

ACJC Workgroup on Sentencing Alternatives
Staff Notes of December 18, 2014 Meeting 1:00 - 3:15 PM
At the Snowden Conference Center

Commissioners Attending: Fred Dyson, Stephanie Rhoades, Quinlan Steiner, Wes Keller (part of the meeting), Trevor Stephens (phone), Kris Sell (phone; part of the meeting)
Staff Present: Mary Geddes, Giulia Kaufman
Participants: Clinton Campion (DOL), Seneca Theno (Muni), Jeff May (UAF; phone),

Future Meetings¹: **Friday, February 13, 2015, 1:00 – 3:00 PM**
Friday, March 13, 2015, 1:00 – 3:00 PM
Tuesday, March 31, 2015, 10:00 – 12:00 PM

Materials Provided (attached) :

- Copy of Anchorage Municipal Code [8.05.060](#)
- Sample of MOA of Pretrial Diversion Program of the Municipality of Anchorage (attachment)
- Sample of deferred sentencing agreement of the Municipality of Anchorage (attachment)

Presentations:

Seneca Theno, Municipal Prosecutor (Municipality of Anchorage):

- Pretrial Diversion Program (PTDP)

Seneca Theno, Municipal Prosecutor at the Municipality of Anchorage (MOA), gave a presentation about the city's pretrial diversion program. She provided commissioners with a copy of the MOA Code [8.05.060](#), a sample Pretrial Diversion Program (PTDP) agreement, and a sample Deferred Sentencing Agreement (DSA).

She stated that the PTDP is an alternative program which aims to weed out low level offenses, such as theft and some driving offenses. Municipal code states that the municipal department of law may, in its discretion, offer pre-trial diversion for any misdemeanor offense in Title 8, Penal Code, and Title 9, Vehicles and Traffic, except for the following offenses: crimes against persons, weapon crimes, crimes harmful to minors, gambling, prostitution, and offenses related to driving under the influence. However, the municipality recently stopped offering the PTDP for license offenses because a lot of people were more successful in the OWL program.

PTDP agreements are usually presented before or at the time of arraignment, and before counsel is appointed. The agreement states that, if the defendant completes the requirements within the specified time frame his/her case will be dismissed. However, if the defendant fails to comply with the conditions listed in the agreement, the case will proceed through the system. If a defendant fails to complete the requirements by the time of the arraignment but has made some progress, the municipality can extend the time frame during which the defendant may complete his/her requirements.

Defendants are usually asked to pay a fine or do community work service (CWS). CWS is usually not offered for thefts of values above \$100, since one hour of CWS equates to \$6.25. It generally takes between two to four weeks to complete the PTDP. Defendants are offered the PTDP option independent of whether they are in custody or not. Whether a defendant is offered PTDP depends on multiple factors, such as criminal history.

¹ Locations TBD.

According to Theno, the program has been going on as long as she can remember and Mary stated that it was already in place in 1983. Theno stated that in during the calendar year of 2012, 498 people participated in the program, in 2013, 468 people participated in the program, and in 2014, 250 people participated in the program. These numbers only reflect how many cases were open or completed and do not reflect how many cases were pulled. She stated that the decline in 2014 can be explained by the fact that the municipality's legal department was and currently is still short staffed and the attorney who was dedicated to PTDP cases now has to fulfil other duties. When asked what other administrative structures are in place for the program, she stated that they have a case management system and a staff member who provides support and audits payments. Theno also said that she is not familiar with the ordinance's history and does not know on which basis specific cases are excluded from PTDP. When asked how many people a) agree to enter the program and b) complete the program she estimated that about 70% of people who are offered pretrial diersion accept it and about 70% of people complete the program. The municipality has also been collecting financial data. The municipality was able to obtain the following fines for their PTDP, pre-charging settlement program (PSP), and deferred prosecution: 2006 – \$331,000; 2011 – \$381,000 (10,400 cases); 2014 – \$133,600 (8,500 cases). The decline in cases in 2014 can be attributed to a reduction in staff at APD. Theno estimates that the municipality on average earns between \$250,000 to \$260,000 per year through the different diversion programs.

