

Alaska Legislature

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ACJC-JRI RECOMMENDATION 6: DRUG REFORMS

The Alaska Criminal Justice Commission was asked by the Legislature to find safe ways of reducing the prison population. It reviewed the state's drug laws, changes in sentences over time and relevant research, and developed the following in response.

The availability and use of dangerous illegal drugs has increased in the general population, despite decades of get-tough-on-crime measures and even though tens of thousands of drug offenders have served long, costly terms in state and federal prisons. Indeed, there's no evidence that incarceration is an effective way to interrupt drug markets, reduce drug use, or curb the rise of new drug epidemics.

This three-part recommendation is intended to focus law enforcement and correctional resources on interdiction and incarceration of the most serious offenders, importers and large commercial distributors, and recommend more cost-effective measures for all drug offenders.

a. Keep simple possession a crime, but reduce it to a class A misdemeanor to limit jail time and get substance abusers into community-based treatment.

The research clearly shows that neither felony classification nor lengthy jail terms mandated by felony sentencing structures has been effective in deterring the population in general from drug use nor in reducing the recidivism of individual drug abusers.

The Recommendation is to stop using these two costly countermeasures (felony conviction and lengthy prison terms) for simple drug possessors and substitute more effective measures for this group. Thus ACJC-JRI Recommendation 6, subpart a., proposes reclassifying the simple possession of heroin, methamphetamine, and cocaine from a class C felony to class A misdemeanor offense. Also, sentences for simple possession would be capped for first-time and second-time simple possession, at one-month and six-month suspended sentences, respectively. Thus, a first-time offender who fails to satisfy conditions of probation (such as treatment) can receive up to 30 days in jail. A second-time offender who fails on probation can thereafter receive up to six months in jail. For any other repeats, the maximum one-

year penalty maintains the threat of significant jail time. Unfortunately, many addicts do require multiple interventions and sanctions.

This structure utilizes suspended sentences to incentivize rehabilitation but allows for increasing sanctions for non-compliance. The Commission recommendations also seek to avoid pretrial stays for this group because there no treatment in jail. Treatment needs to be available to drug abusers when they need it, not weeks or months after a crisis. Thus reinvestment in other interventions, i.e. detox and community based treatment, is an absolutely essential element of this package of reforms.

The current statute punishing the simple possession of schedule IA and IIA drugs has not specified a quantity for which more severe punishment would be required. Similarly, the Commission did not recommend any cap for the reclassified possession. The pertinent question is intent, not quantity. Law enforcement and prosecutors are fully capable and extensively experienced in discerning whether personal use or commercial distributions were intended or had occurred.

b. Re-align the more serious drug distribution classifications because the current classification results in longer sentences than justified by the research, and the structure allows for unreasonable outcomes.

Classifications determine maximums and sentencing ranges. Currently the distribution of heroin (and other opioids in schedule IA) is a higher (class A) felony and the distribution of methamphetamine and cocaine is a lower (class B) felony. Recommendation 6 b. proposes that these distribution offenses be similarly classified at the lower felony level. There are two good reasons for realignment.

First, realignment at the same (lower) felony level is appropriate because research has shown that longer prison stays do not reduce recidivism more than shorter prison stays for many offenders.

Second, classification based solely on a drug type – and not on quantity as well - does not reflect the relative harms involved and can led to unreasonable disparities in sentencing. For example, the distribution of a 2.5 grams of heroin as a class A felony is currently subject to greater penalties than distribution of a kilo (1000 grams) of cocaine or meth, a class B felony. This is a significant concern because most (68% in a recent study) of Alaska’s class A felony drug distributions involve only small quantities. Even though the courts can adjust class A felony sentences to account for small quantities, reductions are limited to 50% of the low end of the presumptive range.

According to a recent two-year study, Class A drug offenders receive, on average, 42 months more of active incarceration time than received by class B drug felony offenders.

c. Maintain felony status for all drug dealers but provide greater penalties for the higher-volume dealers.

According to subpart c of the Recommendation 6, all distribution (and possession with intent to distribute) offenses are still punished as felonies, but higher penalties are provided when there are greater quantities of drugs. The intent is to distinguish the higher-volume distributor from the low-volume distributor. Thus

the higher classification (class B) applies to quantities over a certain threshold and the lower classification (class C) applies to quantities under the threshold.

A realignment in the classifications for smaller-quantities also takes into account both the reported prosecutorial practice of sometimes downwards 'adjusting' a classification (to an attempt) for less serious distributions, as well as the Alaska courts' experience of having to mitigate a majority of the drug distribution sentences due to smaller quantities. Thus the realignment promotes transparency in charging and proportionality in sentencing.

The Commission did engage in extensive consideration as to what quantity of heroin /cocaine/meth would trigger the higher of the two felony classifications. While there was majority support for using a 5 gram threshold, all Commissioners could agree on using half of that quantity, i.e. 2.5. grams, as the break-point between the higher B felony and the lower C felony for all three drugs (heroin, cocaine and methamphetamine). There was no subsequent proposal to assign different thresholds for the different drugs.