

**Workgroup on Presumptive Sentencing
ALASKA CRIMINAL JUSTICE COMMISSION**

Thursday, February 18, 2016, 12:00 – 1:00 PM
Atwood Building, 550 W. 7th Avenue, Rooms 102 and 104

Commissioners Present: Greg Razo, Alex Bryner, Quinlan Steiner, Trevor Stephens, Brenda Stanfill.

Staff: Mary Geddes, Susie Dosik, Teri Carns, Giulia Kaufman, Susanne DiPietro.

Also attending: Rob Henderson (DOL), Taylor Winston (OVR).

The meeting began after 12:00 PM, the scheduled start time. It was noted that AG Richards was not able to attend but that Rob Henderson, a Chief Assistant Attorney General and the head of the Office of Special Prosecutions, was attending on his behalf.

There were two items on the agenda: a presentation from the Alaska Judicial Council staff who have been working on the Felony Sentencing Study, and workgroup plan of action.

Susanne DiPietro, the Judicial Council ED, noted that the Sentencing Study was completed but the Executive Summary was still being finalized. The complete report should be available for distribution very soon. Draft excerpts, principally the Executive Summary, from the Felony Sentencing Study were made available and discussed in this meeting.

Comr. Stanfill asked for relationship of the Felony Sentencing Study findings to JRI recommendations. Comr. Steiner noted that the JRI recommendations sought reduction in the sentencing ranges, changes that were justified by the research and the increase over time for all sentenced defendants in the length of time served but that Comr. Bryner had recommended looking at alternatives, i.e. different systems of sentencing. Bryner responded that our presumptive sentencing scheme is very unusual, actually unique, among the states and because of its unique features we should be careful with inferences drawn from the study.

Among the questions for this Workgroup (and the Commission ultimately): Should we maintain the presumptive sentencing structure? Noting that avoiding ethnic disparity in sentencing was a principal goal in designing PS originally; the question is whether that it still a goal? Are there other sentencing/correctional/reformation goals which it does not achieve? What does the research indicate in terms of effective sentencing measures? Should less serious crimes be treated differently in terms of the amount of discretion given to sentencing judges?

Mary at this time proposed that the group plan work for the May-June time frame, as the report will most certainly have been released and it will be past the crush of most legislative related work.

Susanne promised the Commission would soon have the full final report and it should be of assistance in these discussions. She particularly emphasized that if there are quantitative questions which have not been answered, then the AJC can do additional analysis. Susanne also

noted that the Felony Sentencing Study is certainly not the only source of information for an evaluation of the existing presumptive sentencing structure. Teri noted that the Pew data on the length of stay (LOS) is potentially of great use.

Susanne suggested that a chair be chosen and there be agreement as to the time frame and the scope of the group's work. Mary Geddes noted that the three-judge panel would certainly be a specific topic of discussion because so many individuals have already identified it as a problem. Brenda recommended that Comr. Steiner be chair of the subgroup.

Rob Henderson asked if it is possible to make comparisons between older, historical data and this study. Teri explained that the samples in the 1999 and the 2012-2012 studies were defined differently out of necessity because of the migration to using electronic case file information.

Susanne noted that ethnic disparities noted in the pre- presumptive sentencing years has been reduced by presumptive sentencing. But, Teri noted, ethnic/racial disparity still exists, but more in 'pockets.'

Rob asked if it is possible to exclude trial cases from the sample. [not sure this was answered] According to Teri, Alaska Court system reports indicate: "In 2012 and 2013, more than 96% percent of all felony cases in Alaska were resolved without trial" and "Most of those are resolved by a plea agreement negotiated under authority of Rule 11 of the Alaska Criminal Rules of Procedure."

Comr. Bryner at this point noted that presumptive sentencing was designed to deal with the inconsistent results of open sentencing, not a world in which the vast majority of cases were resolved by plea agreements. Subsequent case law interpreting the presumptive sentencing statutes similarly attempted to rein in judges' discretion, e.g. such as when a judge relied upon the existence of an aggravator as the basis for then imposing the statutory maximum sentence.

Teri clarified that the Felony Sentencing study was looked at convictions from a two year period (2011-2012) in which there was a general DOL ban on plea bargains, although charge bargains and other agreements (e.g. to a mitigator) were permitted. Rule 11s agreements were not noted in the electronic record. Furthermore the finding of an aggravator or mitigator (or both) was also not indicated in the electronic record. Since only the class A's conviction files in this study were viewed manually, the AJC study did not have that information for the vast majority of the cases (C's and B's).

Comr. Steiner asked about the data on drug sentences below the presumptive range, clearly reflecting the existence of a mitigator. In a world in which most charges were resolved by an agreement, he asked whether there is enough information to draw a useful conclusion. What if anything might it reflect about the DOL policy at the time, for example?

Comr. Stanfill referenced statutory ACJC goals (#2 and #3) in SB64 and asked whether staff could help frame the specific questions to be answered in this workgroup.ⁱ Comr. Razo moved the question and Comr. Bryner seconded; the motion passed unanimously.

All agreed that Commissioners will help inventory concerns about presumptive sentencing. Staff will be responsible for proposing an agenda with questions to be answered and will ensure that data and evidence is preeminent in considerations.

Additional public comment was sought. There being none offered at this time, the meeting was adjourned.

ⁱ AS 44.19.645 reads in pertinent part:

“(a) The commission shall evaluate the effect of sentencing laws and criminal justice practices on the criminal justice system to evaluate whether those sentencing laws and criminal justice practices provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation. The commission shall make recommendations for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution. In formulating its recommendations, the commission shall consider
(2) sentencing practices of the judiciary, including use of presumptive sentences; [and]
(3) means of promoting uniformity, proportionality, and accountability in sentencing;
...”