

Alaska Criminal Justice Commission

Sex Offenses Workgroup

Meeting Summary

Wednesday May 2, 2018, 9:30 a.m.

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

Commissioners present: Karen Cann for Dean Williams, Brenda Stanfill, Joel Bolger, Walt Monegan

Participants: Chanta Bullock, Paul Miovas, Laura Hill, Karen Gonne-Harrell, Laura Brooks, Alison Hanzawa, Kaci Schroeder

Staff: Staci Corey, Susanne DiPietro, Barbara Dunham

SAM data recap

Staff research analyst Staci Corey walked the group through a memo she had drafted on cases of Sexual Abuse of a Minor (SAM) involving victims and defendants who were close in age. She had analyzed all SAM cases referred to the Department of Law in 2016 in which the defendant was age 25 or younger. There was a total of 62 cases, 44 of which had victims age 13 or older. Those 44 cases involved 47 encounters.

Barbara Dunham explained that this research was intended to address the legislature's interest in these cases. In particular, the legislature was most interested in learning whether there were a lot of criminal cases involving a consensual relationship between a defendant and victim in the same peer/age group. The analysis therefore focused on SAM cases with younger defendants. The analysis excluded sexual assault cases, even though there a sexual assault case can involve defendants and victims in the same peer/age group. But lack of consent is a necessary element of sexual assault, but is not an element of SAM. Therefore Staci only looked at SAM cases, as those were the only cases that could possibly involve the consent of the victim.

Staci had categorized the 47 encounters by consent type, as described in the case file: 20 were consensual, 15 were nonconsensual, and 12 were unknown. The most frequent age difference between victims and defendants in the consensual encounters was 5 years and the most frequent age difference in the nonconsensual encounters was 7 years.

Staci also looked at case outcomes; i.e. whether the case was prosecuted, refused by the Department of Law, or dismissed by the court. Consensual cases were more likely to be refused or dismissed. Whether the victim consented was determined by a file review performed by the Department of Law. (Note these cases don't include cases that may have been referred to DJJ.)

Staci noted that only two cases in the "consensual" column resulted in a guilty conviction. One involved a 19-year-old defendant and 15-year-old victim; there was alcohol involved in the encounter and the victim later regretted it. The other case involved a 19-year-old defendant and a 14-year-old victim, and no other details were available. It was not clear what the final charge of conviction was but the cases started out as SAM 2.

Updated report to legislature

Data and recidivism

Barbara walked the group through the latest draft of the report to the legislature. She explained that she had addressed many of the comments made in the last meeting about the data section. She had added a subsection on cases involving children to the data section, including the information from Staci's analysis. That section also included information on SAM cases generally (not just the same peer group cases). She also said that she had asked DJJ for additional information on juvenile offenders.

Commissioner Walt Monegan wondered whether the data showed how many offenders were repeat offenders. Noting that the prevalence of sexual assault and abuse is very high, he wondered if the rate was high because people were reoffending or a new batch of attackers was doing the offending. Susanne DiPietro said that was reflected to some extent in the recidivism data, which showed that the recidivism rate was quite low; she suspected that it was a new batch.

Paul Miovas asked how long the follow-up period was for the recidivism study. Susanne and Barbara explained that the study followed a cohort of offenders who were released between 2008-2011, and followed them for 5 years. Paul wondered if the recidivism rates were low for this cohort were low because they were still being supervised. Susanne said that was the working theory.

Paul said he would be interested in knowing the number of people convicted of a sex felony for a second time. He knew the third-time cases were rare, but thought the second-time cases might be more common, and thought it might be higher than what the recidivism rate shows. He noted there were three trials in the last week where there was "404b" evidence and the defendants were not convicted.

Susanne said the recidivism study looked at both re-arrest and reconviction rates, but there were things the study couldn't get at-like incidents in which the person is not caught. Commissioner Monegan noted that some people come out of prison smarter than when they went in, so they're better at not getting caught. He thought the polygraph was a good deterrent in that way. He noted we will be able to understand these offenses better when the state moves to the NIBRS reporting system. He also suggested that the length of stay data depicted in a chart in the report could be broken down into first and second-time offenders.

