

Alaska Criminal Justice Commission
Sex Offenses Workgroup

Meeting Summary

Friday, June 22, 2018, 9:30 a.m.

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

Commissioners present: Karen Cann for Dean Williams, Walt Monegan, Trevor Stephens, Brenda Stanfill

Other participants: Shannon Cross-Azbill, Keeley Olson, Suki Miller, Kaci Schroeder, Clare Sullivan, Paul Miovas

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

Terminology

Barbara Dunham explained that at the last plenary meeting of the Commission, the Commission had agreed to adopt people-first language and avoid using the term “offender” where possible. She said that she would like some direction from the group on how to approach terminology in the report, noting that the term “sex offender” had previously been used throughout.

Susanne DiPietro said that some labels explain a person’s legal status; she wondered what the group thought about using the word “defendant.” She noted that the report’s title was “Sex Offenses” and thought a starting point would be to refer to crimes where possible.

Barbara also noted that the word “victim” was often used in the report and she understood that not everyone would like that label either. Brenda Stanfill said that advocates often use the term “survivor.” Barbara said that in an effort to use people-first language, she had used “people who have experienced sexual violence” in the new sections of the report. Keeley Olson pointed out that “victims” and “people who have experienced sexual violence” have some overlap but may be different groups.

Keeley said she had done some research and found that proponents of person-first language thought that people should not be judged based on the worst thing they had done; she didn’t necessarily agree. Judge Stephens observed that the report was focused on the worst thing that some people have done, i.e. sex offenses. He also noted that the term “sex offender” is the term used by the legislature and is used in statute. He was more concerned about the term “victim” if there was a better word to use.

Suki Miller suggested just making a note about the terminology issue in the report, explaining that person-first language is used where possible, but some terms such as “victim” would be used in the context of a criminal legal case. Susanne said that “victim” was like “defendant” in that it describe a role in the criminal justice system—she didn’t think they carried any stigma in that sense. Paul Miovas said that as a prosecutor, he often sees motions not to use the word “victim” in front of a jury. But the legislature has given a definition for “victim” in statute and he didn’t see a need to deviate from the legislature’s usage in the report.

The group agreed on making a note at the beginning of the report about using “person-first” language where possible.

Updated report to legislature – Juvenile cases

Barbara said that she had gotten information from DJJ about juvenile sex offense cases, and that Staci Corey had analyzed the information and provided the charts included in the new draft of the report. Barbara said that she could add or remove information depending on what the group thought was appropriate. Karen Cann said she liked more data.

Judge Stephens noted that of the FY16 cases, 61% had been dismissed, and depending on the reasons for the dismissals, that might be a concern. Susanne wondered if there was any information on whether the juveniles were going to treatment instead of being adjudicated. Shannon Cross-Azbill said that she wasn’t sure but could try to find the information. She knew that cases might involve multiple charges and could resolve with a plea wherein one charge is dropped. Barbara said she would follow up with Shannon and others at DJJ after the meeting to get more information on the dismissed cases.

Paul asked whether the cases included in the dataset for FY16 included cases referred by OCS. Shannon said the referrals only came from law enforcement.

Updated report to the legislature - Same peer group cases

Keeley said she hadn’t been at the last meeting and had been confused by the meeting summary and the result of the conversation about these cases. She wondered why some of these cases were labeled as “consensual.” Judge Stephens noted that the cases discussed in this section of the report were SAM cases, for which lack of consent is not an element of the crime.

Paul said he was also concerned about how “consensual” is defined in this section. Though the information (including the “consensual” label) came from his department, he was not sure what definition was used. Staci explained that Department of Law staff had conducted a file review of the cases and used the label based on what they read in the file.

Judge Stephens recalled that this information is what the legislature wanted to know—whether there were frequent prosecutions of 18-year-old seniors in a relationship with 14-year-old freshmen. He agreed it would be better to know what the label “consensual” means in this context. He said that this data seemed to suggest it was not happening frequently. Barbara said that comported with national studies on the same issue. Keeley said that often those accused of sexual crimes claim consent as a defense; she thought it was something of a myth that these cases are prosecuted frequently.

Paul said that such relationships happen frequently, and are reported to law enforcement, but those cases are not often referred to Law. He would prefer these cases be referred so they can be addressed in a more systematic fashion to avoid disparate treatment. He didn’t necessarily want to prosecute every case but thought Law should be the gatekeeper here.

Karen suggested going back to Law to get more information on how cases were designated “consensual.” Barbara said staff would follow up and noted that this section could be reworked to include more context.

Report to legislature - Case resolutions

Suki asked whether there was information about how cases resolved and wondered what the data showed about sex offense cases resolving with a conviction for something other than a sex offense. Barbara explained that there was a section starting on page 8 on a study from the Judicial Council on how charges for the most serious sex offenses resolved in 1999. Suki wondered if it was possible to update the study. Paul noted that charging may have changed since the changes to sentencing in 2006.

Staff will look into updating the 1999 study.

