

Alaska Criminal Justice Commission  
Behavioral Health Standing Committee

## Meeting Summary

**June 26, 2017**

Alaska Mental Health Trust + Teleconference

Commissioners: Steve Williams, Walt Monegan, Greg Razo, Stephanie Rhoades, Brenda Stanfill, Dean Williams

Participants: Rick Allen, Laura Baez, Kristy Becker, Randall Burns, Karen Cann, Pam Cravez, Rob Henderson, Gennifer Moreau-Johnson

Staff: Susanne DiPietro, Barbara Dunham

### **Announcements and Agenda**

Steve Williams called the meeting to order. Greg Razo moved to approve the agenda and Dean Williams seconded the motion. The motion passed unanimously. Judge Rhoades moved to approve the previous meeting's minutes and Greg Razo seconded the motion. Steve Williams suggested amending the summary to add Rick Allen's name to those working on the questionnaire, and to clarify that Brenda was referring to reinvestment grantees on page 5. There was no objection to approving the summary so amended.

### **Jail Diversion for Behavioral Health Populations**

Dean Williams said that the diversion position was approved by the legislature and anticipated being able to hire someone soon. Rob Henderson asked if there was a target date to have someone start. Dean said there was not but he expected to move quickly once the grant money comes in; he would let the committee know.

Steve Williams explained that there were only three responses from committee members to the questionnaire that was sent out. Dean said he appreciated the good work that Judge Rhoades, Karen Cann, and Rick Allen had done on the questionnaire but he wanted to take a step back before setting up parameters that might prove to be too limiting in hindsight. He wanted to approach the topic with an open mind. He thought everyone could agree to start from the concept that there are people in custody who are being made worse by being in custody, and that is the impetus for diversion.

Dean explained that while it would be good to give the new planner/coordinator on information gathered by the group, he didn't want the coordinator to begin from preconceived notions of what diversion should look like. He gave an example from creating a juvenile expulsion school—the biggest limitation to implementing the program was the preconceived ideas that people had about the participants—that they were too “troubled.”

Steve asked Judge Rhoades, Rick, and Karen what their process was in creating the questionnaire. His understanding was that it was meant to ask questions, not necessarily answer them.

Judge Rhoades said they began by going to the national evidence base, and looking at problem statements from national programs to see whether they applied locally. They wanted to differentiate jail diversion from other diversion programs. The purpose was not to limit the approach but to address any preconceived ideas of what people *don't* want, so that the coordinator would know what barriers there might be and how to work with them.

Greg Razo asked whether there were clinicians to consult that were experts in diversion. Judge Rhoades said that there were many examples of diversionary practices already happening in Alaska, from the formal mental health courts to law enforcement officers making a decision not to arrest. Diversion can happen within many different agencies and at different intercept points. Because diversion can be such a broad concept, she thought there was a need to get a good sense of the type that the group was looking at – a jail-based program.

Dean said that everyone seemed to be in the same book but on different pages. He knew there were law enforcement chiefs who would like permission to divert known repeat offenders to alternative programs, so the diversion program wouldn't necessarily have to be located within DOC.

Judge Rhoades noted that many law enforcement officers in the state have gone through crisis intervention training but there was still a need for service providers to bring people to. She had thought that the diversion coordinator was going to plan a jail diversion program; she also thought that the pretrial services program would be a good venue to swiftly identify people who would be suitable for diversion. She didn't think anything was off the table but thought pre-trial was a good place to start.

Steve Williams agreed there was a wide continuum of opportunities for diversion but not necessarily the resources to divert people at every point. He thought pretrial and post-incarceration—people who have no advocate—was a place to start.

Randall Burns asked if there was any talk about a pilot program or how DOC was going to roll out the diversion program. Dean said he would prefer a pilot program to see if the program works. He agreed with Judge Rhoades that pretrial is the area where people have energy right now.

Randall wondered whether there was anything in statute that would keep pretrial defendants in the community. Susanne DiPietro noted that most would stay in the community as long as they can show up for court and not commit new criminal activity. Judge Rhoades pointed out that any pretrial diversion program must be voluntary, and that people would not want to sign up for diversion if it meant being sent somewhere else.

Walt Monegan confirmed that DPS did just do a crisis intervention training in the Valley and they would like to take it statewide. He agreed the problem is finding caregivers and alternative

places for people to go. DPS will continue to do crisis intervention training regardless of what happens with the diversion program. Greg said that was gratifying to hear, and asked if the future trainings will include VPSOs. Walt said that the training in the Valley did include medics and first responders so that would be appropriate.

