

# Controlled Substances Advisory Committee

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**Date:** Wednesday, January 6, 2016 from 1:00-4:00 PM

**Location:** Attorney General's Office, 1031 W 4<sup>th</sup> Ave, Room 501, Anchorage, AK 99501

**Chairperson:** Robert Henderson (LAW)

**Member in Attendance:**

- Leonard (Skip) Coile (public member)
- Major Dennis Casanovas (DPS)
- Dr. Jay Butler (DHSS)
- C.J. Kim (Board of Pharmacy)
- Dr. Alexander Von Hafften (public member)
- Deputy Chief Eric Jewkes (FPD) (telephonic)
- Sandra Aspen (telephonic)
- Dr. Lawrence Stinson (public member)

**Public in Attendance:**

- Mary Geddes (AJC)
- Susan Dipietro (AJC)
- Joan Houlihan
- Gregory Razo
- Tony Piper (DHSS)
- Alex Bryner
- Jeff Laughlin
- Christina Sherman (LAW)

**Presenters:**

- Tony Piper (DHSS) – “Substance Abuse Treatment Options” (DBH)
- Christina Sherman (LAW) – “Spice in Anchorage”
- Mary Geddes (ACJC) – “Alaska Criminal Justice Commission”

**Secretary:** Shiloh Werner

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## Handouts

- ❖ Alaska Criminal Justice Commission, Justice Reinvestment Report
- ❖ CDC Health Advisory – Increase in Fentanyl Drug Confiscations and Fentanyl-related Overdose Fatalities
- ❖ PDMP Mandate - Mandatory Use of Prescription Drug Monitoring Programs
- ❖ Alaska Statute 11.71.100
- ❖ Morbidity and Mortality Weekly Report, Increases in Drug and Opioid Overdose Deaths- United States, 2000-2014
- ❖ CSAC “White Paper” on Increasing the Effectiveness of Alaska’s Prescription Drug Monitoring Program
- ❖ Memo Re Legal Issues Surrounding “Spice”
- ❖ Briefing for the CSAC: Drug Related Recommendations of the ACJC
- ❖ Public Safety Aspects of the Heroin Abuse Epidemic
- ❖ Substance Abuse Treatment Options – DHSS, Division of Behavioral Health ppt

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## Agenda

- ❖ Approval of Minutes from August 4, 2015
- ❖ Presentation-Substance Abuse Treatment options in Alaska – Al Wall, Director of Behavioral Health
- ❖ Alaska Criminal Justice Commission presentation regarding its Justice Reinvestment Report (“Recommendation 6”)
- ❖ “Spice” use in Anchorage – Dr. Jay Butler
- ❖ Presentation – Legal issues surrounding Spice- ADA Christina Sherman
- ❖ PDMP “white paper” update – Dr. Jay Butler, Dr. Von Hafften, and CJ Kim
- ❖ General Discussion
- ❖ Next Steps / Next Meeting

## APPROVAL OF MINUTES

Minutes from the meeting held on August 4, 2015 approved unanimously by the Committee.

## SUBSTANCE ABUSE TREATMENT OPTIONS IN ALASKA

### **Presentation – Tony Piper (DHSS)**

Presentation by Mr. Piper on substance abuse treatment options through the Department of Behavioral Health. These programs are located throughout the state with services ranging from prevention, screening and brief intervention, and acute psychiatric care. National accreditation required for participation, several through grant based funding. The first level of programs focus on early educational prevention. The next level is providing private outpatient treatment programs for those who have displayed the beginning effects of addiction. The first identification of those needing treatment is primarily made through the criminal justice system and medical care providers. For residential treatment, there are fewer spots available than outpatient treatment. Alaska currently has 114 in-patient beds available with programs ranging from 30-60 days, and some for 2 years. A wait list exists for those looking to get into treatment. A partnership exists with Alaska’s therapeutic courts in order to provide alternatives to incarceration for drug users. Drug dealers are prohibited from any therapeutic court programs. The most prevalent drug addiction currently being addressed by Alaskan treatment centers is heroin, followed by prescription drugs. The need exceeds the available resources. Average wait list for residential programs is 2-4 months. There is only one detox facility. This detox facility receives an average of 30-50 calls a day; and is not able to maintain a waitlist due to high demand and lack of beds.

## LEGAL ISSUES SURROUNDING SPICE

### **Presentation – Christina Sherman (LAW)**

Presentation by ADA Christina Sherman on the difficulty of prosecuting the influx of spice cases. There is a difficulty in identifying the specific ingredients of spice, and Department of Law is unable to prosecute unless the crime lab determines the suspected spice contains one of ten illegal chemicals. The makers of spice can easily change its chemical make-up. Other states issue general bans on drugs based on their effects. At the federal level they use analog bans via the “Analog Act”. Alaska has not

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prosecuted a stand-alone case of spice use because of the difficulty on the “science side” of proving the drug is indeed spice. Ms. Sherman recommends we look in to making changes that help decrease the difficulty in the science-side of prosecuting spice cases. Deputy Chief Jewkes wonders how Anchorage’s ordinance on spice has worked? Ms. Sherman responds that the municipal ordinance is based around the packaging of spice. They have had some success but no member of the committee has firsthand knowledge of whether or not the municipality and APD feel their ordinance adequately responds to the issue of controlling and prosecuting spice.

