

Alaska Criminal Justice Commission
Sex Offenses Workgroup

Meeting Summary

Wednesday, January 8, 2019, 9:30 a.m.

Denali Commission Conference Room, 510 L Street, 4th floor, Anchorage
And teleconference

Commissioners Present: Brenda Stanfill, Trevor Stephens, Amanda Price, Greg Razo

Participants: Ed Webster, Brad Myrstol, John Skidmore, Katie TePas, Lizzie Kubitz, Triada Stampas, Diane Casto, Carol Nordin, Chanta Bullock, Diane Casto

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

Updated Report to Legislature- Introduction

Barbara Dunham, project attorney for the Commission, explained that the Department of Corrections (DOC) had submitted a comment suggesting that the introduction state that the addition of polygraph testing recidivism rates were lowered by the. She was not convinced the report should make this claim as there was no evidence that the polygraph program caused recidivism rates to be lower, and there was no baseline data on recidivism rates in Alaska from before implementation of the polygraph program.

Ed Webster from DOC said he thought it was not just the polygraph but all of the elements of the containment model that keep recidivism rates low. He noted that other states had had conducted studies showing that their containment programs reduced recidivism. Susanne DiPietro, executive director of the Judicial Council, wondered whether in-custody treatment could also contribute to low recidivism rates. Brad Myrstol, director of the Justice Center at UAA, said that the Results First project used national data showing that those programs reduced recidivism, and, assuming the same effect applies in Alaska, were cost-effective programs.

Brad also noted that the sample in UAA's recidivism study was from people released from prison following conviction for a sex offense in 2008-2011. Ed noted that the containment model and in-custody sex offender treatment programs were both implemented in 2006. It was difficult to know how many of the cohort released between 2008-2011 would have completed sex offender treatment or engaged in the containment model, but safe to say that many were.

Brad noted that the study followed the cohort post-release for 8 years. Sex offenders usually have probation for at least 5 years, and up to 15 years, so it would be reasonable to assume that many in the cohort were under supervision for most of the follow-up period. UAA didn't have any information on the conditions of probation for those in the cohort. John Skidmore from the Department of Law said that was one of the concerns he had with recidivism data on sex offenders, because recidivism follow-up periods seem to overlap with supervision periods. He would be interested to know what the recidivism rates were once people are off supervision. Katie TePas from DPS said that assuming most in the cohort would have been subjected to the post-2006 containment model, the recidivism rates did seem to indicate that the containment model was working.

The group agreed that the substance of the above discussion should be incorporated into the body of the report but the introduction should be left as is.

Updated Report to Legislature- Data, From Charge to Conviction

Barbara explained that she had updated this section pursuant to the feedback from the previous meeting. She had added a table that compared felony sex offenses to felony assault cases disposed in 2017. The table looked at how many cases in each category went to trial, and how many resulted in a conviction, acquittal, or all charges being dismissed. This information was also reflected in pie charts.

Updated Report to Legislature– Evidence in Sexual Offense Cases

Barbara explained that both Law and DPS had extensive edits to a previous draft of this section; they were not substantively different and she was hoping the two departments could reconcile their edits. John said he thought DPS' edits should be adopted into the report.

Katie explained the gist of her edits to this section. First, she explained that the report should use terminology such as “forensic sexual assault kit” to ensure that the report accurately refers to the type of evidence collected. She noted that law enforcement pays for exams for all victims ages 16 and over, though other partners will sometimes finance the exams (and CACs finance the exams for children). She also noted that forensic analysis has improved and data collected 20 years ago might yield new information from the new analysis.

Katie also explained that there are different types of “backlogs” that should be differentiated in the report. First, there are kits that have been submitted and are in the queue to be tested. Second there are previously unsubmitted and untested kits, some from AST and some from municipal law enforcement. The state received a federal SAKI grant to test the kits in this category held by AST. The legislature has allocated funding to test the kits in this category held by the municipalities. The state does not currently have the capacity to test all the kits in the second category; those must be sent to labs outside the state. The best estimate is that it will take 3 to 4 years to address all the unsubmitted kits.

Updated Report to Legislature– SAM Cases

Barbara and Susanne explained that they continued to receive feedback about this section. Barbara had changed the heading of this section from “same peer group” to “SAM Cases Involving Defendants Under 21.” Susanne said that she had the idea to lower the age of the defendants in this analysis to age 21, as that was less objectionable and closer to what the Legislature was interested in knowing. Katie also suggested reworking this section to include child/teen emotional and cognitive development. She encouraged staff to reach out to the Alaska Children’s Alliance to ask for a review and comment.

John said that attorneys at Law had also struggled with this section, including with the wording. They labeled cases as “statutory” or “nonconsensual” by looking at whether the victim and defendant were just outside the 4-year gap or whether there were drugs/alcohol or manipulation involved. Despite their difficulty in labeling the cases, John had concluded that the department was appropriately screening out cases that needed to be screened out and screening in cases that needed to be screened in.

Diane Casto from the CDVSA agreed that this was a very complicated issue and said that CDVSA has had these same conversations. She wanted to make sure that policymakers gave serious consideration to protecting children from predators.

John noted that the report has a chart explaining age differentials but not the age of victims. He believed that cases involving 13 and 14-year-old victims were not the ones getting screened out. Judge Stephens said that lowering the age of defendants discussed in this section to age 21 made sense. He also didn't think the legislature was concerned that cases involving 13-year-olds were being over-prosecuted. John said on the contrary that he remembered discussions in some quarters about broadening the 4-year age gap to include 13-year-olds and 21-year-olds, though he didn't think the idea was necessarily popular enough to become the subject of a bill.