Steve asked how the group wanted to proceed. Rob Henderson suggested getting more ground level: identify a pilot location, assess what resources are available there and see what the Commission can do to close service gaps. From the Department of Law's perspective, he couldn't answer any questions about a defendant's legal eligibility until he knew more about the resources—i.e. whether there were resources available for defendants who are high risk or have a particular treatment need.

Dean said he was focused on diverting the offenders who were using the most resources, meaning he didn't necessarily want to exclude violent offenders. Rob agreed.

Susanne noted that service providers have been expressing discomfort about criminal justice-involved individuals overwhelming resources, and this added a dimension to the capacity issue. Dean said there has been movement in terms the tribes and federal grants that might help develop capacity.

Judge Rhoades suggested looking at need first, then corralling the resources to address the need. She suggested getting numbers from DOC—talking to prison providers about where individuals with behavioral health needs are and what services they would need in the community. That might also help develop identify a pilot program location.

Dean asked how to identify the individuals to count. Judge Rhoades suggested going back to the questionnaire, and identify the clinical issue to tackle. Greg said that since it was known that there were not enough resources for everyone, the question is then what level of severe mental illness (SMI) or substance use disorder (SUD) justifies diversion. Judge Rhoades said that SMI is the most costly—those individuals that are using the beds in Mike Mod, for example.

Greg suggested talking to the clinicians in Mike Mod to get a sense of the population and risk level they present. Judge Rhoades said that those clinicians don't do LSI-Rs and that population might not necessarily be high risk. The clinicians will know the medical and clinical needs for obvious SMI individuals, but it would be difficult to identify individuals with more moderate mental illness and SUD, especially pretrial. She suggested figuring out who is costing the most, what they need, and what their risk factors are.

Rob said if the group can identify the resources needed, that will give a better sense of the legal eligibility picture. He suggested giving information on what services a defendant needs to the DA—they typically don't get LSI-R type data. Judge Rhoades suggested that some programs might divert early enough not to involve the DA.

Randall Burns said the resource issue was important. It would be impossible to reorganize the whole state—providers would be overwhelmed. That is why a pilot program would be

important. Teri Tibbet said that one concern from providers is being able to get assessments done—this is currently very difficult.

Steve said he thought a one-month snapshot from DOC will help start to paint the picture of the target population and will help guide the diversion planner. Judge Rhoades suggested giving the questionnaire to the planner, who could then give it out to stakeholders. Gennifer Moreau-Johnson suggested including people with intellectual/developmental disabilities in the snapshot. Teri suggested also including those with cognitive impairments such as dementia, TBI, and FASD. Steve noted that the latter was a historically difficult group to identify.

It was suggested that the group consult with clinicians on this. Laura Baez asked whether the clinicians from the SAMSHA grants were still around. Judge Rhoades said there was one, and the other moved on. Dr. Becker noted there was a small number of clinicians in the state who have the training for this kind of screening—ideally someone doctorally trained in forensic/criminal psychology. Teri suggested contacting Tom Chard of the Alaska BHA as he is in touch with providers.

### **Standardized Release of Information**

Steve Williams noted that Randall Burns had provided an example of a potential universal Release of Information (ROI) to the group. Randall said it was a template that is one page (plus instructions) and is all that is required to meet HIPAA. The AG's office is looking into whether potential changes to 42 CFR might affect this however. Susanne DiPietro asked whether this template worked. Dr. Becker said that it did but the question is whether it can be sent to others. Judge Rhoades explained that this was an issue originally raised by Alysa Wooden because of issues in reentry—each provider was requiring a different ROI. Karen Cann noted that DOC now has one form for reentry efforts.

Judge Rhoades asked whether the Commission should recommend that this ROI be required by statute. Susanne suggested looking at the recent statute regarding a standardized power of attorney (that would have to be accepted by all banks) as an example. Dean Williams asked whether it could be just adopted by regulation. Judge Rhoades thought it might need to be a statute—not all providers might accept it and they are wary of being sued.

Susanne suggested putting out feelers to stakeholders to see if they would accept it – e.g., Medicaid grantees. Rob Henderson suggested asking local health care lawyers. Randall noted there had previously been a group formed to address the needs of 100 “high utilizers” of state services in Anchorage—and that group gave up because they couldn't agree on an ROI. He agreed to reach out to the former members to get more information. Susanne also suggested making acceptance and use of the ROI a condition of being a grantee.

Randall said he would check in with the grantees and get a problem statement as to the difficulties the disbanded task force had. Walt Monegan suggested talking to other states. Steve and Randall will confer on this.

