

Meeting Summary

Alaska Criminal Justice Commission Sentencing Workgroup

July 26, 2018, 9:30-11:30

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

Commissioners present: Quinlan Steiner, Joel Bolger, Brenda Stanfill, Greg Razo, Steve Williams

Participants: Tracy Dompeling, Paul Miovas, John Bernitz, Chris Provost, Matt Davidson, Kaci Schroeder

Staff: Susanne DiPietro, Barbara Dunham

Juvenile auto-waiver

Quinlan Steiner summarized the group's previous discussions on changing the juvenile auto-waiver statute. (This statute requires juveniles charged with certain crimes to be tried in adult court.) In some cases, discretionary waiver might be more appropriate; if fewer cases were waived into adult court, the Division of Juvenile Justice (DJJ) would also need to raise the age of extended jurisdiction. This was based on evolving research on brain development, which shows that a person's executive functioning and decision-making capability is not fully developed until their mid-20s. There is also research that shows that there are better recidivism outcomes associated with housing young people convicted of crimes in juvenile facilities as opposed to adult facilities.

John Bernitz of the Public Defender Agency said that he was compiling a table with all waiver cases since the auto-waiver law was enacted in 1996. His information comes from DJJ and fellow attorneys, including Chris Provost. His database is about 80% complete and it has to be combed through for consistencies and to redact confidential information. His database has about 80 individuals now; he is hoping to have a complete database soon. He also wanted a way to talk about individual impacts. The problem with the auto-waiver law in his view was that it took discretion away from judges in cases where leniency was most warranted. He added that there has been a lot of new research since 1996, not only on juvenile brain development but also on debunking the concept of the "superpredator." He and Chris were working on a law review article on this—this is something many other jurisdictions are working on.

Susanne DiPietro noted that the Commission has a research analyst who might be able to help with the database project, and John said he would welcome the help.

Tracy Dompeling, director of DJJ, said that she took the spreadsheet compiled by Justice Bolger for a previous meeting and dug a little deeper in their records, and identified about 90 individuals subject to auto-waiver which is close to John's number. Chris asked whether she had a sense of how many were convicted of A felonies as opposed to unclassified. Tracy said she didn't have that level of detail yet. Justice Bolger said he was also interested in knowing the number convicted of A felonies as those were the people who would be getting out of prison in 5 to 10 years.

John proposed looking at the auto-waiver population as two categories, those subject to auto-waiver under AS 47.12.030(a)(1)-(3) and those under AS 47.12.030(a)(4). [This was in a handout that John brought to the meeting which was circulated via email to the workgroup.] In the former group, they should be given a chance to rehabilitate so they don't commit a similar crime again; they should be under DJJ custody until age 24-26 to permit treatment until emotional maturity. In the latter group, the mental state required for those offenses was essentially the mental state of any teenager, and he didn't think it was fair to punish children as adults for something they are physically unable to control. Justice Bolger said the same logic could be applied to manslaughter cases.

John noted that the purpose of the juvenile system was different from the adult system—the focus is on rehabilitation of the juvenile so they don't commit crimes as an adult. Time is also spent differently in the juvenile system- a juvenile might stay in the system longer than they would in the adult system if there was a therapeutic need.

Tracy said she was concerned about mixing 25-year-olds with teenagers in DJJ custody. Chris noted that the Detention 1 unit at McLaughlin Youth Center had been repurposed and he wondered if that could be used for housing. Tracy said that DJJ would have to comply with the OJJ and PREA requirements, and she was not convinced that McLaughlin was the best facility. She thought staffing alone for this additional population might cost around \$1.2 million. Chris thought that money could be shifted from DOC. DJJ is better equipped and trained to deal with this population and DOC didn't want to house them in the first place. He has talked to superintendents throughout the state saying they are not equipped to handle youth in custody and he has heard stories of juveniles spending years in solitary for this reason.

Tracy suggested looping in DOC for this conversation, and Susanne said that staff would make sure someone from DOC was at the next meeting.

Tracy said she had a list of options for changes to the laws in the handout she had brought. [This was also circulated via email to the workgroup.] She thought the first few options were doable:

- 1) Hold auto-waiver and discretionary waiver youth in DJJ custody until convicted on an adult charge.
- 2) Hold auto-waiver and discretionary waiver convicted youth in DJJ custody until age 18 (Tracy was willing to adjust the age)
- 3) Reform/expand dual sentencing.

Tracy was interested to hear the defense attorneys' thoughts on #3, as she thought that option might address some of the Department of Law's concerns about accountability.

Paul wondered how many teens were being held in DOC facilities. Chris said he had three such clients.

Chris said that legislative fixes will be hard to obtain. He has worked on reform efforts before but victims' rights groups spoke against those efforts and the bills died in committee. He did think, however, that any change to dual sentencing would definitely need a legislative fix as the statutory language was too convoluted. He also said that raising the age of DJJ jurisdiction to 25 or 26 might be a nonstarter, as many experts say that while the brain is not fully developed until that age, it's about 90% developed by age 20.

Quinlan said that the proposal would not be to raise the age of DJJ jurisdiction in the first instance, just the age of extended jurisdiction. The cases would still start when the juvenile was under 18 but extended jurisdiction would allow them to remain in DJJ custody for longer. Chris said he still thought that may be an issue. He was interested in sorting those charged with unclassified felonies from those charged with Class A or B felonies, because the latter will be released and likely recidivate more if detained in the adult system, which undermines the public safety purpose of the auto-waiver statute.

