Meeting Summary

Alaska Criminal Justice Commission
Sentencing Workgroup

July 28, 2017, 1:30-3:30pm
Denali Commission Conference Room, 510 L Street, Suite 410
And Teleconference

Commissioners: Joel Bolger, Trevor Stephens

Participants: Doug Moody, Phil Shanahan, Tara Rich, Karen Forrest, Dennis Weston, Heidi Redick, Barb Murray, Matt Davidson, Kaci Schroeder, Rob Henderson, Heather Nobrega

Staff: Susanne DiPietro, Barbara Dunham

Juvenile waiver

Karen Forrest explained that the DJJ white paper on rethinking the automatic waiver had been brought to the Criminal Justice Working Group and to the legislature in the 2014 session, where the issue was also being pushed by a national group. The situation has changed since that paper was written: there has been a downward trend in keeping kids in juvenile custody [or in juvenile cases generally?], so DJJ has closed wings and removed hard beds from its facilities. There are also significant budget issues. She would be interested in hearing from DOC on the number of youth in DOC custody and the nature of their charges, as well as any issues with providing services and any outcome data.

Doug Moody said that the PDs were looking at the dual sentencing process—it is currently up to the DA whether to allow dual sentencing, but the PDs believe it should be up to the judge. There are very few of these cases so it is difficult to get data, but there indications that there are disparities in using dual sentencing among jurisdictions. It is used so infrequently in some places that people are unfamiliar with it. The PDs would also like to make dual sentencing available for juveniles subject to a discretionary waiver.

The PDs also suggested sealing the criminal case if a juvenile subject to dual sentencing successfully completes juvenile rehabilitation. (If the juvenile does not complete the rehabilitation, the criminal case would remain public.)

Rob Henderson asked Doug if the PDs were tracking data on juvenile offenders. Doug said Jon Bernitz was tracking them but there were very few because it was not used often. Susanne DiPietro asked if the Dept. of Law had this data; Rob did not think so. Karen said tracking down this data would be very important. DJJ had gone from over 300 to about 225 beds, and they have closed units- they are now at full capacity. Justice Bolger added that the legislature will also want to know data on the types of offenses committed. Doug suggested CourtView might hold this data; Justice Bolger said he would look into it.

The group discussed what data would need to be collected: those charged at age 16 or 17, with the crimes enumerated in 47.12.030, over the course of 5 years. It seemed likely that data would need to be cobbled together from several sources, especially given the varied practices in the different

jurisdictions. Karen said this might be an opportunity to reduce disparities. Heidi Redick said that it was also important to look at outcomes, and thought the 5-year period was appropriate because sometimes cases took a long time to resolve.

It was agreed that the representatives of the various agencies would ascertain what data they had on auto-waiver defendants. Barbara Dunham explained that the workgroup would be taking a break while staff worked on the annual report, and that there was no rush to get this done soon. Karen said she appreciated that—she would like time to run the numbers and thought that any proposal would have to be crafted carefully and with consensus, so that it did not have the same fate as the 2014 legislation which died quickly.

Three-judge panel

The group had reviewed the proposed statutory changes circulated by Mike Schwaiger at the last meeting; one page had the consensus proposals and one page had additional proposals. Kaci Schroeder said that the consensus proposals accurately reflected the points of agreement, and the Dept. of Law had no objections to that page. The consensus proposals included: adding two mitigators for extraordinary potential for rehabilitation and exemplary post-offense behavior, adding eligibility factors to send cases to the panel, adding a provision to allow the panel to act as a sentencing court if it does not find manifest injustice, and allowing the panel to grant discretionary parole eligibility.

Judge Stephens agreed he did not have any objection to these proposals; his goal was simplification of the statute which these proposals achieve.

Justice Bolger asked why the proposal did not make sentencing by the panel automatic (rather than by agreement of the parties) in cases where it does not find manifest injustice. Rob Henderson explained that the victim or a party might object, preferring that the original judge to hear the trial do the sentencing; victims or either party might have reasons for wanting either option. Doug Miller agreed.