Susanne explained that the report now had language stating that the cases currently labeled "statutory" were those in which a victim subjectively perceived him or herself to be consenting; this language was taken from case law. Barbara also noted that she had included a footnote with the NIBRS definition of "statutory rape" and that Alaska would have to move to NIBRS reporting in the future. John said he appreciated the case law definition.

Updated Report to Legislature – Recidivism

Barbara explained that she had revised the language throughout this section pursuant to suggestions from Law and DPS. She had tried to be as specific as possible. She had also added some of the charts from Brad's presentation to the workgroup last year. John said he thought the inclusion of the charts was a good idea because charts were less prone to subjective interpretation.

John also thought this section should include the information discussed above that most of the people in the recidivism study were on probation, suggesting the need for a study of those who are off probation. He also said he had some suggestions on language for this section. Katie wondered whether the information on the conditions of probation for the recidivism study cohort could be obtained. Ed said it would probably have to be a file review, but anyone on probation for a sex offense after 2006 would be subject to the containment model.

Susanne also suggested adding language about the known characteristics of those in the cohort. Brad said he appreciated the inclusion of the information on different trajectories of reoffending as those trends are more informative than the base rate and more informative for policymakers.

Katie wondered whether the report was going to make policy recommendations. Commissioner Brenda Stanfill said she was hesitant to go that route and preferred that the report be more informative. Susanne said that the "recommendation" language should be taken off the front page.

Updated Report to Legislature- Revisiting the Research

Barbara said she added a new paragraph to this section to make clear that it was not advocating for a repeal of the 2006 sentencing law. Brenda said she was struggling with this section of the report as it still read to her like it was advocating for a repeal. Barbara said that at previous meetings other Commissioners had stated they thought it was important to note that previous legislation had been based on research that was outdated or misunderstood. Susanne said she thought it was important to include the updated information.

Brenda said she was uncomfortable with the section as written; by stating that the research upon which the law was based was no longer valid, it was like saying the law itself was no longer valid—despite any language to the contrary. Barbara said that she thought that the legislature's reaction to this report might be to make changes to the law and that it was important to give the legislature accurate information.

John said that Law's reading of this section was also that it advocated for changing the law, though he thought it was appropriate that the study that had been misunderstood was given greater context. Susanne said she and Barbara would work on this section. Brenda agreed it should be revised and thought the report should be very careful about wording here. John said it was also important to note that there were many reasons why the legislature passed SB 218.

Updated Report to Legislature - Gaps

Barbara noted that Paul Miovas had pointed out an inaccuracy in this section at the last meeting which she had neglected to fix.

Updated Report to Legislature – Out of Custody Programming and the Containment Model

Barbara explained that DOC had offered a comment to these sections about how earned compliance credits made it difficult for probationers to complete treatment before being discharged from probation with these credits. She said that SB 54 had changed the law to make it so that people convicted of sex offenses could not be discharged from probation early with these credits unless they had completed treatment, which should have addressed DOC's concern. Ed said he wasn't familiar with why that was suggested and said he would check.

Next Steps

The group agreed getting a final draft to the full Commission by January 24 was too ambitious. Barbara offered to get a new draft out to the workgroup by January 23 and the workgroup set the next meeting for February 7.

Public Comment

Chanta Bullock said that the 2006 sentencing laws were based on emotion; senators at the time stated that all sex offenders will reoffend. The laws need a second look because first time offenses can essentially carry a life sentence especially if you include mandatory probation and a lifetime registration. There are almost a million people on the registry, and she thought that the Commission should take a careful look at the registry itself. She believed the current registry was unconstitutional. Someone who spent a lot of time on the registry without doing anything wrong would still not be able to find housing or a job. The registry also affects the family members of those on the registry. Sex offenders should not all be lumped into the same category.

Tammy Lawson said she wasn't sure what the laws were in Alaska but in some places all sex offenders are considered violent offenders. She thought there should be a special panel to review everyone on the registry. If a person spends 15 to 20 years on the registry and has not committed a new crime, she thought that person should be granted relief. The registry has horrific consequences for the registrant and the family of the registrant. She herself was a registered sex offender from Virginia because her 14-year-old son, who was not living with her at the time, had sex with a 26-year-old woman. She tried to resolve the problem without reporting to the police but eventually she did report it. She was convicted of failing to report a sex offense committed against a family member, and was now required to register as a violent sex offender in Virginia.

Carol Nordin said that she had great empathy for the victims of sex crimes. But she believed there was a tendency to pile on the bandwagon against sex offenders in the name of deterring future offenders. She believed the registry itself created victims. She thought there should be consequences for crime but she didn't agree with the registry. She wanted her comments to be considered in the report; she didn't see

anyone in her position reflected in it. She also noted that she had sent in a written comment and she read aloud from that comment. In the written comment she explained that she had suffered from PTSD and other emotional, physical, and financial consequences as a result of her husband being placed on the sex offender registry. She said the research showed that the registry does not prevent sexual abuse as the most common offender was not a stranger but an acquaintance or family member. By masking the real threat it makes people more vulnerable.

Barbara explained that she had circulated the written comments from Carol, Chanta, and Bob Churchill (volunteer organizer of the Alaska Nations Reentry Group) to the workgroup.