- Pre-charging Settlement Program (PSP)

Another program the city ran between 2012 and 2014 was the Pre-charging Settlement Program (PSP). APD has 20 days to review and screen a case file. If the prosecutor determines that the case qualifies for pretrial diversion he personally called the defendant and presented the option of the PSP. If the defendant accepted the offer, he/she would have to pay a \$250 fine and the case was never filed, which also meant that it never showed up on CourtView. Offenses that qualified for this program included citation cases, driving without insurance, driving without a license, and theft. The program was successful; as of February 2014, the city earned around \$6,000 through the program. However, despite its success, Theno recently stopped this program because it was not open to all defendants. More specifically, whether or not a defendant could participate was based on his/her having a phone and whether he or she could immediately afford to make a large payment. In addition, the attorney who reviewed the case focused primarily on the type of offense and the defendant's criminal history rather than the case's evidentiary value. Therefore, in some cases, the defendant could benefit if a case was not properly reviewed.

- Deferred Sentencing Agreement (DSA)

Another program the city offers is its deferred prosecution program. In this program, the case goes to trial and the defendant agrees to a deferred sentencing agreement (DSA). The defendant pleads either guilty or no contest to the crime and agrees to fulfil specific conditions (e.g., such as treatment) and sentencing is deferred. If the defendant complies, there will be a status hearing and the defendant will be allowed to withdraw the plea and the case will be dismissed. If the defendant fails to complete the requirements, the previously agreed upon sentence will be imposed. It usually takes 6 to 12 months to complete a DSA. Theno stated that the DSA provides a way for people to enter treatment programs and the people who enter a DSA are usually interested in obtaining treatment. Theno also informed the group that DSA are very case specific; for example, if there was a victim in a case (e.g. assault) victims are involved in the determination of the punishment but victims do not have right to veto the conditions of the DSA. Offenses excluded from the DSA include serious driving offenses, reckless driving, and DUIs.

- Discussion

During the discussion, the group was interested to learn about the recidivism rates of the different programs. Theno stated that there are no recidivism studies on DSA agreements, but she stated that she believes

that repeat offenders usually do not have previous DSA. Further, she stated that it would be difficult to study, since there is no dedicated field in their database which indicates whether a defendant entered a DSA. Further, she informed the group that the CMS does have field which indicated whether a defendant successfully completed a PTDP. Theno said that “anecdotally” there is a lot of recidivism amongst the group which does enter a PTDP agreement. She believes that this is case because a PTDP agreement focuses on the offense rather than the needs of the offender which a DSA addresses.

Further, the group wanted to know if certain populations are more likely to opt out of the PTDP because they do not understand the process. Theno stated that from her personal experience, she cannot see a pattern. She said that generally people who turn it down want to consult with counsel and if an attorney gets involved the cases are more likely to result in a DSA. That is because attorneys are not as familiar with the PTDP. Campion was also interested to learn about whether the MOA offers translated agreements for ESL defendants. Theno informed the group that the municipality does currently not offer translated agreements.

The committee was also interested to learn how many of the misdemeanor cases the municipality handles. Theno informed the group that during the fiscal year of 2013 the MOA handled about 65% of all the misdemeanor cases in Anchorage. However, since the expansion of the statute in June 2014 the city’s caseload has increased by 23%. Theno stated that her goal is to handle 75% of the misdemeanor cases within the municipality. At the same time the PDA and the DOL want to decrease the amount of misdemeanor cases the state handles.

The group was also interested to learn how much money is saved through the pretrial diversion programs. Theno stated that there is no analysis on how much money is saved that way but several costs are saved, such as staff costs, discovery costs, court costs, corrections costs, and social costs. The group is interested to learn if PEW has information from other states with regards to monetary savings and recidivism rates for pretrial diversion programs.

Deferred Sentencing in Alaska:

- Alaska Pre-Trial Intervention Program (PTI):

Mary informed the group about the DOL’s statewide Alaska Pre-Trial Intervention Program (PTI) from 1981 to 1988. The following information is obtained from the study [Evaluation of the Alaska Pre-Trial Intervention Program \(1988\)](#) conducted by the UAA Justice Center.

The objectives of the program were: (1) to provide prosecuting attorneys with a viable alternative to formal processing with defined criteria and guidelines; (2) to provide rehabilitative services to Alaska residents charged with essentially nonserious first offenses; and (3) to provide restitution either to the victim through reimbursement for monetary damages or to society through community service. Both state and municipal prosecutors made referrals to the program. Screening was required by the prosecuting attorney in order to assure that evidence was adequate in each case for a conviction. Program guidelines stipulated that nonprosecutable cases should not be referred to the program. To be eligible for program referral the defendant must be charged as an adult with a single offense and must be a first offender charged with a property crime in which no one was endangered, assaultive behavior in a family setting or possession, sales or distribution of a small quantity of a controlled substance. He could be charged as either a misdemeanant or a felon though the intake process was different in felony and misdemeanor cases [...]. Exceptions to the first offender criteria included: a prior conviction under state motor vehicle codes or fish and game regulations; a prior domestic violence charge if the instant offense

was of the same nature; or a prior conviction the nature of which was such that the behavior could not be considered habitual (e.g., it occurred several years previous to the instant offense).

