

Meeting Summary

Alaska Criminal Justice Commission Sentencing Workgroup

September 12, 2018, 10:00-12:00

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

Commissioners present: Greg Razo, Brenda Stanfill, Quinlan Steiner

Participants: Tracy Dompeling, Juliana Melin, Kelly Manning, Karen Cann, Paul Miovas, John Bernitz, Tammy Axelsson, Matt Davidson, Jillian Gellings

Staff: Barbara Dunham

Juvenile auto-waiver

Commission project attorney Barbara Dunham explained that at the last meeting, the workgroup had discussed several proposals to amend the auto-waiver statute. Justice Bolger had proposed three tiers of amendments to the auto-waiver process based on the severity of the underlying offense: (1) for the least serious crimes, remove them from the auto-waiver statute entirely; (2) for the next tier of crimes, remove them from the auto-waiver statute and allow extension of DJJ's jurisdiction, and (3) for the highest tier of crimes, allow for a reverse waiver process. Barbara had come up with a draft recommendation based on those proposals for further discussion.

Tracy Dompeling, director of DJJ, said that they had been discussing the extended jurisdiction idea and concluded that DJJ could not support extended jurisdiction at this time. She had had an opportunity to speak with DOC Commissioner Dean Williams and Deputy Commissioner Wyckoff and Deputy Director Axelsson, to start a conversation about how to jointly better serve this population. DJJ is amenable to holding pre- and post-conviction youth who are waived into the adult system through the current age of jurisdiction/extended jurisdiction. They had spoken with representatives in the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) and this was acceptable per regulations. DJJ was also in agreement with the proposal to take the less-serious Class B felonies out of the auto-waiver statute.

John Bernitz, with the Public Defender Agency, asked to clarify: is DJJ okay with keeping youth who are auto-waived in DJJ custody? Tracy said yes, thought there would need to be some statutory changes to allow that. She added that DJJ was just not ready to extend jurisdiction beyond what it is currently, and thought a better way to approach this idea was to look at how best to serve this population no matter where they are housed. Their issue is that they are not equipped to house 24-year-olds with 14-year-olds. Another issue is that juvenile probation officers and adult probation officers are very different; probation officers for adults carry firearms because the supervision population can be more dangerous.

Matt Davidson with DJJ added that OJJDP had confirmed that DJJ could hold youth who are convicted in the adult system until they are age 18 ½, but no longer. Tracy explained that for youth whose

cases are disposed in the juvenile system, DJJ can have jurisdiction over them (and hold them in custody) until age 19, or age 20 with the juvenile's consent. If they are sentenced in adult court, DJJ can only hold them in custody until age 18 ½. If DJJ were to hold youth who were sentenced as adults, they would have to be released at age 18 ½ or transferred to DOC custody.

Commissioner Brenda Stanfill asked why they were treated differently. Tracy said that it in the regulations the juveniles disposed as juveniles were not considered "adults." Even then, it was rare to have someone in DJJ custody through age 20; at that point it is a struggle for DJJ if they are on supervision in the community.

Barbara explained that she had asked one of the Judicial Council analysts to look at how many youth were housed in DOC custody. She provided the workgroup with a chart showing the number of 16- and 17-year-olds in DOC custody on snapshot days. There were no more than 11 on any of the snapshot days. (She also provided a chart showing the number of 16- to 26-year-olds in DOC custody who had been admitted to custody at age 16 or 17, also on snapshot days. There were no more than 18 on any of the snapshot days.)

Tracy said that it would be possible for DJJ to absorb the 16- and 17-year-olds at those numbers. In her talks with DOC representatives, they said they would get her more information on average numbers of these youth in custody and their location.

Deputy DOC Commissioner Karen Cann noted that the country seems to be moving in the away from treating juveniles as adults where possible. She wondered if DJJ might have the capacity to hold juveniles for longer in the future. Tracy said that for now they were looking more at collaboration with DOC and the possibility of blended sentences, though she noted this was more easily done in states where juvenile justice and adult criminal justice systems were located in the same agency. She thought that for now DOC would likely be fine with DJJ taking over responsibility for the 16- and 17-year olds. Deputy DOC Director Tammy Axelsson agreed, and noted that housing those youth in adult facilities rendered them non-compliant with PREA, and that they would be better served in DJJ facilities.

