

Alaska Criminal Justice Commission

Victims' Rights and Services Workgroup

Meeting Summary

Thursday, August 20, 9:00 a.m.

Via Zoom

Commissioners Present: Steve Williams, Sean Case, Shelley Hughes

Participants: Ingrid Cumberlidge, Rachel Gernat, Travis Welch, Mike Ramsay, Troy Payne, Megan Hiser, Dawn Shewmaker, Nancy Meade, Yulonda Candelario, Michelle Hale

Staff: Staci Corey, Barbara Dunham

Introductions

Ingrid Cumberlidge introduced herself as the new Missing and Murdered Indigenous Persons (MMIP) coordinator working in the U.S. Attorney's office. There are people in similar positions representing different regions around the county; her position is just for Alaska.

Rachel Gernat introduced herself as the new representative for the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA). She is an attorney from Palmer. Megan Hiser introduced herself as an attorney with Office of Victim's Rights (OVR), filling in for Taylor Winston.

The group approved the summary of the May 6 meeting and the day's agenda.

Commissioner and workgroup chair Steve Williams explained that the previous workgroup chair was Brenda Stanfill, whose term with the Commission ended at the end of June. The chair of the Commission had asked Steve to step in as workgroup chair.

Draft recommendation (cont.)

Steve explained that Barbara Dunham had sent out the latest draft of the workgroup's recommendation package, and noted that Taylor Winston from OVR had also sent in comments in advance of the meeting, which he felt really got to the meat of what remained to be decided: how do we define victims?

Recommendation 1: Public Outreach

Barbara explained that in this recommendation and throughout the draft document, she had added more language describing the reasoning behind the recommendations and how they related to the feedback the Commission had received. In this recommendation, the draft now reflected what the group had decided at the last meeting, that the public outreach campaign should be led by OVR or another state agency in collaboration with local and nonprofit organizations.

Recommendation 2: Victim Advocates Working in Partnership with Law Enforcement

Steve explained that Barbara had highlighted in yellow the details that still needed to be finalized. These details also related to the other recommendations—in this recommendation, should the Commission be talking about all victims, or a specific set, such as victims of violent crime or victims of felonies? This group has been having conversations about treating victims differently, and Taylor suggested that the Alaska constitution requires all victims to be treated similarly. Barbara added that another item left to be decided was whether this recommendation should be made to the legislature or to law enforcement agencies directly.

Senator and Commissioner Shelley Hughes thought the Commission should consider all victims. Even if a victim is not physically impacted by crime, there can be an emotional impact and lingering fear that can affect someone for a long time. There may be different steps to take for different types of crimes.

APD Captain and Commissioner Sean Case said it was in some respects easy to look at violent crimes, but property crimes affect all people all the time. On a related note he recalled that Taylor said that OVR was updating their pamphlet/card for law enforcement to hand to victims. Megan they did update it, and it had been sent out to the courts and was ready to be dispersed.

Mike Ramsay from DOC said he agreed with Senator Hughes and Taylor. Steve added that when looking at all crime victims there can be trauma in any crime. The question was whether there is capacity to accommodate all victims of crime or whether resources would be stretched thin. But as Taylor had also mentioned, that was not a reason not to make a recommendation. He thought everyone could agree with that sentiment. The recommendation may need to acknowledge the pros and cons of what will be required of the system, and may need to identify additional resources needed.

Sen. Hughes agreed that the recommendation should mention needed resources, and wondered if it should be general or specific. Steve said the workgroup might not have the full breadth of expertise necessary, but the recommendation could list out considerations for reasonable implementation.

Sean suggested adding the perspective of resources needed from a regional standpoint—different things are available in different areas and the information law enforcement provides in one region is specific to that region. That way not everyone is forced to provide resources that are not local. Mike agreed the information should be relevant to the geographic area, and suggested also referring to a website so the same basic information is getting to everyone. Rachel suggested dividing by court jurisdictions.

Dawn Shewmaker with the U.S. Attorney's office explained that on the federal side, she works with victims of nonviolent crime such as burglary and identity theft, and their sense of violation can be the same as with victims of violent crime. Nonviolent cases can be tricky because there is such a lack of resources for victims of nonviolent crime. Excluding them from this recommendation would be another barrier for them.

Steve observed that there were maybe 13 different communities that could qualify as hub communities which might be a challenge. He wondered if it would be difficult for OVR to produce 13 different handouts. Megan was not sure but could look into it. Steve thought it was worth getting nailed down. There could also be a handout that refers to a website that has resources pertinent to the region.

Steve wondered if this is something that should be required of all agencies. The Commission's mission is to meet the needs of all victims statewide. Sean said he thought requiring having a card would be a good step in the right direction—working directly with victim advocacy organizations might be a lot but just handing out a card at least gets the conversation started. Mike agreed.