By 1983 PTI services were provided in 13 locations across the state. The evaluation concluded that

The data show that the Alaska Pretrial Intervention operated successfully on a variety of measurements throughout the period of its existence. It met intake goals and was available to a broad spectrum of Alaska citizens; two-thirds of the clients admitted to the program have no record of any subsequent law violations. [...] The Alaska program was successful in providing alternatives to more severe sanctions for nearly 1900 Alaskans throughout the state. The opportunity to avoid a criminal conviction was not directed at specific population groups but was available to a variety of Alaskans of all ages, races and socioeconomic levels as long as their offenses were not violent or, in the case of property crimes, not of a serious or threatening nature.

Further, Mary informed the group that National Association of Pretrial Services Agencies (NAPSA) stated in a [report](#) that 45 jurisdictions, including DC and the Virgin Islands, currently provide 298 pretrial diversion programs.

- Discussion

Mary suggested that the workgroup might want to possibly form a subcommittee to specifically examine pretrial diversion and deferred sentencing. Judge Rhoades wanted to know what the DOL's perspective is on pretrial diversion and deferred sentencing. Campion stated that DOL's policy states that pretrial diversion is currently banned, unless approved by the DOL the Deputy Attorney General or the Director of the Criminal Division. However, there is a recognition within DOL that pretrial diversion needs to be an option and part of the justice process.

Overall, the group agreed that there should be some sort of formal regulation. A discussion emerged whether the commission should make a policy or a statute recommendation. Whereas Steiner argued that a policy recommendation would be the quickest and most cost effective way to go about the issue, Judge Rhoades argued that a department's policy depends on the administration and policy is easily changed if the administration changes. Dyson pointed out that the current administration is more open to justice reform than the previous administration.

Jeff May (UAF) Introduction (jdmay@alaska.edu; Cell: 907-750-4986; Home: 907-474-5715)

Jeff May is a faculty member at the UAF Justice Department. He received his Law Degree from the University of Montana. He also holds a Bachelor's Degree in Justice and Master's Degree in Justice Administration from UAF. He has been at UAF for six years and currently teaches courses in Justice Ethics, Criminal Law, Procedural Law, and civil liability concerns in justice administration. His research focuses on sentencing alternatives and restorative justice. Most of his research and service work focuses on working with the Galena Magistrate Judge and aims to achieve greater community involvement in sentencing.

May reached out to the commission and offered his help because the commission's work is of interest to him. He is interested to know more details about why the states PTDP was discontinued and only short-lived. He stated that if it was successful there would be no need to reinvent the wheel. He also informed the group that the department was approached the DA's office in Fairbanks which is interested in establishing a PTDP for non-violent first time felony offenders. He stated that he visited a training conference with the DA and stated that everybody seems to be on board. He also said that the Fairbanks prosecutors as well as the DJJ are interested in sentencing alternatives and restorative justice practices and have approached the department.

He said that the commission work is of interest to him and he would be happy to help and open correspondence with UAA. Judge Rhoades asked if he would be able to research the PTDP of the MOA with

regards to recidivism. He said that he would relay this to the department. Mary said she would explore how the commission could partner with UAA and UAF.

Assignments:

With regards on how to move forward the group agreed that Mary would write up a concise three page document about the current situation of pretrial diversion and deferred sentencing in Alaska and identify questions for the commission to act on. She stated she would send it to Judge Rhoades, Quinlan Steiner, and Clint Campion to verify the information.

The group agreed that they would correspond via email before the next commission meeting on how to proceed. At the moment the group would like to give a presentation on the issue to the full commission addressing the issues of pretrial diversion, deferred sentencing, sentencing agreements and making sentencing alternatives more consistent and available to defendants and encourage them to participate in treatment programs.

Mary will continue discussions with UAA and UAF to promote partnerships with ACJC.

