

# Alaska Criminal Justice Commission

## Sex Offenses Workgroup

### Meeting Summary

**Tuesday December 18, 2018, 9:30 a.m.**

Denali Commission Conference Room, 510 L Street, 4<sup>th</sup> floor, Anchorage  
Teleconference number: 1-800-768-2983, access code 513 6755

Commissioners Present: Brenda Stanfill

Participants: Kelly Howell, Natasha McClanahan, Paul Miovas, Jenna Gruenstein, Lei Tupou, Cynthia Erickson, Laura Russell

Staff: Staci Corey, Susanne DiPietro, Barbara Dunham

### Updated Report to Legislature

Project Attorney Barbara Dunham walked the group through the changes to the report. She noted that she had added call out boxes to highlight details for readers who would just be flipping through.

One section that changed was the section describing the difference between charges at filing and charges at resolution for Sexual Assault 1, Sexual Abuse of a Minor 1, Sexual Assault 2, and Sexual Abuse of a Minor 2. Barbara explained that she and Susanne DiPietro had discussed ways to make this section clearer and had decided to remove the data in the charts from 1999, as the charts were somewhat cluttered and the data from 2017 was more pertinent. Brenda Stanfill wondered if the information from 1999 could still be included in some way. Susanne suggested adding the link to the 1999 study from the Judicial Council (which contained the 1999 data previously represented in the charts) in a footnote.

Paul Miovas asked whether it was possible to parse this data by cases that went to trial versus cases that had not gone to trial. Barbara explained that the charts were based on the court system data, which had around 50 different codes for dispositions, all of which would have to be sorted into a “trial” or “not trial” category, which would be rather complicated and would take time and some judgment calls to work through.

Paul and Jenna Gruenstein explained that more sex offense cases went to trial more often than other cases, and it was their sense that when the sentences changed in 2006, it became more difficult for prosecutors to secure plea deals. This was perhaps because there was no sentence they could legally offer that a defendant would find palatable, and defendants would therefore prefer to take their chances on a trial. Sex offense trials were more likely than other trials to result in an acquittal. Jenna said that court data she had reviewed a few years ago showed that around half the criminal trials in Alaska had been sex offense cases, showing that those cases went to trial at a disproportionate rate.

Brenda thought that offering more context was helpful, but largely the data was what it was, and should be presented as a snapshot of what is happening in Alaska, whether there was a ready explanation or not. She noted that some of the data might also reflect the effect of cuts to the prosecution budget.

Paul said he was concerned that some people might look at the data and decide that Law was trying to many cases, while at the same time they would receive the same kind of pushback they’d normally receive, that they are not trying enough cases. He thought it would be good to have more resources to take on more cases, but widening that net would necessarily result in more acquittals.

Brenda wondered whether it would be helpful to also separate the acquittals from the dismissals in this data. Barbara explained that staff had also looked into that and it would be tricky to parse because there were some cases where some charges were dismissed and some ended in acquittal—which would require a policy call prioritizing one or the other when determining how to categorize those cases. Paul and Jenna said that from Law’s perspective, any case where a jury acquitted a defendant and no charges remained (even if there were other charges that had been dismissed earlier in the case) should count as an acquittal. Barbara said staff would look into parsing this data out by trial and no trial and by separating acquittals from dismissals.

Barbara said that other new additions to the report included an appendix listing the dispositions for DJJ case (moved from the body of the report) and an appendix summarizing all the sex offenses and related offenses in statute. She had reworded the recidivism section to reflect the discussion from the previous meeting, and expanded the victim safety section thanks to feedback from Diane Casto at CDVSA and Cynthia Erickson of My Grandma’s House. She had also added language in the “new approach” section reflecting the discussion on the correlation between the trauma of experiencing sexual violence and future crime.