## “SPICE” USE IN ANCHORAGE

Dr. Jay Butler expands on Ms. Sherman’s presentation on spice from a prosecutorial standpoint to that of the medical field. The medical field has been able to obtain samples of spice circulating through Anchorage and discovered that it has an unusual and complex chemical nature that is easily changed – thus making it difficult to specifically identify. Spice was recently recovered in a liquid form that was used in an electronic cigarette. When tested, it had similar properties to that of previously tested forms of spice. Spice is both a euphoric drug and economically cheaper than other drugs. The homeless population has been targeted with sale of spice. Testing of body fluids for spice is generally not available to hospitals in Alaska at this time.

## **Prosecuting Spice – Municipal, State and Federal Difficulties**

Major Casanovas relates that the current statutes don’t give law enforcement and prosecutors sufficient leverage when going after spice cases. Currently, the punishment is only a violation with a fine from 0-\$500 dollars, making it a low priority for law enforcement. Major Casanovas wonders how Fairbanks is handling the new surge in spice use. Deputy Chief Jewkes responds that the problem is not as prevalent in Fairbanks and spice specific enforcement is non-existent. Mr. Razo wonders how spice is obtained and both Dr. Butler and Ms. Sherman respond that the compounds used to make spice products and the packaging can be ordered online. Batches of spice come out differently and have quite varied, customized packaging. Ms. Sherman thinks an analog act, such as what has been enacted at the federal level, would be her recommendation for aiding in dealing with spice. However, she understands there are other difficulties with putting that sort of act in play in Alaska and does not believe our crime lab, as it is currently staffed, could handle such a change and does not possess the expertise necessary for an analog scheme. Ms. Dipietro wonders if the US attorney’s office in Alaska is doing something here. Ms. Sherman responds that spice shipments are focused on at the federal level rather than street level use. Ms. Geddes wonders if the state can “piggyback” off of federal statutes for identifying the drug when prosecuting spice. Dr. Butler responds that it would take a very long time to test the new substances appearing on the streets from a medical perspective. If the substance contains a “new” synthetic compound, as we see in spice circulating Anchorage, it will need to be sent through several lab processes before it can be accurately identified. Hospitals are currently not able to test specifically for spice, they merely go off symptoms they recognize the patient as exhibiting against their personal knowledge of how known people on spice behave.

Dr. Butler shares with the committee that an upcoming presentation is being planned by APD on spice, and it will be open to those in the criminal justice community.

Major Casanovas wonders if the statutes under 11.73 have been used very much in prosecution of drug cases. He wonders if instead of fine tuning statutes in other places, we might be better served by using 11.73. Ms. Sherman responds that to her knowledge 11.73 has not been that successful for use in the courts as a way to prosecute the use and sale of spice in Alaska.

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## ALASKA CRIMINAL JUSTICE COMMISSION JUSTICE REINVESTMENT REPORT (RECOMMENDATION #6)

### **Presentation – Mary Geddes**

Ms. Geddes, member of the Alaska Criminal Justice Commission (ACJC), presents to the committee the work by the ACJC in regards to their 6th recommendation. To begin, Ms. Geddes provides the Committee with a brief overview of the Alaska Criminal Justice Commission – members, purpose, overlap with the current Committee in regards to control substances. Recommendation #6 recommends an alignment of the heroin penalties with meth and cocaine. The recommendation is limited to heroin and not the scheduling of drugs. The Commission believed there were radically different penalties for otherwise similar offenses and uses that as the base for their recommendation. This will allow reduced sentences for heroin related offenses. The Commission has discovered that lengthy jail terms did not successfully reduce the recidivism of drug offenders; neither did it reduce the abuse or dealing of drugs. Does the recommendation require a change to the drug schedules? Ms. Geddes believes it does not. Ms. Geddes does not believe the Committee needs to take any action with regard to the rescheduling of any controlled substance as it relates to the Commission's Recommendation #6.

The commission is still charged with reporting to the legislature whether they believe the current drug schedules are appropriate. Mr. Razo expects collaboration with this committee as the ACJC moves forward in their response or recommendation in regards to the current drug schedules. Mr. Coile wonders if the reduced sentence for heroin offenses will lead to a reduction in recidivism. Mr. Razo responds that it does not, but Dr. Butler adds that from a public standpoint, they do not wish to allocate funds to locking up these offenders for longer than what may be necessary. Ms. Dipietro adds that the Commission is recommending an investment in more treatment as opposed to harsher and longer sentences.

