious crimes aren't waived into the adult system, DJJ would need the authority to hold them in custody longer. John Bernitz of the Public Defender Agency is gathering data on all juvenile auto-waiver cases.

Barbara Dunham noted that she had compiled some research on recidivism rates for juveniles. The research was fairly conclusive that recidivism rates were worse for juveniles when they were incarcerated in adult facilities as opposed to juvenile facilities.

Tracy Dompeling, director of DJJ, said that staff at DJJ had been talking about this and they have been looking at their data as well, comparing it to the list of cases Justice Bolger had compiled for the last meeting. She thought the court system data might be more complete. In some places DJJ gets custody of an auto-waived juvenile first, and in other places, DOC gets custody first, and DJJ doesn't necessarily have records of the latter.

Tracy thought that if raising DJJ's age of jurisdiction and removing the auto-waiver were among the options on the table, removing auto-waiver would be easier than raising the age of jurisdiction. Quinlan clarified that the group had only been interested in looking at raising the age of extended jurisdiction (currently set at age 20), not the age of jurisdiction in the first instance (i.e. only for those who start out in DJJ custody at age 17 or under).

Paul Miovas said that this is an issue they struggle with at the Department of Law. Often they would like to avoid an adult conviction but by the time the case reaches a resolution, there is not much time before the juvenile reaches age 20. These are complex cases that don't resolve quickly.

Justice Bolger noted there were a lot of cases in the list of cases he had compiled in which the juvenile would likely be serving 5-10 years—those are all kids who will be coming back to the community sooner rather than later who would have a better chance if their cases were kept in the juvenile system.

Heidi Redick wondered if there had been any talk of expanding dual sentencing. She knew it was something that was used locally in Anchorage, but can also raise the same issue of running into pressure once the juvenile nears age 20.

Tracy said that she had talked to her counterparts in other states such as Oregon and Nevada about this. Many states struggle with this issue. Some start all these cases in the juvenile system and then transfer them over to adult court only when warranted. Oregon was one state that did this. Heidi noted that some states have a dual sentence system where the juvenile starts a sentence in juvenile custody and transfers over to adult probation when released.

Tracy explained that all DJJ facilities are PREA compliant, though the state as a whole is not. (PREA is the federal Prison Rape Elimination Act which requires juveniles to be housed separately from adults.) She was not sure that DOC's noncompliance was based on the way they housed juveniles; it could be based on something else. Also the Juvenile Justice and Delinquency Prevention Act has different requirements—the separation must be “sight and sound” separation but the requirements don't apply to those 16 or older. Matt Davidson noted that it also doesn't apply to youthful offenders sentenced as adults.

Heidi noted that DOC's policy is to keep youthful inmates separate from the general population up to age 22, and kids under 16 are even more removed from the general population. DOC sometimes struggles to adhere to that policy as they have trouble with gangs forming and some of the youthful offenders have to be placed in adult segregation.

Tracy said that whatever course this discussion took, DJJ wouldn't want to do anything that would render them noncompliant with PREA, which would be a concern if they were to have custody of 24- to 26-year-olds. DJJ was not necessarily opposed to changes but would need to look at capacity and might need a specialized unit. She definitely understood the research on recidivism.

Heidi said that this issue has come up in the past, but before any action is taken, there is a wave of serious crime such as homicides committed by juveniles and the subject is dropped. Tracy said that on that count it would be good to get the victim advocacy groups involved.

Brenda Stanfill agreed and said she needed to do some outreach to other victim advocates and educate herself more on this topic. She was thinking of a 17-year-old in FCC right now who she definitely wouldn't want to be in a DJJ facility. Tracy offered to touch base with her the next time she was in Fairbanks and to give her a tour of DJJ's facility there.

Matt said that this conversation had occurred in various forms over a number of years. He offered to put together a list of options to better frame the discussion.

Barbara said she would be sure to loop in John Bernitz and Chris Provost for the next meeting.

DV Sentencing/Programming

Brenda explained that she and Quinlan had met with the Council on Domestic Violence and Sexual Assault (CDVSA) to get their input on the two proposals forwarded to the workgroup following February's Commission meeting. The first proposal was to enact a mandatory 1-year sentence for anyone who violates a domestic violence protective order (DVPO) and the second was to enact a mandatory 99-year sentence for people who murder their spouses.