Report to legislature - Revisiting old research in legislative history

Barbara explained that one study cited by the legislature for the proposition that offenders average over 100 offenses before being caught was actually a polygraph study from Colorado with a small sample size of limited scope. While the offenders in that study disclosed a mean of 110 prior offenses, the median number of prior disclosed offenses was 11. It would be difficult to draw any universal conclusions from that study. Victimization surveys in Alaska and nationwide do show that sex offenses are vastly underreported, but it cannot be said that all sex offenders average 110 offenses before being caught. Susanne said it was challenging to develop a nuanced approach to sex offenses so as not to either over or underestimate the scale of offending. Keeley said that the polygraph study reflected cases like that of Harvey Weinstein or Bill Cosby, who are now known to have assaulted many people. She said that these are the worst offenders, also seen in the Washington study of offenders sent to McNeil Island.

Judge Stephens said it was interesting to note that the sentencing laws from 2006 appeared to be based on statistics about the worst offenders and seemed to be a reason the sentences were lengthy, though there was also the three-judge panel and mitigators that could be used.

Suki wondered if the lengthy sentences might have resulted in the unintended consequence of having more sex offense charges plea down to non-sex crimes. Paul said that he didn't think that was happening; the problem would usually be the proof for the crime wasn't there to charge it in the first place. Prosecutors were not giving anyone a pass; reducing a sex offense charge to a non-sex offense charge required approval from someone much higher up the chain of command.

Paul wondered how many first-time offenders there were who were sentenced to 20 years who truly had no criminal history. Judge Stephens said he sees a lot of offenders who score a low risk on the Static risk assessment tool. Keeley said that a lot of offenders have prior bad acts that aren't charged. Paul agreed and said the Static doesn't always capture those. Barbara said that it would be hard to find data unreported prior history because it isn't collected anywhere- it might pop up in a pre-sentence report but more likely would not.

Judge Stephens said that statistically someone charged with a sex offense probably has prior history but there's no way of knowing for certain. Paul said he thought the first-time offenders who are sentenced to 20 years probably committed an offense that was particularly violent, had significant prior history of other offenses, or the DA possesses knowledge of prior sexual offending. Judge Stephens said there were also cases where someone got 20 years because they wanted to take a case to trial rather than benefit from a plea bargain.

Staci noted that the Colorado study also revealed that the offenders in that sample had disclosed offending at an earlier age after being subjected to polygraph tests. Keeley said that made sense as a lot of offending stems from intergenerational trauma, particularly experiencing or witnessing domestic violence. Judge Stephens said that was another reason the dismissed DJJ cases [discussed above] concerned him.

Barbara said she would add language to the end of this section explaining what information is or is not available on unreported prior history and suggesting a future study looking into intergenerational trauma and its effect on sexual offending in Alaska.

Updated report to legislature – Treatment and reentry

Barbara explained that she had added data about the Results First results and had reworked the polygraph section. She explained that polygraph testing is controversial in the research with very little agreement among experts. It would be safe to say that polygraph exams increase the number of disclosures made by those to take the exams, however the literature is divided on whether these disclosures are truthful and whether polygraph testing is effective considering that there are those who can outfox the test and the test can also give false positives.

Staci added that some of the studies on polygraph testing showed that offenders disclosed a greater variety of past offenses which can have an effect on the course of the offender's treatment. Karen said she thought that polygraphs were good about getting past data and helpful at the beginning of treatment, but wondered whether an offender who has "clean" polygraphs for several years and is low risk needs to continue on polygraph testing for the full 15 years. Barbara noted that the statute just called for "regular" polygraph testing so she thought DOC might be able to be flexible on this. Karen said she would find the official DOC policy on polygraph testing.

Barbara noted that at the last meeting the group had discussed restorative justice, talking circles, and circles of support and wondered whether any information on those things should be put in the report. Karen said she was interested in knowing more about it, particularly if having those options would be better for Alaska Natives and those in small communities. Judge Stephens noted there used to be a circle sentencing program in Kake but the judge running it retired.

Staci noted that circles of support are different from talking circles; the idea of circles of support is to have a safety net of people surround the person convicted of a sex offense to ensure they don't reoffend. Judge Stephens said that DOC used to do something like that and thought it should be revived if not being done now. Karen said she could check on that. Keeley recalled that CNN did a story on that in a village in rural Alaska. Karen said that it is done to some extent, because POs will check in with the victim and the family of anyone convicted of a sex offense before that person is allowed to go back to a village.

Updated report to the legislature – Victim safety section

Barbara explained she had filled in these sections reflecting the discussion at the last few meetings. Keeley suggested adding information about the Safestar program, which is a new program the CDVSA is looking to roll out. It is a nationwide program that helps laypersons train to complete SART exams and provide first aid in sexual assault cases.

Keeley also suggested adding information about the recent ADN article about the VPO with a criminal record who sexually assaulted and cause the death of a teenage girl. She said it was indicative of a trust problem in rural Alaska: if people there can't trust their local law enforcement officer, they won't trust any law enforcement officer. Barbara noted that recruiting and retaining quality officers to serve in rural communities was a pervasive problem. Karen said that DPS was working on a plan to do what they could to improve the situation.

Keeley also suggested add the frontline documentary *The Silence* as a citation, and adding the *Darkness to Light* and *Stewards to Children* programs to the list of prevention programs. Staci said there was similar programming from rural coalitions.

Recommendations

The Commissioners present did not have any suggestions as to recommendations to add to the report, but noted that if there was any research available about evidence-based restorative justice approaches to sex offender containment and treatment they might be interested. They noted the report would be reviewed by the full Commission which might have recommendations to offer.

Public Comment

There was an opportunity for public comment but no one offered.

Next Meeting

The next meeting was set for August 24 at 1:30.