John noted that DJJ facilities such as McLaughlin Youth Center (MYC) house the older juveniles separately from the younger and pre-disposition juveniles. He understood the challenge for DJJ in housing older juveniles past the current age of jurisdiction—there is a big difference between a 13-year-old and a 25-year-old. He also saw the benefit of having those caught in the system as youth treated differently. If youth are allowed to stay in the juvenile system, it will be more beneficial to society, as the youth will have a better shot at redemption, and could become productive citizens.

John noted that developing research on brain science suggests that kids who get into trouble at a young age are not fully culpable for their actions because they cannot fully comprehend the consequences of their actions. He had a real concern for youth who leave the system at age 20, because there was nothing to keep them in line at that point. California, for example, has a system that allows those kids to go to probation after being released from juvenile custody. Regarding the reverse waiver, John thought it should not be based on any one crime but rather on the culpability aspect. He thought that anyone with a shot at a reverse waiver should remain in DJJ custody.

John also noted that electronic monitoring might be an option, though it could be applied overbroadly, it might be an alternative to custody.

Tammy thought that everyone could agree that the population of youth who are legally adults but still very young was a vulnerable population. There is an opportunity here for everyone to collaborate, but, she thought more needed to be talked through.

Commissioner Quinlan Steiner thought that the practical concerns shouldn't be relevant to the discussion; the workgroup should make the best policy choice regardless of what logistically would need to happen to achieve it. The question of housing should be a separate, later discussion. He would like to have more time to consider the drafted recommendation. He proposed having a discussion about what the most appropriate rehabilitative model might be.

Paul Miovas from the department of Law also thought there were other considerations to take into account. Law had some concerns, and while they acknowledge the science on brain development, rehabilitation is not the only criminal justice policy goal. The *Cheney* criteria list a number of other things the workgroup shouldn't lose sight of.

Brenda said she appreciated both views and wanted to know more about the neuroscience research behind these ideas. John suggested a book by Laurence Steinberg called *The Age of Opportunity*, written for a general audience. It describes adolescence as an extended period between ages 10 and 25, though each individual is different.

Tracy didn't think anyone disagreed with the neuroscience research or the idea that juveniles need rehabilitative treatment, or the public safety benefit of that treatment. She was supportive of working with this population differently. She noted that the draft as written specified that DJJ would assume custody of this population—she thought that it could be redrafted to make it more of a general recommendation without naming a particular agency responsible for custody.

Karen agreed that there are partnership models out there and she thought they could be workable for Alaska. She believed that Florida and Pennsylvania were also looking at these issues, and offered to look into what they were doing.

Commissioner Greg Razo agreed with Quinlan that logistics shouldn't drive the conversation, as logistics will always be a problem. He wanted to read up more to understand the science better. The Commissioners would need to be solid on the science to explain any proposal to legislators.

Tracy said she thought it was helpful to think about two co-defendants, one age 16 and one age 18, involved in a robbery. One would get rehabilitative treatment with DJJ and the other would be sentenced and held in custody at DOC. But they would not functionally be all that different. She thought this whole population needed to be served better.

Quinlan said that could be part of the recommendation, to include prison reform that better serves the needs of the 18- to 25-year-old population. Karen agreed.

Quinlan suggested wordsmithing the current draft to be less specific about jurisdiction. He thought the group should set another meeting to vote up or down on this draft with minor changes.

Brenda said she reached out to other victims' services providers and found that no one really understands how the different waivers work, but she didn't really get a sense of outcry on this from them. She would like to hear more about Law's thoughts on this. Paul said that they hadn't had a chance to discuss this; he would try to pin down his colleagues and get more direction by the next meeting.

Matt suggested reorganizing the proposal with numbers so it would be easy to refer to. Tracy suggested reordering it to reflect the priorities Justice Bolger had suggested at the last meeting.

DV Sentencing/Programming

Barbara reminded the group that two domestic violence (DV) sentencing proposals had been forwarded to the group earlier this year. The workgroup had rejected those proposals but expressed an interest in developing other proposals to address DV offenses. She explained that before the previous meeting of this workgroup she had circulated a memo summarizing research on DV. The group had not had time to discuss this issue at the last meeting.

Barbara walked the group through the memo, which addressed recidivism rates, sentencing, monitoring, intervention programming, coordinated community responses, risk assessments, DV protective orders, mandatory arrests, shelters, and fatality reviews. Two practices in Alaska were associated with negative effects in the research: the Duluth model of batterer intervention programming (which is required for state funding in Alaska) was associated with increased recidivism, and mandatory arrest laws, which are associated with increased fatality.

