

ACJC Workgroup on Classifications of Crimes and Applicable Sentences  
**Staff Notes and Member Assignments, March 24, 2015**  
Attorney General's Office, 1031 W. Fourth Ave., Room 501, Anchorage, AK

Commissioners attending: Alex Bryner, Kris Sell, Quinlan Steiner  
Staff present: Susie Dosik, Mary Geddes, Susanne DiPietro  
Participating: Judge John Lohff (ACS), Kristin Bey, Sen. Fred Dyson (ret.), John Skidmore (DOL)

**Future meetings:** April 29, 1:00 – 4:00 p.m. in Anchorage

**RELEVANT INFORMATION DISTRIBUTED TO WORKGOU P MEMBERS**

[SB 56 \(2014\) bill text](#)

Proposal for Revision of MISC 4 re simple possession offenses (excerpt from

[Report on Reclassifying Nonviolent, Small Quantity Drug Possession As A Misdemeanor](#))

[“Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment”](#)

Chart of States with Misdemeanor Drug Possession (draft - do not circulate) (Mary Geddes)(attached)

Summary of Delaware Drug Reforms (Mary Geddes)(attached)

Drug Chart (Susie Dosik) (attached)

**DISCUSSION:**

**Resources for Commission's Mandated Review of Presumptive Sentencing Scheme**

**Future Presentation by Professor Berman**

Ms. Geddes reported that she had contacted Professor Berman about providing an overview for the workgroup or the Commission on the different types of state sentencing schemes. He is willing to provide a 'webinar' type presentation with an opportunity for questions. Workgroup members agreed that the full Commission would be interested in his presentation and that it would be ideal if he were available for up to an hour. Participants asked staff to schedule his presentation up to an hour for either the March or April ACJC meeting, depending on other agenda items and Prof. Berman's availability.

**Alaska Judicial Council Felony Sentencing Study**

Ms. Dosik indicated that the results of the Council's felony sentencing study should be available by the fall of this year, 2015.

**Request to Court System for Law Clerk Assistance**

Justice Bryner will contact Christine Johnson to see if any law clerk assistance might be available with respect to the Commission's statutorily imposed responsibility for reviewing the presumptive sentencing scheme. (Ms. Geddes will assist with any written proposal for the same.) Justice Bryner noted that it will be important to provide context for the review, i.e. describe the evolution of the sentencing scheme and developments such as [Apprendi/Blakeley](#).

**Department of Law**

Mr. Skidmore said that the Department of Law has an internal manual, updated every year, which provides an overview of the presumptive sentencing scheme and a discussion of the changes which have been enacted since its inception. The DOL may be willing to share this overview and discussion with the Commission so as to avoid duplication of (great!!) effort, and to aid the Commission in its efforts. He will report back.

## **Court System Information on 2014 SIS Dispositions and Set-Asides**

Ms. Dosik reported that she had requested and received the following data from the court on SIS completions: in calendar year 2014, 566 convictions were set aside after suspended imposition of sentence, 721 were not set aside (1,287 total). The percentage of set aside convictions of the total was 44%.

## **Reclassification of MISC 4 (felony to misdemeanor)**

Background: At its last meeting the Workgroup discussed some members' interest in developing a recommendation for the Commission concerning simple possession offenses. Workgroup members had asked that SB 56 be circulated, and that staff provide information concerning those states which classify simple possession as a misdemeanor. Staff was also asked to provide information as to those states' crime rate trends. Consequently, staff developed materials to aid the Workgroup in its discussions. Ms. Geddes later noted that almost all of the states with misdemeanor classifications for simple possession seem to have provisions of law providing for deferred sentencing.

The workgroup discussed former SB 56 (2014) that had been circulated. Mr. Skidmore stated that the Legislative Research Service had probably overestimated the savings which would result if SB 56 reforms were enacted. Sen. Dyson informed the group that amendments had been suggested for SB 56 with proposed drug quantities which were more agreeable to public safety agencies. Staff agreed to locate the proposed amendments. [MG: They are now attached to this summary] Although Commissioner Steiner felt prepared to proceed with a substantive proposal for the Commission, Commissioners Sell and Bryner did not, and the Workgroup ultimately agreed to wait to review that additional information from Sen. Dyson before considering and advancing a recommendation.