Notes by Giulia Kaufman

_____ I understand that I am charged with a criminal offense by the Municipality of Anchorage.

_____ I understand that the MOA is offering me a Pre-Trial Diversion option.

_____ I understand that if I choose to proceed with Pre-Trial Diversion I will waive my right to a speedy trial for the time period of the diversion.

_____ I understand that if I fully complete the Pre-Trial Diversion requirements the MOA will dismiss my case.

_____ I understand that if I do not comply with this agreement within the time frame I have chosen, I will forfeit any payments made and the Municipality will proceed with the prosecution of my case.

I am choosing the following Pre-Trial Diversion Options

_____ **1 month to pay a \$250.00 fine and provide proof of active Insurance.**

_____ **2 months to complete 40 hours Community Work Service and provide proof of active insurance. (Community Work Service must be completed through the Anchorage Community Work Service Office at 535 E 9th Ave, telephone# 343-4057. A fee of \$25 will be required)**

_____ I understand that my case is being rescheduled for an arraignment on _____. I understand that I must appear at that arraignment unless I complete my requirements early, show proof to the MOA and my case is showing as dismissed in Courtview.

_____ I understand that if I fail to appear at a future court date a warrant will be issued for my arrest.

Signed this _____ day of _____, 2014.

Defendant

MOA Prosecution

MOA PRETRIAL DIVERSION Information

You have been offered a chance to complete a Pre-Trial Diversion program and get your criminal charges dismissed. This means that you will take one or two months and pay a fine or do community work service.

PLEASE READ THE FOLLOWING:

1. All community work service hours will convert to a fine if not completed within the chosen time frame. The conversion rate is \$6.25 per hour.
2. Community work service hours can be completed through the Anchorage Community Work Service Office. The PTD program has a reduced administration fee of \$25.00.
3. The Anchorage Community Work Service Office is located at 535 E 9th Avenue. The telephone number is 343-4057. A form with additional information for community work service is available for those choosing to do it.
4. Proof of completion of community work service hours must be brought to the Municipal Prosecutor's Office on the 2nd floor of City Hall (632 W. 6th, Suite 210)
5. Fines are to be paid at the Municipal Prosecutor's Office on the 2nd floor of City Hall (632 W. 6th, Suite 210).
6. Fines must be paid in cash or money order. Personal checks are not accepted.

Call Assistant Municipal Prosecutor Travers Gee with questions 343-4250

Municipality of Anchorage
Criminal Division
632 W. Sixth Avenue, Suite 210
Anchorage, AK 99501
(907) 343-4250

DEFERRED SENTENCING AGREEMENT

MUNICIPALITY OF ANCHORAGE v. JOHN DOE 3AN-14-55555 Cr.

This agreement entered into this 9th day of January 2015, between the Municipality and the Defendant in the above matter, for a term of 12 months from this date. Defendant agrees to comply with the conditions stated herein and the Municipality agrees to dismiss this matter upon verification of such compliance.

Conditions:

1. **Defendant shall plead no contest or guilty to Count 1: 8.10.010(B)(1) ~ ASSAULT.**
2. Defendant shall not commit any new jailable offenses or any acts of violence during the pendency of this agreement.
3. Defendant shall pay to the Municipality of Anchorage a fee of \$250.00 within 6 months. Payment shall be made at the Municipal Prosecutor's Office in the form of cash or money order only. Checks or credit cards are not accepted at this time.
4. Defendant agrees to abide by the following additional conditions:
 - A. **Complete an alcohol assessment through AASAP and complete recommended treatment and pay associated fees. Must report to AASAP within 7 days.**
 - B. **Complete 24 hours of community work service and pay associated fees. Must report to CWS within 7 days.**
 - C. **Have no contact, direct or indirect, with Jane Doe unless signs a written consent with the Municipal Prosecutor's Office.**
5. If above conditions are met, Municipality shall agree that Defendant can withdraw plea, and the Municipality will dismiss the above case at a COP hearing to be held on **1/9/2016**.
6. If the above conditions are not met by the time limits prescribed in this agreement, the Defendant will be sentenced on the hearing date listed in section 5 above. The MOA may request an expedited sentencing date at any time if the MOA receives notice that the defendant has violated any term of this agreement.

DAVID M HAMMOND

Assistant Municipal Prosecutor

I have read the foregoing agreement and am aware of and understand the agreement, and I agree to abide by its terms. I understand that if I fail to comply with any of the above conditions, I will be sentenced to the above charges. I understand that if I fully comply with the conditions stated above, the case will be dismissed after the period of time stated above.

Defendant

Defendant's Attorney