

ACJC WORKGROUP ON RURAL CRIMINAL JUSTICE
Staff Notes and Member Assignments (TC)
From December 10, 2014 Meeting, 10:00- 11:30 AM @ Denali Commission

Commissioners Attending: Quinlan Steiner, Alex Bryner (tel.), Greg Razo, Terry Vrabec (tel.)
Staff Attending: Teri Carns (TC), Mary Geddes (MG)
Also Participating: Gregg Olson (Law); Jay Hochberg, Public Defender

**The next workgroup meeting is: Wednesday, January 12, 9:00 AM- 11:00 AM
Denali Commission, 510 L Street, 4th floor, Anchorage**

INFORMATION

The meeting opened with a telephonic presentation by Jay Hochberg, Assistant Public Defender, about bail issues in rural areas of the state. Mr. Hochberg said that at Mr. Steiner's request he surveyed Public Defender agency staff about their concerns regarding bail practices. Mr. Hochberg made the following points:

- Third party custodians are used in the majority of rural cases, including misdemeanors. They are often layered on top of secured bail requirements, rather than substituting for money bail as was originally intended.
- Poverty is also keeping people in jail. Mr. Hochberg wondered why isn't the court/DOC allowing credit card payment.
- In rural areas, the issue is not 'flight.' Pretty much everyone knows where a defendant can be found. Other issues can interfere with appearance, i.e. forgetting a hearing or not having airfare to come into town.
- Even when a third party custodian is available, some judges require a signed affidavit, rather than allowing confirmation on the telephonic oral record. Requiring signed paper work from a remote custodian following court often adds one to three days of incarceration before release.
- In a few communities, judges permit lengthy (30 to 60 minute) aggressive cross-examinations of proposed third-party custodians, focusing on relatively minor and remote past incidents.
- In many communities in the past, it has been acceptable to release the defendant and permit him/her to make their way home (typically to a village), and have the third party custodian meet them at the airport. Some prosecutors are objecting to that practice, apparently preferring that the custodian come to the court and leave with the defendant.
- In some communities, judges or magistrate judges are requiring that defendants post the amount of a return ticket to court in advance of release to assure that the defendants are able to get back to the court for further hearings/trial.
- Some judges/magistrate judges will not release a defendant back to a small community because of perceived danger to the victim or others in the community even when there is a third-party to supervise.

- Mr. Hochberg noted that there is substantial support for the 24/7 program. He stated that he is in the minority as he objects to the 24/7 program on several grounds. It is unconstitutional as a warrantless search under Scott (9th Cir. 2006). He is also concerned that it will be used in addition to third-party custodians and secured bonds rather than in lieu of them. The requirements are burdensome and onerous. In larger communities, getting to the center where breath tests are administered can be very difficult because of lack of transportation. He noted that despite his objections many attorneys like and use the program. Many rural communities could use their VPSO for their own kind of 24/7 program.
- Mr. Hochberg said that because defendants are unable to find third party custodians or meet other bail conditions, they often plead guilty at an early opportunity, because the offense was minor and they know that they'll be released with no further time to serve. He said that judges do not perceive this as coercing pleas, but he believes that many defendants, if released, would have a chance to obtain witnesses and evidence to defend themselves against the charges. He suggested that one piece of evidence is that followup bail hearings at which changes in bail conditions are denied are often followed almost immediately by a change of plea that disposes of the case.
- Mr. Hochberg noted that both Alaskan studies (e.g., Judicial Council Alaska Felony Process: 1999) and others show that people who spend time incarcerated before disposition are significantly more likely to have longer sentences, bail conditions that are less likely to obtain release are costing the state substantial amounts of money. He suggested that the commission could review a bail policy in Kentucky that allows the defendant a \$100 credit against a required bail amount for every day of pre-trial incarceration. When the bail amount has been reached, via these credits, the defendant is released until disposition of the case. Mr. Hochberg suggested that the Kentucky arrangement particularly makes sense in terms of 2nd DUI offenders. It is very typical that they will otherwise sit in jail because of a 3rd party requirement. When they have been sitting in jail like this for a while, defendants will typically plead out even though there is no discovery, even though no review for motions is possible, and judges will let them out after they have sat in jail for the minimum mandatory sentence.
- Mr. Hochberg said that he had appeared before Judge Jeffrey early in his practice and that he observed the Judge release a defendant on an installment plan so that he could keep his job. S. Carolina also allows bail on the installment plan, after a down payment.