Mr. Skidmore asked about the necessity of reclassification if there are pretrial diversion and deferred prosecution programs implemented. He said that while the DOL does want pretrial diversion there is always a question about the state's ability to finance treatment costs associated with any diversion type program. Mr. Dyson suggested that certain funds could be identified for such purposes, such as the funds intended for victim restitution. Mr. Steiner said it was not the Commission's job to find funding; its job is to evaluate the efficacy of the current system and make recommendations to improve it.

Ms. Dosik said that the criminogenic effect of imprisoning lower level and non-violent offenders also, ultimately, has economic impact. Justice Bryner noted that because of the nature of addiction, experts recognize that drug users will have multiple contacts with criminal justice system, but that 'smart justice' approaches such as incremental sanctions and PACE make more sense than mandatory minimums and lengthy presumptive sentences. Research has shown, he said, that recidivism among drug users much more effectively reduced by community-based programming than by incarceration.

With respect to Mr. Skidmore's additional question as to whether research shows any difference in treatment/compliance results between defendants facing felony sanctions versus misdemeanor sanctions, Ms. Dosik reported that she had looked at that research and it indicated there is no difference.

Workgroup members and Commissioners noted that they may need to request an expert to advise them on what quantities of drugs reasonably reflect personal use rather than an intent to distribute. Mr. Steiner expressed concern that the group not get bogged down with determining quantities for its recommendation concerning simple possession. Lt. Sell suggested that she could provide some anecdotal information, just based on texts they see in Juneau which are directed at drug dealers. Sen. Dyson stated that the proliferation of pain-killer prescriptions suggests that personal-use quantities may need to be updated.

Commissioners also noted that the ACJC legislative mandate requires it review current drug schedules, and that it would certainly need expert advice given the lack of agreement among the states in determining which drugs are the most dangerous. Lt. Sell noted that the drug frontier is constantly changing, e.g. Spice, and it would be easy to get lost in the weeds. The lack of any activity on the part of the [Controlled Substances Advisory Committee](#) was noted. It had been hoped that the Advisory Committee would have convened already and that the ACJC could rely in part on the expertise of that group. [MG: It does appear that [new Committee members have been appointed by Governor Walker](#), but that the Advisory Committee has not yet been met.]

*The Workgroup agreed to recommend to the full Commission that the Controlled Substances Advisory Committee meet and begin its work. Mr. Skidmore also said that he would check to see what was happening with that group.*

The Workgroup also decided against bringing in an expert at this stage to discuss personal use quantities. Rather the Workgroup agreed to focus on the MISC/simple possession issue to see if it could reach a resolution at its next meeting.

### **Justice Reinvestment Initiative and Its Impact**

Susanne DiPietro reported that the likely invitation by the State of Alaska to the Pew Public Safety Performance Project, known better as the justice Reinvestment Initiative (JRI), means that the Alaska Criminal Justice Commission will be shifting gears in June in order to effectively partner with the Project.

The Classification Workgroup will continue to work on its own agenda in April and May, but Commission members will likely find the Pew partnership a time-absorbing process once it begins in June.

### **Increasing Felony Theft Thresholds**

Commission members and participants indicated that they were still interested in this topic. Ms. Geddes stated that she would circulate some of the submissions related to the 2014 bill that raised felony thresholds before the next meeting so that Workgroup members could determine if they wanted to address this issue.

### **Reclassification of Misdemeanors**

Commission members and participants indicated that they were still interested in this topic. Ms. Theno (who could not attend today's meeting) said she would assist and enlist others to help. Commission Steiner has previously supplied a list of potential misdemeanors for reclassification to another workgroup. Ms. Geddes will circulate that list. Judge Lohff again suggested that VPSO's and rural State Troopers be contacted for their input, so that it could be learned if rural law enforcement would welcome such changes.

### **Other Matters**

Mr. Dyson recommended that the Commission look at offender PFD's that are forfeited to the state, which the Department of Corrections currently uses to fund offender health care services. Justice Bryner urged Mr. Dyson to make that recommendation directly to the Commission.