Barbara explained that the next section of the report detailed the changes to the sentencing laws in 2006 through the enactment of SB 218. Once subsection was entitled "Impact of SB 218" and Justice Bolger suggested **retitling** this as it suggests a cause-and-effect which might not actually exist. Barbara explained that SB 218 was accompanied by a letter of intent that cited studies whose conclusions may be out of date or superseded by more recent research. She said she thought about revisiting each study but was concerned about readability.

Polygraphs

Karen Cann said that DOC was also looking at updating research in this area. For example, more recent research on polygraph testing indicates it works better in some contexts than in others. Susanne said it would be great to include data on why the polygraph is effective. Laura Brooks said that polygraphs are good for when sex offenders "start to go sideways"—i.e. reveal problematic thoughts or behaviors—and the PO can adjust supervision accordingly.

Susanne asked whether adding the polygraph component was better than just having the PO talk to the sex offender. Laura Brooks said it was. She said she agreed with Karen Cann that the model could be improved, but the conversations that POs have with offenders are very different when they are facing a

polygraph than when they are not. Laura Brooks thought it was worth looking at who should get polygraphs and how often, and thought there would be away to focus on the high-risk sex offenders more intensively. Karen Cann said she also thought that there was a difference between sex offenders who have been out for 1-3 years and those who have been out for 7 or 10 years. Susanne suggested this sounded a lot like the **Risk-Needs-Responsivity** principle, about which the Commission has done a lot of research.

Reentry and teletreatment

Barbara explained that the next section was about sex offender reentry and the containment model. She had been talking to Commissioner Dean Williams about this section of the report and had begun to redraft this section based on that conversation, but it was not yet finished. Susanne suggested adding the results of the **Results First** analysis to this section.

Commissioner Monegan said that he would like to know more about returning sex offenders to their communities and the logistics of arranging teletreatment. Laura Brooks said that teletreatment is almost ready to go, and DOC will do a **trial run** in the next week or so. They are looking at a capacity of 12 to 15 for the trial run. The teletreatment program will be for released offenders from rural communities who would need to live in a hub community for treatment. Laura Brooks also explained that **two new in-custody** treatment programs for medium-risk offenders will start this summer: one at Anvil Mountain CC in Nome and one at Wildwood CC in Kenai.

Paul asked what program the teletreatment model would use. Law is interested in learning more about this. They view the current model as very effective and are hesitant to move away from it.

Karen Cann said she respected Law's position. What DOC keeps hearing is that people from rural communities are waiting in Anchorage to complete treatment, and while they are waiting become homeless and apt to reoffend, typically petty crime. DOC wants to reduce the number of potential victims on that front. She noted that there was one person who was able to fly in and out of Anchorage for the day on a weekly basis, but for most others they must stay in Anchorage and risk homelessness. DOC is also talking with tribal clinics to get additional supports for reentrants returning home.

Commissioner Monegan asked whether there would be an evaluation of the pilot program, perhaps conducted by UAA. Karen Cann said that the pilot program was part of the statewide recidivism reduction initiative, which has a data component. Brad Myrstol from UAA is part of that data team. Laura Brooks said that DOC will track the pilot program to make sure they are going with the right approach, and noted that telepsychiatry has been used for a while in other areas.

Paul wondered whether DOC could prioritize the in-custody programs for offenders from rural areas. Laura Brooks said they prioritize based on risk first, then whether the offender is from a rural community. The issue, however, was that the offenders themselves are resistant to in-custody programming because they don't want to be labelled as sex offenders, and because the treatment in custody is more intensive and time-consuming. Often when a judge orders a sex offender to treatment, the judgment is not specific as to whether the treatment must be completed in or out of custody.

Paul thought the option for out-of-custody treatment should be removed to ensure rural offenders will complete treatment before release. Justice Bolger said the obvious place to address that would be in the PSR; the PSR writer could flag sex offenders from rural areas. Susanne asked whether PSRs are completed in every case. Paul said they were completed for every sex offense case. Commissioner Monegan said it was also important to ensure engagement – the treatment will not be effective if they don't engage in it.

Karen Cann said it was important to keep in mind the capacity of the treatment programs. Such a step might result in warehousing offenders if release was conditioned on completing treatment in custody. There was also some benefit to community treatment as the reentrants are exposed to triggers in the community and treatment can help them process that. Most of them will be going back to the community eventually. Susanne added that risk assessments aren't performed at sentencing.

