

Alaska Criminal Justice Commission  
Sex Offenses Workgroup

**Meeting Summary**

**Friday, September 14, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4<sup>th</sup> floor, Anchorage  
And teleconference

Commissioners Present: Quinlan Steiner, Brenda Stanfill, Walt Monegan

Participants: Karen Cann (chair), Suki Miller, Anna Taylor, Paul Miovas, Keeley Olson, Doug Miller, Brad Myrstol, Shannon Cross-Azbill

Staff: Susanne DiPietro, Staci Corey, Barbara Dunham

**Update on Sex Trafficking**

Commission project attorney Barbara Dunham reminded the group that the workgroup had considered a proposal to change the sex trafficking laws, and had sent that proposal to the Anchorage Trafficking Working Group (a state-municipal task force) to solicit their feedback.

Anna Taylor, attorney for the Alaska Institute for Justice, which chairs the service provider sub-group for the Task Force, explained that the proposal had been distributed to several of the Working Group's sub-groups, including their legislative, law enforcement, and service provider sub-groups. The groups have been circulating comments, and representatives from Covenant House have been working on a draft response; they will meet soon to discuss the draft response.

Deputy DOC Commissioner Karen Cann said that the report to the legislature could just note that the workgroup was engaged in this process. Barbara said she could provide a brief explanation of the issue for the report and add any available data.

Commissioner Brenda Stanfill agreed that it was important to wait to see what the Working Group had to say about the proposal and not to move forward without their input.

**Updated report to legislature –data**

Barbara explained that she had updated the report to the legislature based on the feedback from the last meeting. She noted that the data section would need to be updated because the annual Uniform Crime Reporting (UCR) data had come out along with DPS's annual Felony Level Sex Offenses in Alaska. Much of the data section included last year's data so those data would need to be updated.

Suki Miller from the Governor's office noted that the Alaska Victimization survey was scheduled to be repeated in 2020 and she thought that there would need to be a funding request for next year's budget, and this could be something to note in the report. Brad Myrstol, head of the Justice Department at UAA said Andre Rosay, who led the previous surveys, was still working with CDVSA on this project but he

wasn't sure where the program was at now. DPS Commissioner Walt Monegan said that DPS has a request in, and CDVSA still wanted to do the survey. He was planning to talk to the legislature about it next session.

Barbara noted that at the last meeting, the group had wanted an update on felony sex offense case resolutions. The Alaska Judicial Council had done a study in 1999, and the report now showed the resolutions in 1999 compared with 2017. The group noted that particularly for first-degree sexual assault, many cases resolved as a felony other than first-degree sexual assault, attempted first-degree sexual assault, or second-degree sexual assault. The group wondered which felonies they were, and Barbara said she thought she could get the list. The "other felony" category in this case could include attempted second-degree sexual assault. Suki suggested putting the full list of case dispositions in an appendix.

Susanne DiPietro, executive director of the Judicial Council, said it was also interesting to see the relatively large proportion of cases where all charges were dismissed or the defendant was acquitted on all charges. This was commensurate with other studies. Barbara noted that while the data reflected the cases with all charges dismissed, they do not reflect situations in which an entire case is dismissed as part of a global plea agreement and the defendant is convicted a separate case.

Barbara next explained that the chart showing the breakdown of a snapshot the incarcerated population by offense class had been updated with 2017 data. Brenda noted that people often say that there is a disparity in sentencing Alaska Natives for sex offenses and wondered if there was a way to show whether that was true with the data. Susanne asked whether she thought snapshots or sentence lengths would be better. Brenda said that anything that showed a potential changing trend could be useful. Susanne thought that the DOC offender profile reports might contain helpful information.

Paul Miovas from the Department of Law cautioned that that could pose a loaded question and that there are a lot of dynamics at play. Susanne suggested ensuring that proportions were represented in relation to overall demographics of the Alaska population. Brenda said she thought the legislature would want to know about this—she recalled this question coming up repeatedly from legislators.

Walt asked if Brad Myrstol, director of the Justice Center at UAA, had any such data. Brad said he would take a look at what he had. Walt said that in his experience in working in rural areas, and noting that it is part of Alaska Native culture to highly value honesty, that often Alaska Native defendants will accept plea deals. He could remember only a handful of trials. Doug Miller, private attorney, said that if numbers are available to report, they could be put in context. Keeley Olson from STAR suggested that if there is data on race in relation to defendants that similar data be included regarding race in relation to victims.

### **Updated report to legislature –SAKs**

Keeley pointed out that that the report should be updated to reflect that Sexual Assault Kits (SAKs) can now be collected up to seven days after an assault rather than 96 hours. Suki noted that there had been another allocation to fund testing of the backlogged SAKs (all kits) and APD should also be hearing soon about a similar grant.

### **Updated report to legislature – Sex offenses involving minor defendants, same peer group cases**

Barbara noted that she and Staci Corey, the Commission's research analyst, had worked to provide a more detailed explanation of what the dispositions were for the FY16 sample of DJJ cases involving sex offenses.

Staci had also done a lot of work to update the same peer group cases (cases where the defendant and victim are close in age enough to be in the same peer group). Barbara explained that she and the Dept

of Law had gone back and forth about how best to word this section. Paul noted that the point was to determine how often these kinds of cases were prosecuted in which, but for the age of the defendant and the victim, the conduct would have been legal. Barbara would continue to work with the Department of Law on this. Susanne reminded the group that the legislature had asked the Commission to look into this.

Suki wondered if there was any available data on teens and young adults and social media cases involving sex offenses—things such as sexting, posting pictures on sites without permission, etc. She thought that the legislature was also interested in such cases. Keeley said she didn't think such cases were often prosecuted, and Paul agreed.