Brenda said that the CDVSA was not interested in weighing in on the proposal for the 99-year sentence, but would support the workgroup with whatever action it decided to take. For violations of domestic violence protective orders, they wanted to lump that issue into taking a broader look at penalties for domestic violence crimes and the effectiveness of protective orders. They especially wanted help gathering and analyzing data, which they did not have the capacity to do. CDVSA has been working on evaluating and inventorying DV treatment and intervention programs in Alaska.

Quinlan said he was concerned about jointly participating in a sweeping review of DV laws with CDVSA, and would prefer to first see what their proposals are. He thought the two sentencing proposals that had been forwarded to the workgroup were too radical. He didn't think anyone was interested in the 1-year mandatory minimum for violating DVPOs, as that could have unintended consequences. He wanted to take a look at programming for prevention and recidivism reduction and to look into the value of protective orders.

Brenda said she had also spoken to others in the Alaska Network for Domestic Violence and Sexual Assault (ANDVSA) about the mandatory 1-year proposal. They agreed that violations of DVPOs should be taken very seriously, but they also noted that DVPOs are easy to obtain, and people who are actually victims might end up being respondents to a DVPO and end up violating the DVPO—that would be an unintended consequence of the proposal which was aimed at helping victims.

Quinlan noted that the unintended consequences problem was complicated by the mandatory arrest laws. DVPOs were often subject to manipulation and erroneously granted, and he would like to see more focus on that problem.

Paul said he hadn't had a lot of experience with prosecuting violation of DVPO cases but agreed that the mandatory 1-year proposal was probably a non-starter.

Quinlan asked if there was any opposition to rejecting the mandatory 1-year proposal but recommending to the Commission that the workgroup look into preventive programming and how to strengthen DVPOs.

Justice Bolger said he thought that the mandatory 1-year proposal had the same problem as the mandatory 99-year proposal, in that violation of a DVPO, like murder, can cover a wide range of behavior. Violating a DVPO could involve driving within the perimeter of an exclusion zone. He thought there should be a way to sanction such behavior without ruining someone's life. He suggested saying the workgroup "doesn't support" the mandatory proposal rather than saying the workgroup opposes or rejects it.

Paul asked what the basis was for the proposal. Quinlan said that it had been proposed by the parents of Bree Moore, who was killed by her ex-boyfriend. The idea behind the proposal was to separate a DV victim from her abuser long enough to sever the relationship. He did not think this was a valid theory of how domestic violence works. Brenda said she agreed, and often observed as a victim advocate that distance can make the heart grow fonder. She also thought that it was hard to base a law on one perceived dynamic, when the circumstances around domestic violence vary widely.

Paul said he was familiar with the Bree Moore case because he prosecuted the defendant. He recalled that there was no protective order in that case. He was sympathetic to what her family must be going through but didn't think this proposal would have helped Ms. Moore.

Brenda recalled that Commission Chair Greg Razo had tasked the workgroup with looking at whatever data and research was available on this topic and wondered if there was any data to report out.

Quinlan said he was not sure what data would be available that would be relevant to this topic there was data on sentences generally. He thought the workgroup could say it relied on the professional judgment of its members, and note that DVPOs are often subject to error and manipulation. Barbara said she could look into social science and policy research on evidence-based practices and theories of DV. Brenda said that the workgroup could also note the proposal didn't have the support of the ANDVSA. Quinlan suggested highlighting the variety of DVPO cases and factual scenarios behind them Barbara said she would draft a memo to the full Commission covering these points.

Justice Bolger said that the memo should be clear that the workgroup did not support this specific proposal did support evaluating the CDVSA's work once it is complete. Quinlan said he would also be interested in looking at a defense for violating a protective order in cases where the respondent is responding to contact initiated by the petitioner, which the Public Defender Agency sees a lot.

Judge Stephens said that he supported the idea of sending a memo to the Commission saying the workgroup did not support the proposal and noted that he also did not support the mandatory 99-year proposal. Quinlan said he agreed with that too.

Brenda asked Paul whether it was true that implementing a mandatory 99-year sentence for people who murder their spouses would help cases come to a speedy resolution. That was one reason the Moores had made the 99-year proposal.

Paul said that generally speaking, the possibility of a 99-year sentence can hasten plea negotiations; it's something that tends to play out in sex offenses cases which often carry a 99-year maximum sentence. It is a benefit to the prosecution to have that kind of leverage. In this case he was not sure it was wise, and if it was a mandatory sentence he was not sure how a plea deal would work. Both first and second-degree murder already carry a sentence of up to 99 years if an aggravator is proven.

