

**DRAFT Notes and Meeting Summary
WORKGROUP ON BEHAVIORAL HEALTH¹**

Alaska Criminal Justice Commission

Wednesday, June 29, 2016

9:00 a.m. - Noon

Location: Alaska Mental Health Trust Authority

Commissioners Attending

Stephanie Rhoades, Jeff Jessee, Brenda Stanfill, Kris Sell

Commissioners Absent

Greg Razo, Dean Williams, Walt Monegan, John Coghill

Other Attendees

Steve Williams, MHTA; Jocie Garton, PDA; Cathleen McLaughlin, Partners for Progress; Alysa Wooden, DHSS; Paul Miovas and Steve Bookman, Dept. of Law; Laura Brooks, DOC; Tony Piper, ASAP; Jerry Jenkins, Anchorage Community Mental Health; Diane Casto, DHSS; Trina Sears, OVR; Bill Miller, APD; Kate Burkhart, Alaska Mental Health Board; Christine Johnson, Alaska Court System; Heidi Weiland, MHTA; Brad Myrstol & Araceli Valle, Alaska Justice Information Center.

Staff: Susanne DiPietro

Next meeting: July 13 from 9 a.m. to noon.

The meeting began at 9:10 a.m.

The group reviewed the analysis and recommendations from the report entitled “Review of Alaska Mental Health Statutes” authored by consultants from the University of Nevada Schools of Law and Medicine.

1. Forensic examiners.

Recommendations on pages 7-8. The group had no objections to the recommendations on pages 7-8 of the report. Those will be forwarded to the commission for its consideration.

Note: Department of Law raised the question of whether and when telephonic testimony of forensic examiners should be permitted. The group felt that issue was outside the scope of its work and recommended that the

¹ Throughout the continuum of care in the criminal justice system.

Department of Law and the Public Defender Agency ask the Alaska Court System to consider changing the court rule regarding telephonic testimony.

2. Competency to stand trial.

Recommendations on pages 13-14. The Department of Law objected to removal of the rebuttable presumption in **recommendation 1** for some serious classes of felony offenses (for example, A, Unclassified, SAM). It was decided to bring **recommendations 1 and 2** directly to the commissioners with Law's objection and without a recommendation from the workgroup.

Note: In **recommendation 2 on page 13**, it was suggested that DHHS' designee should be understood to include its grantees.

Note: The question was raised whether the civil commitment process envisioned by **recommendations 1 and 2** is appropriate for defendants found incompetent and not restorable by virtue of a mental disability, because API does not treat cognitive disabilities.

3. Civil Commitment

Recommendations on pages 19-20. The group agreed that these 9 recommendations should be discussed further with DHSS before the workgroup or the commission will take action.

Recommendations on page 22. The group generally agreed with the rationale of the four recommendations that folks who cannot be treated (for example, because of a cognitive disability) should not be committed. However, Department of Law questioned those portions of **recommendations 3 and 4 on page 22** that require a finding on the "need for care and treatment" at the .710 (initial) hearing, on the grounds that it is not feasible for all petitioners to be able to present evidence/information on this issue at the .710 hearing. Although petitioners with medical backgrounds probably would be able to present evidence on this point, family members or other non-medical petitioners likely would not be able to supply evidence, and the judicial officer would then be unable to make the finding.

No objections were voiced regarding **recommendations 1 and 2 on page 22** of the report.

The group agreed that AS 47.30.730 should be amended to require the state to show only that the respondent's condition could be improved by the course of treatment proposed, as cited in **recommendation 3 on page 22**.

The group agreed that AS 47.30.700(a) also should be amended to require the state to show only that the respondent's condition could be improved by the course of treatment proposed, as described in **recommendation 3 on page 22**.

4. Imminence & Grave Disability

The group expressed no concerns with **recommendations 1 and 2 on page 25**. Regarding **recommendation 3 on page 25**, the group agreed that the emphasis on recency of behavior as a factor for determining imminence of harm is problematic. For example, defendants who have been receiving treatment while incarcerated are often judged by evaluators to pose no risk of imminent harm, although they might become a danger once released. The group did not agree with the solution suggested by **recommendation 3 on page 25** that "recent behavior" be defined as behavior within the past 30 days; however, no alternative solutions were reached. It was agreed to form a subgroup consisting of Department of Law, Public Defender Agency, API, and Department of Corrections to propose a "totality of the circumstances" test that would include such factors as current environment, likely future environment, patterns of behavior, etc.

5. Early discharge from civil commitment

Recommendations 1 & 2 on page 26. No objections were voiced to **recommendation 1**. It was agreed to **reject recommendation 2**, on the grounds that the VRA arguably requires the state to notify the victim of early discharge, and this recommendation would hamper the state's ability to do that.

6. Outpatient commitment (page 28)

The group did not object to the recommendation to create an outpatient commitment program; however, the following issues were raised: need to address liability and possible immunity for community providers; need to carefully define "non-compliance"; need for a fiscal impact analysis, including a description of expected savings such a system could create in other areas (e.g. Medicaid).

7. Guilty but mentally ill (page 34)

No recommendation – there was no consensus and the number of defendants affected is not large.

8. Diminished capacity (page 35)

No recommendation.

9. Intellectual and developmental disability definitions (page 36)

The group agreed with Department of Law's suggestion that there should be a larger list of things that relate to intellectual functioning other than the ability to obtain a driver's license or testify as a witness. The group disagreed with the suggestion in **recommendation 3** to delete those items, opting instead to enlarge the list. No objections to **recommendations 1 and 2**.

10. Competency restoration and involuntary medication

The group reach no consensus on **recommendations 1 and 2 on page 38** and it was agreed to discuss these issues further. The Department of Law objected to changing the current situation in which the prosecutor decided whether to file or not to file a motion for an involuntary medication hearing. Regarding **recommendation 2**, the Department of Law preferred the alternative ("the statute could simply allow for the involuntary administration of medication to restore competency and rely on ...*Sell* and *Harper* to guide the courts' analysis.")

The meeting was adjourned at noon.