Barbara asked whether the group wanted to send just the consensus proposals to the full Commission or to send the additional proposals as well. Rob said that Law had some concerns about the additional proposals. He asked Judge Stephens whether the consensus proposals addressed his concerns. Judge Stephens said they did; they should get the appropriate cases to the panel and address the current lack of clarity. This topic will be on the agenda for the fall judicial conference. The group agreed to send just the consensus proposals ("page 1") to the full Commission.

Vehicular Homicide

Rob Henderson said that Law was very close to a finished proposal but they had not had time to share it with the Public Defenders.

Revisions to law surrounding GBMI/NGI

Rob said that he and Josie Garton were still discussing this issue and they haven't come to any conclusions. He noted that DOC would also like to participate in the discussion, and that because GBMI is really its own issue, it would be worth taking the time to address separately later.

Motion to Modify

The proposal still on the table was to amend AS 12.55.088 to allow a motion to modify a sentence past the 180-day time limit if the defendant has completed all court-ordered rehabilitation programs.

Doug Moody explained that Quinlan Steiner had researched the question of why the law was changed to limit motions to modify a sentence to 180 days post-sentencing. The legislative history showed that the Department of Law was opposed to any time limit beyond 120 days. He was not sure where the 180-day limit came from, but the idea was to stem the tide of post-conviction rehabilitation motions. Justice Bolger asked if this was in 1995-1996. Doug said it was, and it was a time when many defendants filed repeated Rule 35 motions.

Susanne DiPietro asked if the legislation achieved its purpose. Doug said that it had in a sense, in that there were far fewer motions to modify, but there are still many PCRs filed. Phil Shanahan remarked that he was at OPA at the time this rule was passed, and the feeling among defenders was that six months was too short a time to prove anything had changed.

Susanne wondered what the interaction of the proposal would be with new administrative parole provisions and the new provisions for case planning for inmates. She also wondered what the criteria would be for granting such a motion—the *Cheney* factors? Phil said he would assume the *Cheney* factors would be used- it would be like the opposite of a PTRP. Doug said that defendants might prefer modifying the sentence to getting administrative parole. Judge Stevens said that these motions are something he rarely sees; he also noted that probation terms are cut in half now [if the defendant gets earned compliance credits] which might affect the defendant's preference.

Rob Henderson said this proposal raised concerns about victim's rights and indeterminate sentencing. He said he might be more comfortable with a mitigator because it would provide for greater finality.

Barbara Dunham asked whether the motion to modify proposal would cut down on PCR applications. Doug said it probably wouldn't; PCRs are not typically submitted on the basis of finishing programs and it is not really within the scope of the statute. Doug suggested a mitigator for someone who gets into treatment right away, with a limit on the time sentencing can be postponed. Susanne said a cap on the postponement would be better for victims.

Justice Bolger wondered whether there would be a need for another mitigator if the "extraordinary potential for rehabilitation" mitigator in the three-judge panel pack passed and defendants already had the possibility of administrative parole. Susanne noted that administrative parole was limited to certain offenses.

Doug suggested that the public defenders should continue this conversation with the Department of Law to come up with the best solution. Rob agreed and suggested including the Office of Victim's Rights in that conversation. The group agreed to table this discussion until there was a consensus proposal from those groups.

Public comment

Angela Hall asked that the workgroup take up the issue of offenders who were sentenced as juveniles or young adults to de facto life sentences in light of new research and new cases from the

Supreme Court on this issue. States such as Nevada and West Virginia have enacted laws that provide for parole review for these offenders. Teenagers who receive a 99-year sentence are not offered any hope. She would like to see the workgroup look into a recommendation that offenders sentenced as juveniles be granted parole review after 15 or 20 years.

Next meeting

The group tentatively set a single-issue meeting for August 11 at 1:30 to take up the vehicular homicide sentencing issue if Law and the PDs are able to confer in that time.