Barbara also pointed out a new section discussing potential gaps in the sex offense statutes. This section was included after the Commission, at the last plenary meeting, directed the workgroup to look into these issues and make a note of this upcoming project in the report. Brenda explained that the gaps identified in the report were those identified by affiliates of the Alaska Network on Domestic Violence and Sexual Assault. They may identify more in the future.

Paul noted that one of the identified gaps should be corrected to more accurately reflect the statute—the marriage defense to sexual assault was not a defense in all cases, and this should be fully explained in the report. He was not defending the defense, but was concerned that it was not accurately described.

Natasha McLanahan said that ANDVSA had noted their concern with this defense with particular regard to a case where a woman who was heavily medicated was filmed and assaulted by her partner. Paul said that he had worked on the indictment in that case and that the details were even worse than that. The jury acquitted in that case and most had agreed it was a shocking result. Jenna thought there was likely broad consensus that this defense should be reviewed.

### **Department of Law Concerns**

Staff noted that Law had submitted edits to the report on Friday but staff had not had much time to go over them. Brenda asked about the extent of Law’s concerns, and whether they would prevent the report from being passed at the Commission level. She wanted to make a concerted effort to get the report done as the workgroup had been working on it for a year and a half. She reminded the group that the report was intended to be an independent assessment of sex offenses. There were things that the Commission had done that made her personally uncomfortable as a victim advocate, but were based on data that was hard to refute. In the end data is data, and the Commission would report the data.

Paul said that Law did have some concerns but they were addressed in the edits that were sent to staff on Friday. He went on to say that his suggested edits were an attempt to make the report more objective. Law would likely want to have a chance for the workgroup to thoroughly review the report once any additional edits are in and ensure that the report accurately reflects the will of the group.

Paul gave a broad overview of the concerns that Law had and how their suggested edits had addressed those concerns. Their first concern was the nomenclature used to describe the victimization survey. They believed that the responses to the survey would not necessarily amount to criminally chargeable offenses so the report should use the term “sexual violence” rather than “sexual assault” to describe the survey responses.

Paul also said he had looked at the recidivism research and thought that additional studies and information should be mentioned, along with a note that recidivism research in this area is a relatively new field that should be studied more. For example there was a footnote explaining that there are different measures of recidivism; Paul thought this should be moved to the main text and expanded.

Paul said that the section on revisiting the research that the legislature looked at in 2006 seemed to be a push to scale back the existing sentencing laws. Barbara and Susanne explained that that was not what they had intended, and would reword that section to make that clear.

Paul also said that the section with reports from victim advocates should make clear that the information is based on their observation, not data. He thought it was important to include these perspectives but Law wanted to make it clear that this was a different kind of information than the quantitative data included earlier in the report.

Natasha noted that some of what the victim advocates reported had also been reported by news organizations and the report could link to those to augment this section.

### **Future Meetings and Tasks**

Leitoni Tupou asked whether there was a deadline for this report. Barbara explained that the Legislature had not set a deadline. The full Commission would have to give the okay to send the report to the Legislature, so the question was when the workgroup wanted to forward the report to the full Commission. The next full Commission meeting would be January 24. Leitoni said that the new administration at DOC would like time to review the report, particularly section III, which has a lot to do with DOC. Barbara suggested he consult with Laura Brooks, who had already had an opportunity to review this section.

Paul thought that the Department of Public Safety would also have extensive edits. Kelly Howell said that DPS had prepared edits and they were awaiting review by the Commissioner, who was in Bethel and not able to make it for the meeting. She thought they would be able to send their edits within a day or so. She added that DPS still wanted to have representation on the workgroup and that they were still determining who that would be.

The next meeting was set for January 9 at 9:30. Barbara agreed to send a new draft of the report out by Friday December 21, and any final comments or edits to the report would be due by January 4.

Cynthia Erickson, who had planned to speak at this meeting about My Grandma's House and some ideas she had to combat sexual violence, offered to speak at the next meeting when more people could attend.

### **Public Comment**

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