

Workgroup on Presumptive Sentencing
ALASKA CRIMINAL JUSTICE COMMISSION
June 25, 2016, 9-11 AM at the Brady Building with Teleconference

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

Commissioners Absent: Wes Keller

Participants: Rob Henderson (LAW); Catherine Hansen (OVR); Kaci Schroder; Mike Schwaiger(PD), Ken Truitt (LEG)

Staff: Mary Geddes, Brian Brossmer, Susanne DiPietro

The group convened at 9:00 AM.

The first topic was mitigators, specifically the proposed acceptance of responsibility mitigators.

Acceptance of Responsibility Mitigators.

All present agreed to the first variation, providing acceptance in the plea agreement context.

With respect to the second variation, providing a 50% floor in the non-plea context, both Greg Razo and Quinlan Steiner thought that there shouldn't be a floor. Rob Henderson and Alex Bryner like the floor. It was agreed that the 50% floor now provided by statute for lengthier sentences would still apply, and that we were only discussing the shorter sentences, like 'C's.' Rob said that he would ponder the percentage in light of revised sentencing ranges. Susanne noted that the felony sentencing study for C felonies showed for all offenders a median sentence of 11 months active time.

Brenda Stanfill thought the mitigator is a good thing for expediting resolutions of cases, but she is still concerned that those who go to trial could get a benefit. Mary Geddes noted that she had practiced in federal court, where "acceptance of responsibility" is an advisory sentencing adjustment, and the adjustment was rarely available for anyone who went to trial. Cathy Hanson agreed that a mitigator is a good idea because speedy resolutions are generally better for victims, although it is possible that some victims might be upset about reductions based on acceptance. Alex Bryner thinks a mitigator for acceptance allows too much discretion, is too subjective and encourages false expressions of remorse.

It was ultimately agreed that since all members but Alex Bryner had agreed to the mitigator (but not necessarily exactly to a floor for sentences where the floor is 4 years or less) the recommendations would be forwarded to the Commission. Alex's concerns would be reflected in the report.

Successfully Completed Treatment Mitigator: The next mitigator discussed was an amended mitigator for successful completion of evidence based treatment. This proposal would remove the offense exclusions and the limitation of crediting only that treatment received in the therapeutic context.

The major concern voiced by Trevor Stephens was that it would encourage pretrial continuances. This concern was shared by Cathy Hanson, Brenda Stanfill, and Rob Henderson. Brenda said she had no problem with pre-sentencing continuances to finish treatment. She would credit pre-sentence treatment received in Batterers Intervention by felony offenders in turning them around and avoiding recidivism.

There was agreement that as long as the mitigator can't be used to continue trial it should be recommended. Alex Bryner also asked that eligibility be conditioned on no recidivism (no relapse) prior to sentencing.

Cathy Hanson wondered if it was possible to get a list of state approved treatment programs in each courtroom so courts would know which programs are credible and which are not. Kris Sell asked if only rich people would get the benefit of this mitigator. The big problem is access to treatment. Trevor Stephens thinks that this mitigator will help even the playing field particularly for rural residents.

The group unanimously agreed to forward this proposal for an amended mitigator provided that it was made clear that pretrial delay was not to be accommodated, and that eligibility be conditioned on no recidivism prior to sentencing.

Mary Geddes said she would try to propose such language.

Three Judge Panel: Trevor Stephens presented a shortened revised list of changes to the three judge panel statute, following the latest round of emails between Kaci Schroeder, Mike Schwaiger and him. The changes are to AS 12.55.175 (c) and a deletion to 12.55.175(e). These changes will be further detailed in a report from the workgroup to be distributed by Mary Geddes.

Kaci Schroeder and Mike Schwaiger will continue working on other possible changes to the three judge panel related statutes.

Mary Geddes noted that she was continuing to look at the issue of 'flat-time' sentences and the pertinent law of probation. The Department of Law had done research on the topic in Swezey v. State; Rob will review and follow up if there is interest.

When and if there are additional consensus proposals from the Department of Law and the PD to review, the Workgroup shall be reconvened. In the meantime, Mary will report on the group's recommendations.

There was opportunity for public comment, but no additional comments were made.

The meeting ended at 11:00 AM.