Justice Bolger said that the language in the order could be adjusted so that the offender would be ordered to in-custody treatment if recommended. Susanne wondered if there could be a provision about restricting eligibility for discretionary parole if treatment is not completed. Paul said that would have to be very carefully worded because it is hard to get a de fact parole restriction added to a sentence.

Karen Cann suggested getting data to understand the issue.

Victim/victim advocate perspectives

Laura Hill from STAR asked what the process was to allow a sex offender from a rural area to return to their community. Karen Cann said that the parole officers will check in with the community, and if new conditions of parole/probation were necessary to keep the community safe, the parole officer would ask for those conditions to be imposed. It depends on the case, but in some cases if there is no treatment available in the community and the offender is untreated, the PO will not allow the offender to return home.

Commissioner Monegan recalled a juvenile case in which a village did not want a juvenile offender to return home. He arranged a talking circle, and the members of the community were able to confront the offender and come to an agreement. He thought there were ways to address sex offender reentry properly. Susanne said that sounded like a restorative justice model. Staci noted that she had looked into the circles model before and could do more research if the group wanted.

Laura Hill and Karen Gonne-Harrell, also from STAR said that if a restorative justice model restores the victim and community and stops the offender from reoffending they were supportive. They noted that the victim could avoid participation in any talking circle if they wanted to. The difficulty is when an offender has a lifetime no contact order- it would be impossible to comply in a village that is so small that there is only one general store, etc.

Justice Bolger noted that the effectiveness of a restorative justice model would depend on the community. Some are very strong while others might be too dysfunctional.

Barbara asked Laura Hill and Karen Gonne-Harrell if there was anything they wanted to share about being victim advocates in Anchorage. Laura noted that AWAIC was the only safe shelter for victims but routinely has capacity issues. STAR has an agreement with them to take their clients but their clients are regularly turned away because the shelter is full. Transportation is an issue and their clients don't feel safe taking cabs. There are also no safe places for men; they often end up going to Brother Francis and while there may be re-victimized. Some of their clients would rather sleep out in the open than go to an unsafe shelter. Part of the issue is that the cost of living is too high.

Commissioner Monegan said that when he was on patrol with APD he remembered encountering a group of people sleeping in their cars in a well-lit parking lot. They explained that they parked and slept there in a group, where it was well-lit, for safety. Karen Gonne-Harrell noted other cities have built tiny houses for the homeless—people really just need a safe place where they can lock the door.

Karen Gonne-Harrell said the real barrier was money and the lack of affordable housing. Many of STAR's clients have been given an eviction notice. Often they are on the waitlist for public housing—right

now there is a three-month wait for someone who has a DV/SA voucher. Even if they get public housing, many victims are part of a marginal population that struggles to maintain employment, meaning the affordable housing may not be sustainable if they fall behind on rent. Laura Hill said that lack of transportation also played a role. STAR clients have been fired because the bus system schedule changed or could not get people to work when they needed to go. The bus system now stops running at 8 or 9 at night. This all contributes to the cycle of poverty plaguing this vulnerable population.

Paul said he would like to see data on homeless victims and offenders, as that would help the legislature understand some of the dynamics at play. He thought that people don't understand how prevalent homelessness is in cases of sexual assault. Laura Hill noted that many homeless clients at STAR are victims of repeat offenders who are not convicted. She also thought there were more homeless men assaulted than is generally known, but that these men are not coming forward.

Paul said that it might be possible to get data from Law's database on the rate of victim homelessness using the information gleaned from the ATN sheet, which has a field for the victim's contact information including residence. It might not always get entered into their database, however, so the data might be incomplete.

Karen Gonne-Harrell said that STAR asks clients at intake if they are homeless, and include it (along with data on other primary risk factors such as use of drugs and alcohol) in a report to the mayor on a regular basis. Laura Hill said they could pull that data for the group. It would include people who seek out STAR for services but don't report their assault to the police- about 140 people per year.

Susanne said it would be good to get this data from both Law and STAR if possible. She noted that if the data was in a raw form Staci could provide the analysis.

Public Comment

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

Next Meeting

The next meeting was set for June 22 at 9:30.