

ACJC Workgroup on Classifications of Crimes and Applicable Sentences
Staff Notes and Member Assignments, January 6, 2015
Denali Commission, 510 L St., Anchorage

Commissioners attending: Alex Bryner, Kris Sell, Fred Dyson
Staff present: Susie Dosik
Participating: John Skidmore (DOL)

Future meetings: Pending scheduling

RELEVANT INFORMATION:

[Reclassifying Nonviolent, Small Quantity Drug Possession as a Misdemeanor](#)

[Fiscal Impact of Reclassifying MISC IV](#)

Email from Mike Matthews DOC concerning numbers of MISC offenders (attached to this document)

DISCUSSION

The group welcomed Mr. Skidmore. Comm. Bryner reviewed the goals and mandates of SB 64, including the solicitation of a broad range of options and viewpoints. Mr. Skidmore reflected that he understood the goal of the commission to be to (1) keep the crime rate going down, and (2) to reduce criminal justice costs, as the current incarceration practices are fiscally unsustainable. Comm. Bryner added that the focus was to be on evidence-based practices.

Reclassification of MISC 4

The group discussed a paper produced by Forrest Dunbar regarding the potential cost savings and other impacts of reclassifying drug possession to a misdemeanor. Mr. Skidmore expressed that he was skeptical of the amount of any potential cost savings because prosecutors may be resistant to negotiating charges down to misdemeanors for conduct that may have originally been charged as a B felony. He agreed, however, with the premise that simple drug possession shouldn't result in incarceration. Comm. Dyson and Comm. Bryner discussed the "collateral consequences" of a felony conviction and Mr. Skidmore stated that he needed to learn more.

The group discussed how to solicit viewpoints from other constituencies. Suggestions included asking for input from groups which had testified during the hearings on SB 56 in 2014 (legislation which would have reclassified MISC 4) including: criminal defense attorneys, the Alaska Police Officers Association, the Office of Victims' Rights, and former Department of Corrections Deputy Commissioner Carmen Gutierrez.

Mr. Skidmore suggested also looking at other options to deal with MISC 4 including pretrial diversion, which would not need Commission recommendation or legislation, but which could be implemented solely by the Department of Law. It was noted that a downside to that approach would be that implementation would depend on the discretion of those in the department. Comm. Sell noted that the Juneau Police and prosecutors had a standard Rule 11 agreement for minor consuming violations which resulted in dismissal of charges if a person was clean for a year, resulting in a "clean" record. Mr. Skidmore stated that Alaska used to have a robust diversion program but the Court of Appeals had issued a case which led to prosecutors not using that approach as often.

Comm. Bryner remarked that 14 or 15 states treat the offense as a misdemeanor, and always have. Two states have reclassified it to a misdemeanor from a felony. There should be evidence of how that is working. One state may have treated it as a “wobbler,” i.e., as a misdemeanor at sentencing, prior to treatment or rehabilitation, and a felony on the permanent record if the offender was not unsuccessful. Meeting attendees expressed that they would like more information on “wobblers.” Meeting attendees discussed the need for prosecutors to have “leverage” and also the need for offenders to have treatment options, which are currently not available, that could be used for such an approach. They noted that some front-end investment would be needed to obtain large scale cost savings in the long run.

It was noted that Mr. Dunbar had identified many of these issues in his paper and had proposed a scaled approach that would provide relief from the felony conviction for the first or second conviction but not after that, and also included risk assessment and tiered levels of supervision.

Meeting attendees discussed how to reach out to others. Mr. Skidmore stated that he would reach out to prosecutors in other states to see how the approach was working, and that Quinlan Steiner (absent from this meeting) could do the same. Comm. Bryner suggested that everyone should read Mr. Dunbar’s report thoroughly, identify other sources of information promptly and present those to the group through Mary Geddes or Susie Dosik.

Mr. Skidmore reviewed how negotiation decisions are currently made in drug cases. He stated that individual prosecutors decide based on: Drug amounts; the suspect’s criminal history, especially other felonies; whether the offense was driving-related; whether firearms were found; information from police about whether objects indicating distribution were found such as scales, ledgers, or other information known to law enforcement about the suspect’s lifestyle. He stated that the level of review of Assistant District Attorney’s decisions varied by area but could include review from a District Attorney, a supervisor’s review (such as the Drug Unit supervisor in Anchorage) or none. Such review was more likely with other types of offenses, such as sex offenses.

Identification of other potential topics for discussion

Meeting participants discussed this area and identified felony theft thresholds and presumptive sentences as possible areas of discussion.

ASSIGNMENTS

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| Commissioners: | Carefully review Forrest Dunbar’s paper
Identify other potential areas of reclassification of offenses or sentencing. |
| Staff: | Present information on “wobblers.”
Research and present information on other states which classify drug possession as a misdemeanor.
Find out whether there is a disparate numbers of urban and rural residents incarcerated in drug cases. |

ATTACHMENT

----- Forwarded Message

From: "Matthews, Michael T (DOC)" <michael.matthews@alaska.gov>

Date: Mon, 05 Jan 2015 22:50:45 +0000

To: Carmen Gutierrez <ave2cg@gmail.com>

Subject: sentenced vs. unsentenced

Hello Carmen,

I just ran some numbers on MICS-1 thru 6 releases and found something I think is interesting when looking at unsentenced offenders (and subsequent PEW reports that claim our sentenced offender counts are down).

The impact of unsentenced offenders is real and needs to be considered.

For example:

Not only are there more MICS offenders and they are staying longer, but the time they spend as unsentenced is also increasing.

MICS-4, for example –

5 years ago,

- 799 offenders were released,
- they stayed for an average of 192 days,
- of which, 17% of that time was as unsentenced.

In 2014,

- 962 offenders were released,
- they stayed for an average of 214 days,
- and 32% of their time was as unsentenced

So, while it is true that our sentenced offender population is decreasing, that is not the whole picture. The reality is that for a number of our drug offenders, their sentenced time is simply being “transferred” over to unsentenced legal status. This might be going on in other offense types but my current research is limited to just drug-related offenses.

This causes a cascading effect:

1. It makes it appear sentenced counts are decreasing. In truth, more offenders are being convicted of drug offenses, it just takes longer to do so. In most cases, the time spent as unsentenced is applied to their total calculated incarceration time. So even though they are

unsentenced now, in the future it will be considered sentenced time when figuring out how long they are to be incarcerated.

2. When offenders are in unsentenced status, it limits where we can house them. They cannot, for example, be housed in a CRC. This, in turn, drives up the cost of incarceration.

3. When an offender is unsentenced, it decreases their chances to enter into program treatment eligibility. Sentenced offenders are the priority.

4. If an offender stays unsentenced long enough before conviction, it could disqualify them from program eligibility altogether because they end up not having enough time to serve in order to participate in a program 120 days long. If an offender is ordered to take a program by the courts but is discharged before the program can be started or completed, then it is up to the offender to get the treatment. If the offenders fails to do so, they are returned to incarceration for failure to comply with the conditions ordered by the court.

This is but one example of the impact unsentenced offenders are having on reformative programs, recidivism, and offender populations in general.

Mike

----- End of Forwarded