Greg said that if it was an issue of building support for the existing Commission recommendation, AFN might be able to throw some support behind this and other recommendations.

### **UNLV Report**

Steve Williams explained that Barbara Dunham had provided the group with a summary of the recommendations in the UNLV report that had not met with any opposition when last year's behavioral health workgroup went through it. Randall said that if the group could agree on which of these to focus on, he could get a fiscal analysis for the next meeting.

*[Below is a summary of the consensus recommendations, followed by the Committee's discussion.]*

#### Forensic examiners

- Amend wording of AS 12.47.070 ("Psychiatric examination") to read "if there is reason to doubt the defendant's competence to proceed under AS 12.47.100."
- Amend Titles 12 and 47 to require neutral evaluators for forensic evaluations.
- Amend Titles 12 and 47 to require qualified forensic evaluators with term "qualified" defined as licensed psychiatrist or licensed psychologist who is trained or certified in forensic examination.
- Amend Titles 12 and 47 to require only one forensic evaluator.
- DBH should coordinate continuing education in forensic evaluations for psychiatrists and psychologists in the state.
- Amend Titles 12 and 47 to require DHSS to designate qualified and neutral evaluators.

Greg Razo said he thought these made sense. Randall said he was not sure about neutral evaluators but that defining forensic evaluators and moving to one evaluator would be okay. Dr. Becker said there was a debate about the neutral evaluators. Evaluations should be unbiased, and some jurisdictions presume that state evaluators are neutral – for example the federal system does this. The problem in Alaska comes down to having only 2.5 evaluators plus an intern. She said that in an ideal world, the evaluators would only do evaluations (instead of both evaluating and treating). This is how it is done in Washington. Randall said that to accomplish that here, the court system would have to hire evaluators. He noted that DHSS and DOC were talking about creating a forensic hospital.

Judge Rhoades said that the small workforce for forensic psychology was a problem. With the volume increasing, it wasn't healthy to have so few trained professionals—there was a professional vacuum. Dr. Becker agreed, there was a professional vacuum; there were far fewer qualified evaluators per capita than other states. Also, for a state to require a board-certified psychologist, such as Alaska does, is rare—and there are none in Alaska. Other states just require someone qualified.

Steve asked whether the Committee could agree on the other recommendations. Rob suggested compromising by requiring a neutral evaluator only if one was funded. He recalled this had been an issue in the past. Dr. Becker said that made sense and would continue the conversation on neutrality.

Greg moved to bring the above recommendations, amended as suggested by Rob, to the full Commission. Rick Allen seconded the motion. There was no objection. Randall agreed to draft the problem statement to bring to the next Commission meeting.

#### Competency

There was no consensus on the UNLV report's recommendations on competency in last year's workgroup. Judge Rhoades asked why this was; Barbara could not remember specifically but said she would send the meeting notes to Judge Rhoades.

#### Civil commitment

The group discussed the civil commitment recommendations, and whether there could be anything done about committing people who cannot be treated. Randall said that the question for a lot of the recommendations is what it would mean practically. He didn't disagree with a lot of the report in theory. Judge Rhoades said she thought it was important to address.

#### **Further information and next steps**

Steve thought that the group seemed to be thrashing a bit at that point. He noted that not everyone in this Committee had been in last year's workgroup or participated in the UNLV process. He noted that the UNLV report was comprehensive and aside from the forensic examiners recommendations, were more nuanced and difficult to understand.

Dean asked whether there was any particular timeframe to make a decision on these. Steve said there was not and it could be done over time. Dean said he would like to add Title 47/sobriety holds to the agenda—the laws were written 30 years ago. Bringing intoxicated persons into the DOC system is a real problem.

Steve asked if the group should continue going over points where consensus had previously been reached, or if the group should stop here and pause to get everyone up to speed on the UNLV report. He recommended either having everyone familiarize themselves with the report or having the authors come explain it, and then resuming the discussion.

Rob asked to centralize the information out there- he knew that the various departments wrote memos on the report, but had not read them.

Dean asked what the focus of this group is regarding the report. Steve said that the purpose is to address in statute areas where mentally ill individuals are languishing in the system or taking repeated trips through state facilities, or where there are gaps in services. Judge Rhoades said the issue was there were people waiting around to have their basic rights addressed.

Steve said he would contact the UNLV folks to get them to do an overview; meanwhile, the committee will still move forward with the forensic evaluators piece.

Steve also said he would add items suggested by Laura Baez and Rick Allen to the agenda.

**Public Comment**

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

**Next meeting**

The next meeting was scheduled for July 20 from 9-11.