Sen. Hughes agreed with Sean and also thought the card should refer to a website *and* phone number (as opposed to a website or phone number); some people might not have access to both. It should also be up to date. She wondered if OVR was required to keep their information updated. Megan was not sure if it was required but they would want things to be up to date anyway.

Steve said he was hearing that Sean and Megan would work on maybe combining third the and fourth paragraph in this section, and finesse the language about the website.

Rachel noted that the last paragraph in this section discusses opening up AS 18.66.200 (the advocate privilege statute) to other types of advocates and she had concerns about that. AS 18.66.200 refers to DV advocates with specialized training. Getting that statute was a hard-fought battle and it still has to be defended in court. She wondered if there was another way to address this issue, perhaps by adding a different statute rather than opening up privilege in this statute. Not all advocates can meet the requirements that the statute requires.

Steve appreciated what Rachel was saying and noted that her comments related to the discussion this group has been having about how much to embed advocates and the issues that arise with that. Sen. Hughes also thought this was a good point and noted that during the drafting process unanticipated technical issues often arise, requiring more changes to be made. Sean suggested hearing from other advocates on how best to achieve this. Barbara noted that AS 18.66.200 also existed in the DV chapter of Title 18 so was just intended to be used in the DV context, and it might be cleaner to have a different statute. Megan noted that there were more protections for victims of DV/SA in statute.

Barbara said that Tory Shanklin from VFJ was not at this meeting but mentioned in earlier meetings that the lack of privilege for other (non-DV) victim advocates can inhibit communications with victims. She also noted that Dawn had the same issue although her position was that of a coordinator rather than an advocate.

Dawn explained that she didn't have any confidentiality at all, that anything a victim tells her is discoverable, and she has to have that conversation early on with the victims she works with. She has to walk the line between not talking about what happened to them but also connecting them to resources. She makes it clear that other resources can help them if they need to talk about the crime. Steve asked Dawn if a privilege statute could help advocates, or if they can do without. Dawn thought they can be effective without that privilege, although it took her some time to get to that point. She was an advocate before becoming a coordinator so shifting roles was an adjustment. It was a balancing act, but she thought she was able to provide victims with the information they need and to be supportive without confidentiality.

Rachel said that it sounded like what Dawn does is like the victim-witness coordinators in the state DA offices. Privilege depends on what the advocates are actually doing too—if they are just providing resources, it's not protected by privilege, but being like a counselor or advocate is what is contemplated for the protections in 18.66.

Steve noted that Recommendation 2 was about connecting victims to services. He said that it sounded like the group did not want to amend 18.66.200. There is a question of whether a different statute was needed. He didn't think there was a clear path to that, so he suggested taking this paragraph out for now, and the workgroup could come back to it at a later date when there is more time to really look into what the need is, and what's the best solution. Sean and Mike agreed. There were no objections. Steve said that paragraph would be taken out but retained for future discussion.

Recommendation 3: Improve Inter-Agency Communication and Agency Communication to Victims

Barbara explained that this recommendation was intended to address victims' frequent frustration that they don't know what is happening with the criminal case. The recommendation had a few parts, the first of which proposed removing the dual designation from the victim-witness paralegals at the Department of law.

Steve asked if there were any objections to this proposal. Dawn noted that separating the two roles would create a traditional paralegal position and a position that is more like what she does. The advantage of her role was that victims are really able to know what's going on in the case; she is a point of contact, not just an automatic notification system. She ensures that victims know their rights and are being afforded those rights. Being able to have position like that for the state would address a lot of complaints from victims. Paralegals right now are already overwhelmed and then have victim notification duties on top of that. She thought this was a good idea.

Steve thought the recommendation might need to be more specific, and use the term "coordinator" in the job title, so as to clearly delineate the difference between the jobs. He thought people would think that a coordinator is someone to go to for referrals, as an information resource, and support, while a paralegal works on a particular case. There were also implications for resources needed. He didn't think the recommendation could be specific about resources but thought it should be acknowledged.

Megan agreed, and noted that one issue she has seen is that paralegals only contact victims for hearings that a victim has a right to be notified for. If it's another hearing such as a pre-indictment hearing, those can be where a lot of the continuances happen, so there can be a long time between required notification hearings, and then the victim is suddenly notified of a change of plea. She suggested adding specifics on how often the victim-witness coordinators should be contacting victims, so their case doesn't fall through the cracks. Steve agreed and wondered if the group should recommend a frequency of contact, and whether that needed to be in statute.

Rachel said that recent amendments to statutes added some contact requirements and thought that the intent and effect of the law was that the prosecutor's office should contact the victim regularly. If they're not, that also seems like a training issue—even if there is legislation, the statutes might not be followed. Victims are not even getting the information they're supposed to be getting.

Steve agreed, and thought that would be another advantage of having a coordinator instead of a dual-designation paralegal; that person will just have more time, as they won't be in court and they won't be filing. Rachel agree, noting that paralegals now get so much work piled on – they are in court all day and then have stacks of work to take care of and often can't work overtime.