Quinlan thought that now was the right time to come up with a recommendation on this issue. He thought there was a pressing need to inform the legislature and the court system that the Duluth model was associated with increased recidivism. People in Alaska are ordered to do these programs every day that can lead to increased violence. He also thought changing the mandatory arrest law was a good idea, and that warrantless arrest might be a better option. It is not always clear to law enforcement what has happened when they respond to a domestic violence call and although they can call a prosecutor to ask not to arrest anyone, practically speaking that is a barrier.

Brenda noted that the Judicial Council (AJC) and the Council on Domestic Violence and Sexual Assault (CDVSA) were studying this. She didn't agree that the WSIPP study on batterer intervention programming was the last word on the issue, and moreover, most if not all providers of those programs in Alaska augment their programming with cognitive-behavioral therapy. She was hesitant to agree that there was cause to think that all Alaska intervention programs are increasing recidivism and that they should be shut down immediately. It would deny people the opportunity to change. There is research to support the effectiveness of the Duluth program, and the data on the program's effectiveness (positive or negative) is not specific to Alaska.

Quinlan felt there was a real need to make a statement about these programs. People are going through the program, recidivating, and being blamed for recidivating when the program might have caused them to recidivate. Prosecutors argue for enhanced sentences on the basis that someone has failed one of these programs.

Brenda thought that the AJC and the CDVSA should finish their research. She didn't feel comfortable supporting a recommendation. Quinlan noted that the study won't get to the effectiveness of the programs—the Commission should at least say that there is evidence the Duluth model is counterproductive and the state should fund an evaluation of the programs. Brenda agreed that an evaluation of the state's batterer intervention programs would be helpful. Karen said she had a hard time recommending that a program should just be thrown out but agreed that there was a need for more data on what's happening in Alaska.

Quinlan said that an interim step could be recommending that failing an intervention program should not be the subject of a PTRP. He understood Brenda's objection but thought it was important to make a statement that this needed to be addressed immediately. Brenda agreed that failure should not necessarily be held against someone in a program because lasting change takes time.

Paul thought there would be little support at Law for abandoning the program altogether. He also noted that public defense attorneys will often use pre-sentence completion of one of the intervention programs to argue for a more lenient sentence. He wanted to review the research.

Brenda said she could agree on a need for an evaluation of Alaska's intervention programs but didn't want to do anything that would undermine the existing programs. She thought it was premature to make a blanket statement that these programs are doing harm. She thought they were doing good work in Alaska. There are more eyes on people ordered to these programs which could drive up the recidivism numbers as it is more likely someone will notice this population is reoffending.

Quinlan thought the need for an evaluation was urgent and the urgency should be made clear in a recommendation, separate from the general need for evaluation of all programs.

Karen said she also thought the programs have evolved and there was a need to find out what about them is working. Quinlan said he hoped the modifications to the programs were positive, but there was no way of knowing this. He thought the only way to highlight that this was an immediate need was to point out the concerns raised by the research.

Brenda thought it was necessary to bring CDVSA director Diane Casto into this conversation. Quinlan thought was also necessary to bring in UAA Justice Center director Brad Myrstol because the conversation involved evaluation. Barbara said she would try to get both Diane and Brad for the next meeting. Brenda and Quinlan agreed they were both working for the same ends on this issue.

Quinlan said he also wanted to talk about the mandatory arrest issue. Paul noted that the law as is gives law enforcement officers cover. They don't want to make the wrong call so calling a prosecutor can give them that cover.

Quinlan suggested there might be a need for a study on this as well. One question for Brad might be what is it about mandatory arrest that increases fatality? Is this something that can be studied in Alaska? Barbara noted that one of the studies on mandatory arrest noted increased fatality for mandatory arrests involving intimate partner violence but not for mandatory arrests involving other family violence.

Brenda noted that the history of that law was that law enforcement officers used to be too reluctant to arrest in DV cases. She thought perhaps the pendulum has swung in the other direction. Sometimes the victim is the one who gets arrested in the confusion of the moment, and that arrest could cause them to lose their job. She thought it was important to make sure there is a mechanism for separating the victim and perpetrator of DV when it is needed for the victim's safety. She agreed there was a need for a study. She thought that it was worth looking at options. She recalled there were decreased fatalities when this law first came out.

Brenda also noted that people had been talking about a diversion program for DV cases. The Alaska Network on Domestic Violence and Sexual Assault and CDVSA met, and they wanted to resolve the intervention program question first, then would like to look at diversion.

Public comment

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

Next meeting

The next meeting was set for November 5th at 9:30.