Members discussed Mr. Hochberg's presentation. Mr. Razo said that he hesitated to limit practitioners' creativity. Mr. Steiner concurred, but said that he favored codifying some changes. He noted that public safety was not enhanced by keeping people, especially many misdemeanants, incarcerated until they plead, and then releasing them immediately with no supervision. He added that evidence shows that even short jail stays increase the likelihood of recidivism among low-risk offenders.

Ms. Geddes said that the federal system uses very few secured bonds, and that Alaska could consider using more unsecured bonds.

Mr. Vrabec said that the Troopers must pay to transport people who they have arrested to court and back (if the person is in the custody of DOC, that department pays). Mr. Steiner said that the cost of transport to trial and court events is being litigated. Apparently some people voluntarily remand themselves in the village so they can get transported back to court in Bethel. Some courts have refused to remand. Mr. Hochberg said they should consider the costs of a airfare versus the costs of daily incarceration.

Mr. Razo said that the new Governor is likely to focus on the cooperative system of rural justice, and there may be a willingness to enter into agreements with more localized justice systems. Perhaps we should have TCC come in for presentation, because there is perhaps as much needs to change policy as statutes. Natasha Singh, general counsel for the TCC may be a good resource, and offer perspective on cooperative agreements.

Quinlan Steiner said that he would like to better understand the barriers to establishing tribal courts, and the realistic prospects of establishing and maintaining the courts. Mr. Razo stated that money has to be spent either on district courts or tribal courts.

Mr. Olson asked if there is an intermediate step to tribal courts, such as an elder council or community group. He noted that back in 1989, the Bethel's DA office did lots of diversions to such groups, resulting in dismissal of cases if there was successful performance by a defendant. In Emmonak, 90% of the young adult cases were handled by diversion, right at arraignment. It also happened in DL cases, too, e.g. charges can be reduced or dismissed if driver gets straightened out in 30 days.

Certainly there has been a history of diversion efforts in Alaska. The Alaska pretrial diversion program was a state-wide program with six offices was shut down in 1986. A 1990 evaluation of the Barrow and Minot diversion efforts showed that the single most important factor contributing to that option was a source of referrals.

Gregg Olson indicated that the Washington State diversion program is run by a non-profit. He wondered about law school resources to study some of the questions raised concerning pretrial diversion. Staff referred him to www.pretrial.org, the website for the Pretrial Institute. MG found a survey of diversion programs at that website. Here is the link. [No Entry A National Survey of Criminal Justice Diversion](#).

The group briefly discussed Criminal Rule 11(i) on Restorative Justice. See [Alaska Criminal Rule 11](#).

RESOLUTIONS/ASSIGNMENTS

Members agreed that they wanted to pursue the following topics:

- Members will explore agreements between executive branch and tribes (including Mike Geraghty's draft agreement). Staff or Mr. Razo will invite Natasha Singh of TCC to speak with

the committee. The workgroup should discuss barriers to creating and sustaining tribal courts. Consider less formal ways for tribes/villages to work with criminal justice process.

- Mr. Steiner and Mr. Olson will collaborate on a paper discussing bail related issues.
- All should review Walker/Mallott Transition team recommendations when they become available.
- Members shall review the ABC Board's recommended changes to Title 4 with respect to criminal provisions, including interdiction.
- The workgroup should further discuss appropriate and available diversion possibilities, including use of non-profit corporations, tribal councils, and so forth for alternative dispute resolution.
- Discuss state's broad definition of domestic violence, and unintended consequences, especially in rural areas. Mr. Steiner said that he would draft a paper covering the issues, to guide discussion.