### **Committee Reactions to Recommendation #6**

Major Casanovas offers comment to the present members of the commission on their recommendation. Major Casanovas noted that all three drugs (*i.e.*, heroin, methamphetamine and cocaine) which are being identified for reduction in severity are clandestinely manufactured, smuggled and sold. These drugs are commonly adulterated with other substances and what is being added is seldom known to the user. Some of the adulterated substances can be as equally dangerous or fatal as heroin, methamphetamine or cocaine itself. For example, law enforcement has seen fentanyl being added to heroin at an increasing rate in other parts of the country. Fentanyl-laced heroin is highly dangerous. He believes heroin has a high potential of death and thinks that lowering the sentence may send the wrong message to the public given the spike of heroin and other opiate related deaths. Further, by providing for a harsher sentence, you give both law enforcement and prosecutors tools for working out deals. He, and Mr. Coile seconds, believes reducing the penalty for distribution of heroin sends a message to the public that the drug is not being considered seriously and takes away incentives that allow for the ability to aggressively prosecute. Additionally, using weight cut-offs for prosecution could be a burden to law enforcement. As an example, due to marijuana legislation, law enforcement officers now carry around a scale in which to measure the amount of marijuana. Members of the Commission present respond that no intent existed to single out heroin specifically, and the decision they made was based on extensive research and input based on a long term outlook. Major Casanovas

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further comments on the similarity of a three-strikes rule with that of the Commission's recommendation which requires several instances before something is considered a felony. Singling out heroin, methamphetamine and cocaine means it would take three separate convictions of possession of heroin (a schedule IA substance) before the conduct is treated as a felony. However, first time possession of a single dosage of hydrocodone or oxycodone, a prescription drug, would be considered a felony. This could send an inconsistent message to the public or a message of "why bother" due to the amount of police and crime lab work required to prosecute and get offenders in a correctional facility where they can receive treatment. Mr. Razo responds that it is cheaper to provide treatment in a community based program as opposed to utilizing a correctional based approach. The Commission is looking for options that are cheaper and more effective than our current processes. Mr. Henderson adds that a reduced penalty may reduce the incentive for offenders to be directed to therapeutic courts. When these alternatives are not used, they are defunded, and could be lost. Dr. Butler adds that he shares similar concerns with Major Casanovas, but does acknowledge the need for a health approach as opposed to a solely criminal justice approach. He worries that cost cutting will not allow for the health approach that is needed in addition to justice. Ms. Dipietro responds to these concerns by noting that a focus on improving probation processes will hopefully meet the need for an increased focus on the health and behavioral change of the offender. Dr. Von Hafften comments on his concern that in order to make these changes there will need to be a reinvestment of funds, and will that reinvestment be sustainable? Will budget constraints in the future cause these changes of proposed programs to collapse? If punishment or treatment is not swift, it fails to change behavior and could potentially be a public safety issue. If coordination between DOC and community players is lacking it can be dangerous when dealing with high risk offenders. Does the funding exist for these transitions? Is it sustainable? Are we setting ourselves up for a revolving door if we don't back up these changes with the resources necessary? The present commission members agree that proper reinvestment is crucial to the success of the commission's recommendations. Dr. Stinson seconds the concerns presented and wonders if now is the right time to make such drastic and potentially expensive changes given the current fiscal climate. Mr. Kim wonders about the public response and the response of the victims. Will they wonder where the punishment is? Is there a deterrent?

## PDMP "WHITE PAPER" UPDATE

### Suggestions for Edits

Major Casanovas – excellent product. Minor suggestions for changes are as follows: Pg 2 - Suggests adding updated facts from the bulleted list from CDC's MMWR report to bring our paper more up to date. Pg 4, bottom – does there exist a penalty for not reporting? Should we add one? Mr. Kim responds that there currently is not one designated by the Board of Pharmacy. Pg. 6, item 14, number 1 and 2 – does there exist a penalty for failure in regards to these? Should we add in something? Mr. Kim responds that the new vendor for the PDMP can track log-ins and log-outs, etc. Pg 11, top (continued from pg 10) – could we expand on the efficiency and cost savings in regards to epidemiological surveillance?

Mr. Henderson – Suggests edit as follows: Pg 4, Pg 8 – federal schedules need to be highlighted. There are two big questions on the table. 1. We need to talk about putting it out for public comment before adopting it as a committee. Who are the stakeholders that we can notify in order to get comments? 2. Once we vote on, and adopt. How do we turn it into a work product that we send out. Is it changed into a letter to the governor? The alternative would be a letter to the board of pharmacy. Or

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we leave it as a work product generated by the committee, but there is that fear that then it would go nowhere.

It is decided to not do a public notice, but do a re-write and send out to the agencies that the committee feel are stakeholders in order to solicit comments and adjust as necessary.

## **ASSIGNMENTS**

- ❖ Bring in someone from the Anchorage Police Department or a Municipal attorney in order to hear their report on the state of their “spice” ordinance, specifically its effectiveness and volume.
- ❖ Locate the NAMSIL analog statute sample.
- ❖ Rob Henderson and Stacy Kraly will discuss the specifics of how to bring about a change from a statutory to a regulatory structure.
- ❖ Put out the White Paper for comment from concerned agencies

**Next Meeting: Scheduled for January 27<sup>th</sup> @ 2:00 PM**