Steve said it sounded like the group was agreed that this part of the recommendation would specify positions and roles, and he suggested looking at Dawn's job description to add details. Dawn said she would send that information to Barbara.

Barbara explained that the next section of Recommendation 3 called for motions to continue to be in writing, a suggestion that had come from Taylor Winston. Barbara had added text explaining that this recommendation was about pretrial delay; if motions to continue are in writing, it will give a victim the opportunity to oppose the motion. She added in more explanation of why these trials can take so much time and also the concerns of victims related to delay. She noted, however, this would be a huge change to criminal trial practice.

Nancy Meade from the Alaska Court System said she understand and was well aware of the frustration with the time trials take to resolve. She agreed that this would be a very thorny solution and wasn't sure that either side would appreciate motions in writing. Also, written motions can cause a delay in and of itself. Oral motions can be granted right away—motions in writing would mean 30 days to reply, and in the meantime the victim would still waiting. She was not sure this would really resolve the speed of the trial. She would also want to check with the clerks of court about the increase in workload, which she guessed would be substantial.

Rachel asked if this proposal was for when the victim wouldn't expect a delay. For example, there are routine delays for discovery, and for those, advocates can warn victims ahead of time. She wondered if this would be for out of the blue occurrences.

Megan thought that Taylor had meant for this proposal to apply to all continuances. She noted that there are some judges who don't recognize continuances as a motion. The routine ones are also problematic—typically the parties don't talk about why the continuance is needed, and they are just automatically handed out. They stack up. The thought behind the proposal was that is if it was a motion, the court would need to recognize that it was an actual motion, and think about the reason for continuing.

Steve said it sounded like there was a lot of thorniness about this proposal and additional information needed about how to best approach/address this issue. He suggested taking this section out and putting it in the parking lot for a future meeting date. That would give the group time to think about what information was needed and who needed to be part of the conversation. He didn't want to brush this idea off but didn't think it would be ready for the upcoming plenary meeting. The group agreed.

The last part of Recommendation 3 proposed having fixed dates for parole hearings. Barbara noted the parole board was not in favor of this. Mike said that the parole director was concerned about making hearing dates public because the list of hearings was a live document and subject to change. If there was legislation that said it was required, the parole board would comply, but they did have concerns about logistics. Steve asked Mike to send Barbara an email listing the concerns about fixed dates, as it sounded like this was something that could be worked through; the idea was just to have a more predictable date. Mike said he would contact the parole board director, ask him for more of a breakdown and email that to Barbara.

Barbara noted that Recommendation 3 had also previously contained a recommendation about making bail conditions accessible to law enforcement but that was already being recommended by the DV workgroup.

Recommendation 4: Victim Navigators

Barbara explained that this was the recommendation that had been discussed the least, and was still a little nebulous. But it did reflect a real need that victims need help navigating the system. Steve asked how this would be different from victim-witness coordinators as envisioned in recommendation 3. Barbara said that the coordinators would be for the criminal case while the need for assistance began before the court case started, when a victim reports a crime and is not sure what will happen next. It also extends after the court case is closed, when a victim needs to know about parole and restitution obligations. It does relate to recommendations 2 and 3. Rachel said it sounded a lot like what has already been discussed.

Dawn said that providing post-trial and restitution information was part of her job. Even when the case is over, victims can still call her and ask what's going on with their restitution. Even though the case is closed, they still have rights.

Nancy noted that the recommendation also called to “increase staff” for restitution processing and noted that would be the court system. The court system does a substantial amount of work for restitution. The court system did not intend to ask for any new positions in the upcoming budget cycle.

Sean said he thought the big thing was to create a connection from the victim to an advocate as envisioned in Recommendation 2, and it would clear up a lot of issues if there is that connection.

Steve said it sounded like this wasn’t ready for the Commission in September. His gut said that if Recommendation 3 defines the role of victim coordinator and resources are there, that should facilitate an increase in communication that would address majority of things identified. If the recommendation in 2 is implemented and resourced, that will take a big bite out of the apple in terms of connecting a victim to the initial stages of a case. There might be more work to do on this in the future. He would hate to have the impression that the recommendations were duplicative. The group agreed.

Public Comment

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

Future Meetings and Tasks

Steve gave a recap of the decisions made. On page 3, Recommendation 2 would apply to all victims and there would be added language about resources. On page 4 Sean and Megan would clean up the language. The paragraph at the top of page 5 would be removed and discussed at a later date. For Recommendation 3, the draft would further delineate the difference between paralegals and victim coordinators and would also talk about the resources required. The other two parts of Recommendation 3 and Recommendation 4 would also be removed and discussed at a later date.

Steve noted the recommendations that were retained would be on the agenda for the September 10 plenary meeting and wondered if the group would want to meet again to review a final draft. The group agreed to have a short meeting on September 2nd at 9am.