

Alaska Criminal Justice Commission
Sex Offenses Workgroup

Meeting Summary

November 30, 2017, 9:30 a.m.

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

Commissioners: Walt Monegan, Brenda Stanfill, Quinlan Steiner

Participants: Doug Miller, Laura Hill, Emily Starr, Brad Myrstol, Amber Nickerson, Terra Burns, Chanta Bullock, Maxine Doogan

Staff: Staci Corey, Barbara Dunham

SAM/Same peer group cases: Data review

ACJC research analyst Staci Corey outlined her research on statutory rape cases where the victim and the defendant are close in age, and ostensibly in the same peer group (these cases are sometimes referred to as “Romeo and Juliet” cases). She had provided the group with a memo summarizing her research. ACJC staff attorney Barbara Dunham reminded the group that the legislature had expressed interest in getting more information on these cases.

Staci first explained that she found several national studies on these cases using data from NIBRS (National Incident-Based Reporting System, a database maintained by the FBI). One study found that of the 1.1 million sex crimes reported to police between 1991 and 2013, cases of statutory rape were rare (5%) and same peer group cases were even rarer (less than one half of 1%). The arrest rate in these cases decreased as the parties’ age increased and the age differential decreased.

The same study found that over the 20 year time period of data for this study, there were 805 cases of an arrest for statutory rape in which there was a two-year or less age difference and 2,648 cases with a four-year or less age difference. According to the author, these cases would account for less than 1% of the sex offender registry.

A 2013 FBI study found that in that year, there were 4,716 incidents of statutory rape reported, which amounted to 0.1% of total incidents and 6.7% of sex offenses. Of the 4,716 statutory rape incidents, 38% (1,791) were cleared by arrest. Of all the statutory rape cases, victims were most commonly around 15 years old and female and defendants were most commonly around 18 years old and male.

Staci went on to explain that she had also analyzed data from the Department of Law comprised of all cases referred to the department as SAM 2 or 3 cases involving a defendant aged 25 or younger and a victim aged 13 or older—44 total . The most frequent age differential was five years. 46% of the cases involved consensual contact. As the age differential increased, the likelihood of consensual contact decreased.

The Department refused 22% of all of these cases referred in 2016 and refused 50% of the cases involving consent. Of the cases involving consent, 3 cases resulted in a guilty plea, 10 cases were refused,

5 were pending, 2 were dismissed, and 1 was under review. Of the cases not involving consent, 4 cases resulted in a guilty plea, no cases were refused, 6 cases were pending, one case was dismissed, and one was under review.

Of the pending cases, Taylor Winston of the Office of Victims' Rights wondered what the charges were. Staci said she could look into that. Brad Myrstol from the UAA Justice Center asked what the total number of SAM referrals was. Staci said she had only gotten the cases from the Department of Law where the defendant was under 25 and the charges would not necessarily involve nonconsensual contact. Brad said it would be good to know the total number of referrals, but from this data it looked like Alaska was on par with the rest of the country.

Commissioner Brenda Stanfill said that she was not sure there was enough information to go on here with just one year's worth of referrals. She said she would like more longitudinal data to get a better idea of how these cases resolve—perhaps going back 25 years or more. Taylor agreed that it would be helpful to have more historical cases to look at and noted that very few cases that begin with a SAM charge resolve as a SAM 2 conviction. Public Defender Quinlan Steiner said that he agreed that it would be best to get data from many years back, and also get sentencing information. Taylor said it would be helpful to get information at least back to 2006 when the sentencing laws changed, and perhaps to look into things like whether the defendant was supplying the victim with drugs or alcohol.

The group discussed the difficulty of getting data from the Department of Law with limited resources, and it was noted that the Department of Public Safety would have a good deal of the information the group was interested in even though it would not have certain qualitative data about consent or victim ages. Brad pointed out that a lot can be gleaned about the defendant and victim ages according to the statute and subsection charged. Quinlan suggested getting a large data set and leaving open the possibility of drilling down for more information on certain offenders. Taylor said that in most cases the charging document should have the victim's age or birth date. It was decided that staff would try to get information on all SAM cases from 2006 to 2016, including the charge, result, sentence and defendant information. DPS Commissioner Walt Monegan said he would ask his staff to compile the information.