Barbara asked Shannon Cross-Azbill with DJJ whether she thought DJJ often saw social media or similar cases. Shannon said she would have to ask DJJ's probation officers. She hadn't heard much about it and didn't think it was prevalent, but would ask around.

### **Updated report to legislature- recidivism**

The next data section concerned recidivism. Keeley wondered why the recidivism rate was so low for sex offender when two-thirds of offenders in one study had prior convictions. Barbara explained that 80% of offenders in the sample had no conviction for a prior sex offense. Once a person is convicted of a sex offense, their recidivism rate is comparatively low, perhaps because people convicted of sex offenses are subject to more intensive supervision and probation requirements upon release.

Keeley thought it was important to explain in the report that often people charged with sex crimes have those charges reduced to non-sex crimes or are acquitted. Paul agreed and thought it was important to tie the recidivism information to the data above regarding the number of cases resulting in dismissal or acquittal, and the number of cases resolved as a non-sex felony. In his experience, cases with sex crime charges often result in a conviction for coercion, which is not a sex crime.

Doug asked what the typical process was for plea deals are made with a defendant pleading guilty to a non-sex crime such as coercion. Paul said in his experience such defendants would have to admit to sexual conduct and perhaps agree to complete sex offender treatment, depending on the circumstances of the case. He thought it was worth looking into how many cases were resolved as coercion.

### **Updated report to legislature- circles of support/talking circles**

Barbara said she had researched circles of support and talking circles in advance of the meeting but did not have time to write up a memo. In her research she had encountered references to Alaska using a "circles" model that sounded like a circle of support, but she had not found any official reference to this model in DOCs literature. She wondered if local communities were offering circles of support independently or if there were state efforts that were not publicized. Karen said she would look into it and confirm.

### **Updated report to legislature- sex offender treatment**

Brenda said that she had heard from DOC Commissioner Dean Williams that DOC had increased treatment capacity in prisons (and teletreatment for those in the community), but that the in-custody programs were not full because judges had not been ordering people convicted of sex offenses to complete treatment in custody. Karen said that capacity had expanded but she was not sure of the participation numbers, which she could get.

Barbara noted that the report mentioned the issue of offenders not completing treatment in prison. Keeley suggested that it should be made clearer that the offenders were essentially opting not to do treatment. Karen said that the issue stemmed from a number of factors. Capacity used to be one of them, but is less of a problem now. It also has to do with the timing of an offender's release, and whether they will have enough time to complete treatment.

Paul said it was a vicious cycle, because a lot of times prosecutors will file PTRPs because an offender hasn't done treatment in the community, but the time imposed for the PTRP won't be enough to complete treatment, and this is especially frustrating when an offender had an opportunity to complete treatment in prison and didn't take it.

Karen said that some offenders were ashamed to be seen doing sex offender treatment in prison. Others might get frustrated with the program because they don't have the literacy skills to understand the treatment materials. This is why DOC was trying to make it easier to do the teletreatment. In some cases it might make more sense to have the offender complete the program in the community if that was the best chance of getting the offender to complete treatment.

Keeley noted there was a 12-month waiting list for trauma therapy for victims of sexual assault in Anchorage. She thought it was a shame if there was a treatment program for offenders that was not operating at full capacity.

Karen said she could get more information on the programs and how full they were.

Barbara said there was also the problem of judges ordering treatment but not specifying that treatment be completed in prison, which allowed offender to do treatment after prison. But judges have no way of knowing at sentencing what specific programs will be most appropriate for treatment or what capacity will be available when an offender gets nearer to the end of their active sentence (when treatment would start)—especially with sentences that are sometimes decades long. Paul said that judges could require in custody treatment, but that might run into legal issues if a program doesn't have capacity and the offender is due to be released on parole before a spot opens up.

Susanne noted that research shows people respond much better to incentives than sanctions, and wondered whether there was any way to incentivize in-custody treatment. She wondered if there was some sort of in-custody benefit that could be used as a reward for completing treatment. Sanctions such as the threat of a PTRP after release did not seem to be working.

Brenda wondered why judges couldn't order the offender to treatment in custody. Public Defender Quinlan Steiner said that they could, but then if the offender doesn't complete it the sanction is to just anticipatorily revoke good time. Brenda asked if this meant that the offender would be released without being on parole. Quinlan said it did. He thought that incentives might work but if a program doesn't have capacity, people can't just be held until they complete treatment and can't be sentenced for the purpose of having enough time to complete treatment in custody. He thought there was a need to do a really deep dive to find the root cause of the problem. He also noted that the incentives for people convicted of sex offenses who were on supervision were stripped out of the law.

Brenda suggested noting how complicated this issue is for the report. Quinlan said that the report should also include any available data, and not just rely on anecdotes.

## **Public Comment**

Doug recalled that he had proposed to the group the idea of a sentencing mitigator that would reflect the cycle of abuse, allowing a downward sentencing departure for offenders who were also victims. He has done a lot of research and there appears to be a lot of dispute about whether the correlation between being sexually victimized and later offending is strong enough to warrant any kind of mitigated sentence. He was happy to get more ideas about how to approach this topic from the group and also thought it might be an appropriate topic for the sentencing workgroup.

Keeley suggested that if there was a correlation, there might be more female sex offenders. There is research to suggest that being subjected to or witnessing physical violence or domestic violence as a child can lead to sexual offending. Doug said that there is a correlation between past child abuse and future sexual offending, the question is how strong the correlation is and whether there should be any policy decisions based on it.

### **Next Meeting**

The group did not finish discussing the draft of the report. Barbara requested that group participants read the rest of the draft on their own and try to get any and all comments back to her by the end of September. She will incorporate those comments and get another draft out shortly thereafter. She will set the next meeting when she gets a better picture of when she will be finished with the draft and when she hears back from the Trafficking Working Group.