Brenda Stanfill agreed that any proposal would be a tough sell before the legislature. She didn't know of many who would be in the auto-waiver population in Fairbanks but there are some she could think of that would see going to adult prison as a badge of honor. She was very interested in exploring the idea of alternative facilities for this population but didn't think it would be best for everyone.

Paul said that prosecutors were typically reluctant to use dual sentencing because of the age of jurisdiction ending at 20. Law would probably support raising the age of extended jurisdiction as that would allow for additional time to know how an individual will do on supervision. The purpose would not be to keep anyone in a facility longer but to understand the chances of success on supervision. He also agreed that the appropriate sentence should account for individual circumstances. He noted, however, that there were cases where a juvenile under 16 might warrant a discretionary waiver but Law often loses those cases—he thought those decisions should also account for individual circumstances.

Chris said he would also like to propose a reverse-waiver process. There is no mechanism for that in Alaska now, and it would also allow for a case-specific analysis. He noted that if fewer Class A and B felonies were subject to auto-waiver, there would be fewer cases where a reverse waiver would be requested.

Justice Bolger wondered why the Class B felonies were auto-waiver cases. He counted only 6 cases in 5 years, and if the sentences were only 3-5 years, he wondered what the purpose was in shifting them to the adult system. Paul said he would like to look into the legislative history of those provisions—he was not sure of the rationale.

Paul said that though rehabilitation and individual circumstances should be accounted for in these cases, consideration should also be given to the severity of the offense. Chris noted that the US Supreme Court decision in *Kent* held that rehabilitation was a factor to be emphasized, but that the seriousness of the crime should also be considered. John noted that the seriousness of the crime was itself a factor in determining someone's potential for rehabilitation.

Quinlan said he would try to summarize the gist of the conversation thus far: he thought that non-violent A and B felonies were fairly easy to deal with—he would like to see a summary of these crimes covered under the auto-waiver statute and thought that they could be removed from the statute. For higher-level crimes, it sounded to him like that would involve a longer discussion on removing them from the auto-waiver statute or creating a reverse-waiver statute. Either option would warrant a discussion on offense severity. He thought it appropriate to flag potential costs, but he didn't think cost should influence the discussion. He also thought a separate but related topic was to address the housing and isolation practices for young individuals in custody.

Chris thought it was important to address housing, as that was a factor in many cases. He had a client who became incompetent to proceed because he was placed in solitary confinement. He thought it

was important to ensure that a juvenile doesn't experience arrested development because of how they are held in custody.

Tracy observed that this was also an opportunity to work with DOC to serve this population—it is all one demographic. She also noted that the JPOs are not as well equipped to deal with this older population as the POs.

Justice Bolger wondered if anyone opposed removing the lower-level felonies from the auto-waiver statute as a general idea, and whether anyone opposed DJJ proposals 1 and 2 [listed above]. Most were unopposed. Brenda wondered which crimes those would cover. Justice Bolger said second-degree robbery and second-degree assault would be included. Tracy added that there were also aggravating circumstances attached to those. She noted that a federal monitor was coming to Alaska in August and she would check on whether these proposals are allowed under federal regulations.

Brenda asked whether, if these lower-level felonies were subject to a discretionary waiver, the Department of Law would still have a hard time winning the discretionary waiver hearings. Paul said that Law really doesn't prosecute many of those crimes so it was hard to say, but it was a possibility. He added that Law would probably approve of DJJ proposals 1 and 2, but he would need to check in with the management team about the lower-level felonies.

Justice Bolger next proposed removing the more serious felonies (Class A felonies including manslaughter, first-degree assault, first-degree robbery, first-degree misconduct involving weapons, arson, and second-degree sexual abuse of a minor) from the auto-waiver statute and making them eligible for extended DJJ jurisdiction to age 25.

Tracy said she was hesitant about the above proposal because she was not sure DJJ custody of those juveniles would be feasible given the logistics of housing or federal regulations. Justice Bolger said that the proposal would be subject to satisfactorily addressing these concerns. The biggest selling point for him on this proposal was that these juveniles would be serving the same time as they would if they were waived into the adult system but they would have the therapeutic advantages of being in DJJ custody. Tracy cautioned that not all juveniles want to be in the juvenile system; some would rather be in adult prison and those juveniles might be a cause for concern if DJJ is housing them through age 24.

There was generally no objection to Justice Bolger's second proposal. Greg Razo thought it was a good fix until the adult system can become more therapeutic. Brenda did not yet agree with the proposal and wanted to look at specific cases and how they would play out under this proposal.

Justice Bolger's third proposal was to allow a reverse waiver process for any juveniles charged with an unclassified felony who are auto-waived. Paul said the devil would be in the details for this proposal for Law, but he thought it was an idea worth talking about. He said he would check with the management team at the department about this and the other proposals.

Barbara agreed to write up Justice Bolger's proposals with the various crimes listed for each category. The group would discuss the draft at the next meeting.

DV Sentencing/Programming

There was not enough time to discuss this topic and it was tabled until the next meeting.

Public comment

Chanta Bullock urged the workgroup to remember that no matter what crime a person has committed, everyone has the potential to change. People should be treated as individuals. Just because someone commits a crime at age 16 does not mean they will do so at age 20 or age 40.

Next meeting

The next meeting was set for Friday, September 14 at 9:30