Sex trafficking law revisions

Barbara gave the group a recap of the group's discussion on this topic at previous meetings; the group had expressed an interest in looking at separating sex trafficking and promoting prostitution in statute. Barbara noted that there were two proposals sent to the group, one from the public defender's office and one from Community United for Safety and Protection (CUSP). Barbara noted that the Department of Law had yet to weigh in on either proposal and there was no one from Law there present.

Quinlan suggested continuing this topic to the next meeting. He thought there might be a way to combine the two proposals but hadn't had enough time to look into it closely. Brenda said it would be helpful to start just from one draft. Terra Burns from CUSP suggested sitting down with the public defender's office to reconcile the two proposals. Quinlan agreed that would be helpful though he said he could not guarantee a compromise. He said he would talk to the staffer who drafted the PD proposal and get back to Terra. Barbara asked that if they did come up with a new proposal, that they send it to her in advance of the next meeting.

Terra said she believed this was the 2nd time discussion of this topic had been postponed due to Law not being able to give an opinion. Brenda said that from a victim's perspective, it would be good to have a draft that was "moveable" and she was comfortable holding off on discussion.

PTSD related to sexual abuse/assault as a sentencing mitigator

Anchorage attorney Doug Miller explained that he was thinking about this issue but that it was more of an idea at this point rather than a proposal. The question was whether the sentencing of sex offenders should account for the offender's own abuse as a child. He had an appellate case a few years ago where his client was sentenced to 99 years flat for a sex offense (the client was convicted of a C felony but it was his 4th felony conviction). The offender had been abused for years as a child, a fact not in dispute. Doug attempted to ask for consideration by the three-judge panel but ultimately the sentencing judge did not sent the case to the panel. The question in his mind was whether the offender's past sexual abuse should be a mitigating factor.

Doug continued that he was reminded of this when looking at a recent opinion from the Court of Appeals [*Brown v. State*, 404 P.3d 191 (Alaska App. 2017)]. The case concerned the sentence of a defendant convicted of possessing child pornography; the defendant had experienced a sexual assault while serving in the military in Kuwait. The main opinion found that the mitigator for combat-related PTSD (AS 12.55.155(d)(20)(B)) included PTSD stemming from a sexual assault while posted on active duty in a combat zone. In a concurring opinion, Judge Mannheimer questioned whether the mitigator should be limited only to combat-related PTSD. Doug wondered whether a mitigator for PTSD stemming from sexual abuse might be a way to recognize that in some instances offenders may be less morally culpable because of the effects of trauma stemming from past sexual abuse.

Commissioner Monegan said he appreciated the motivation behind the idea and noted that studies on ACEs (adverse childhood experiences) reflect the same principles. But he was concerned that making a mitigator might be too complicated and spark a flood of hearings on mitigators. He suggested instead a requirement that DOC account for past sexual abuse in treatment and housing of offenders.

Vicki Henry from Women Against Registry said that she had just returned from a national conference on sex crimes and said their national president had noted that regarding sex offenses, states seem to be stuck in "punishment mode" from the 90s; he advocated for a focus on treatment and mitigating factors. Vicki thought this was an important topic and noted that many child victims of sexual abuse don't get the help they need.

Quinlan agreed this was an important topic to consider. If someone has suffered as a child, and the state has failed to get that person the help they need, that should be accounted for in sentencing. He thought the scope of a mitigator could be narrowed if there was a requirement of a nexus between the past trauma and the crime. If the scope were narrowed there wouldn't be a flood of people asking for the mitigator.

Commissioner Monegan said he was certainly supportive of rehabilitation, and wondered if there was a way to enable early release in cases where the offender suffered from PTSD and went through treatment in prison. Quinlan said that there were provisions like that in SB 91 but they were stripped out with SB 54. Chanta Bullock noted that many of these offenders are also not eligible for parole.

Doug said he wasn't thinking of letting people off the hook, just looking at a mitigator that would allow a sentence to be lowered from 25 to 20 years. He thought it would be possible to address the problem of cluttering up the system. The standard to find the supporting facts for a mitigator is clear and convincing evidence, and adding a nexus requirement would set the bar even higher. He also noted that medical and social science research suggests that the trauma from sexual abuse is different from other abuse.