Quinlan thought it was antithetical to the idea of justice to force a resolution in a criminal case based on the fear of a long sentence. He agreed that this proposal could cover a wide range of cases. If the "DV" designation is used it could theoretically include a former college roommate from 30 years ago. The broad "DV" designation is useful in the protective order context but too broad for enhanced sentencing. Paul said he didn't disagree on that point and also thought that it would be difficult to narrow down the DV category—for example, if it were only to apply to spouses and dating relationships, how long would a couple have to be dating? One week? One year? Quinlan agreed and said practitioners have often struggled over what "dating" means.

Justice Bolger agreed and noted that the legislature is also bound to enact penalties based on the sentencing goals in the constitution. He noted that not all cases plea out. He thought that the DV context was very different from killing a police officer (which also carries a 99-year sentence). A person who kills their spouse might be a woman with battered woman syndrome who may not have a viable self-defense claim. He didn't think the Moores would intend that a woman like that be sent to prison.

Brenda said that the CDVSA would be working on new programming over this year and roll it out next year. The CDVSA was interested in but needed help with taking a broader look at sentencing and DVPOs. They do not have the resources to effectively take a thorough look at those topics and do the necessary data and research analysis. Quinlan asked for clarification—if the Commission does not look into those topics, neither will the CDVSA? Brenda said that was correct.

Barbara explained that the Commission has data on things like criminal case charges and dispositions, but that getting data on DVPOs would require an extra ask from the court system and potentially be a big ask. Quinlan said the workgroup should figure out what it wants to do first before asking for extra data. Justice Bolger agreed and said that DV was a broad topic and it would be difficult to narrow the workgroup's scope of inquiry.

Brenda said there is already published research showing that people convicted of DV crimes have the highest recidivism rates. She thought it was worth looking into what data the Commission could get. She agreed with Justice Bolger that it was a broad topic and she wasn't sure where to start.

Quinlan said that it could broadly be divided into two categories: recidivism reduction and keeping victims safe. He wasn't sure what the takeaway was from the memo on the evidentiary basis for protective orders. Barbara said she thought the takeaway was that they can be effective in certain circumstances. Paul said that the answer as to whether DVPOs were protective seemed to be "it depends." He thought law was interested in discussing this but agreed it was a wide topic.

Quinlan said he didn't want to abandon the topic and also wanted to look into the idea of an affirmative defense. It has been kicked around in the legislature in the past. He didn't want to suggest any kind of reverse penalty (i.e. for abusing the system) but thought there should be some defense in cases where the petitioner calls the respondent and essentially baits them into violating. Paul said that it could also be a mitigator. He wasn't sure Law would support an affirmative defense. Quinlan said it was something of a side issue but he didn't want to abandon it.

Barbara asked whether the CDVSA had put together a list of concerns or things that should be researched further. Brenda said they didn't have a list of specific concerns, but rather a broader concern that the incidence of DV in Alaska was not declining. The CDVSA was also interested in looking at diversion-type program options.

Justice Bolger said it sounded like a literature survey could be helpful, to see what other jurisdictions have sentencing alternatives and what places have made effective progress tackling DV. He thought he had heard about a new intervention program. Brenda said that was a program from Iowa—its preliminary evaluation showed it to be promising, but it was still very new and needed time to be rigorously tested and evaluated for recidivism effects. Judge Stephens said he would be interested in knowing more about effective programs across the board.

Paul said he would be interested in data on arrests and dispositions of DV Assault 4 cases, and whether once someone is convicted of that offense, whether there is any change in their behavior. He knew prosecutors tend to compromise those offenses a lot. He was also interested in looking at how many prior arrests DV offender had. Pam Cravez said that Araceli Valle at the Justice Center had done a lot of research on this, and has more data than she has published.

Barbara noted that there would soon be a pilot misdemeanor DV monitoring project in Anchorage, which staff member Teri Carns was working on. Justice Bolger said he understood that the theory behind that project was that just having the person monitored and touching base occasionally keeps them on track.

Public comment

Christina Alison said that it was difficult to follow the meeting without the agenda and suggested making that available to the public. She said her husband was wrongfully convicted, and his

case was classified as a DV case. She appreciated the discussion acknowledging that DV was a broad and complicated topic and agreed that the two proposals that had been forwarded to the group had been extreme. She also appreciated the discussion about the pressure to plea being a result of long sentences. She thought the group might also consider people who have been wrongfully

Next meeting

Barbara said she would send a Doodle poll to schedule the next meeting.