Chanta said that many people who are abused go into the military and therefore are both veterans and victims of sexual abuse, and she thought this should be accounted for.

Laura Hill from Standing Together Against Rape asked if the mitigator would apply to all sex offenses including SAM and sexual assault. Doug said he wasn't sure, and noted that some offenses weren't eligible to be mitigated now. If it was going to require a nexus he wouldn't want to limit it so that there wouldn't be any eligible offenses. Quinlan noted that the current PTSD mitigator only applies to non-assaultive offenses, so it won't apply to a lot of PTSD-related conduct. Chanta said that most veterans with PTSD commit violent crimes, but without the PTSD, they wouldn't commit the crime.

Quinlan proposed coming up with a draft mitigator as he thought it was an issue worth looking at. Doug said he had some social science research related to the nexus issue and also offered to look at what's done in other jurisdictions.

Brenda said she was concerned this was a slippery slope; she agreed with Commissioner Monegan and was not sure this was the direction to go in. Taylor agreed.

Brad noted that there had been a lot of developments in research into the neuroscience on sexual trauma in the last decade, which has spurred movements towards trauma-informed care and trauma-informed interviewing in the criminal justice context. It's challenging when the victim becomes the offender, as it forces advocates to consider at what point advocacy should stop. He didn't think there was a good answer for that question. But he did know of neuroscience research supporting the idea that the brain gets completely rewired when exposed to trauma, especially sex abuse. Linking that trauma to PTSD would require further steps; PTSD is a DSM diagnosis and requiring a nexus between trauma from sexual abuse, PTSD, and the offender's crime would require a complex chain of proof.

Quinlan thought Brad had articulated the issue—that people have been harmed in the past, don't get the help they need, and then behave predictably.

Brenda said that advocates have been talking about these issues for years. She didn't think the neuroscience was advanced enough to warrant creating a mitigator. Essentially every offender will have sexual abuse in their past. Proving that for the purposes of a mitigator could create a mini-trial at every sentencing where the mitigator applies. She was also wary of labelling people as victims for life—at some point there is individual accountability.

Chanta said the idea was not to let people off free, but just to account for people's experiences in mitigating their sentence.

Barbara asked whether Doug had a sense of how many people this would apply to. Doug said that his research showed that approximately 18% of sex offenders have past sexual abuse. He didn't have the research on him however so he was not certain. But, he said, even if it were more like 40%, would that preclude giving the judge discretion to use the mitigator? He thought there were ways of getting around the slippery slope. He was happy to do more research on this.

Laura said that childhood trauma related to domestic violence was actually more of a predictor for sex crimes. She said she could see both sides here and thought it would be helpful to see some research on where to draw the line. Doug agreed and noted that he was not proposing to open up the mitigator to all ACEs factors. Brad said that if the link was specifically going to be PTSD related to sexual trauma, that distinction would have to be clear—that is a smaller subset than just offenders who have a history of being sexually abused. Doug said that he thought of the PTSD link only after reading the Court of Appeals case mentioned earlier.

Barbara said she would check in with DOC Commissioner Dean Williams (who was the chair of this group but not able to attend that day) to see what the next steps should be on this.

Report to legislature- Rough draft

Barbara walked the group through the latest draft of the report, noting that only the data section was updated. She said she had information to report in most of the rest of the outline of the report, except she would like to get more input from rural and Alaska Native voices, particularly victim voices.

Brenda said she would like to see the data section become more of a narrative, to get a sense of the small number of cases that are reported, charged, and prosecuted. Barbara said she struggled with writing that section of the report for that reason because the existing data sources aren't necessarily comparable and it is hard to convey that concept both precisely and concisely.

Brad noted that the case processing study he did may help with some of that, but it only started with the arrest and charge filing. There was an additional study from UAA looking at offenses from 2008-2011 that starts with reports that would give a better sense of the prosecutorial triage process, though it was for AST reports only.

Barbara said she would rework that section and include the studies Brad was referencing.

Public Comment

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

Next Meeting

The next meeting was set for January 12 at 9:30.