

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
January 22, 2018, 10:30 AM - 12:30 PM

Denali Commission Conference Room
510 L Street, Suite 410
Anchorage, AK
And teleconference

Commissioners Present: Quinlan Steiner, Greg Razo, Brenda Stanfill, Joel Bolger, Steve Williams

Participants: Joshua Spring, Karen Cann, Clinton Lageson, Rob Henderson, Doug Wooliver, Kaci Schroeder, Teri Tibbet, Jeff Edwards, Dunnington Babb

Staff: Susie Dosik, Barbara Dunham

Time to redemption

Staff member Susie Dosik had circulated a memo on time to redemption to the group, and she walked the group members through her research. She explained that “time to redemption” referred to the time that needs to pass until an ex-offender poses a reasonable risk of reoffending. There are two ways of looking at this: the time it takes to reach the same risk level as the general population (around 10%), including former offenders; and the time it takes to reach the same risk level as the population of persons who have never been arrested (around 3%).

The most extensive study was of around 8000 first-time arrestees in New York. The study began in the 1980s and followed the arrestees over a number of years. The people in this cohort demonstrated that it generally took 7 to 10 years from the first arrest to the point where their risk of arrest was the same as the general population.

One study looked at whether time to redemption was affected by the number of prior convictions an offender had—but since this was a Dutch study, it may have limited bearing on Alaska’s offender population. The study looked at both the age of the offender and the number of prior convictions and found that a greater number of convictions and/or a lower age at time of arrest significantly increased time to redemption.

Another study looked at whether the offense type made a difference; the time to redemption (to equal the risk of the general population) was 4-7 years for violent offenders, 4 years for drug offenders, and 3-4 years for property offenders.

The bottom line was that the 7- to 10-year range was the range most consistently established by the research; there was a more nuanced picture if age at first arrest, number of priors, or offense type were taken into consideration.

Dunnington Babb asked whether there was a difference if the initial arrest was somehow not a barrier. Susie said that one study she came across suggests that, and she could look into it further. Dunnington said that he feared that the 7-10 year range was too long. Susie said that the 7-10 range was based on studies focused on youthful offenders; the time to expungement could be shortened if age were included as a factor for the judge to consider. The type of offense matters too—time to redemption is longer for violent offenders than property offenders or drug offenders.

Doug Wooliver asked if that suggested a matrix, similar to what is being used in bail decisions now. Susie said she wouldn't go that far, as the evidence is not extensive enough to put these factors into a grid. She thought these studies could be used as a guide for the general concepts they represent. She noted that the bail grid was the result of extensive data mined specifically from Alaska.

Rob Henderson suggested summarizing the information from Susie's memo to include in the recommendation. He noted that the research on the offender's age was counterintuitive at first blush, and he wanted to make sure the judges don't read the recommendation the wrong way.

Doug asked to clarify- the research suggested that after around 7-10 years, most offenders reach the same risk of offending as the general population. He was not sure this was the right tool to determine an offender's risk. Susie noted these were general guidelines, and not guarantees of an individual's risk in a given case.

Justice Bolger observed that the group had been leaning towards a shorter time to expungement period for drug offenders, but the study looking at offense type seemed to suggest their time to redemption was the same as property offenders. Susie said that was true, but that study may not have just looked at possession crimes (as the proposed recommendation did). So it would not be unreasonable to have a shorter time period if felony/dealing crimes were excluded.

Karen Cann noted that if the main study was of cohorts arrested between 1980 and 1990, that might have less bearing on the current drug offender population. With the opioid crisis, the system may be dealing with a different kind of offender now.

Dunnington said that if a drug user was going to continue to use, they would likely reoffend within the two year timeframe. Barbara Dunham noted that the recommendation as drafted called for an individualized determination; if a judge was not convinced that a drug user was totally clean, the judge could deny the petition and the applicant could try again in a year.

Effect of expungement – protection from firing

Barbara reminded the group that at the last meeting, the group had decided that the effect of expungement would include the offender's ability to choose not to disclose the conviction, and not to be held guilty of perjury for failing to disclose the conviction. Most of the group had agreed that the offender would also be protected from being fired for not disclosing the conviction; however, Rob had indicated that the Department of Law was reluctant to sign off on that.

Rob said that Law was still hesitant to sign off, and they were still actively looking into what protection from being fired would legally mean. Nevertheless, he thought it could be included in the recommendation with the caveat that Law may no longer support that provision if legal issues come to light.

Dunnington asked how this protection would come into play—would the statute say that the offender has a claim against the employer for wrongful termination? Rob said that was the concern Law had and was looking into. Justice Bolger noted that there are common law duties of honesty and fair dealing, so a statute would need to have some stated protection for these individuals to overcome that. Dunnington said he agreed having some kind of protection was worth pursuing but agreed it was complicated.

Effect of expungement – guns

Barbara next explained that the group had previously discussed whether gun rights should be restored. There had been general agreement not to worry about any potential conflict with federal laws and that offenders should simply be warned that even if state law permits gun ownership, federal law may prohibit it. The group had wanted more information on whether SIS cases included DV offenders before making a decision on whether gun rights should be restored. Kathy Monfreda had provided information that some SIS cases that were set aside included DV offenders, although it was a small percentage.

Rob said he would be less hesitant about restoring gun rights if it excluded DV offenders. He noted that the current draft of the recommendation expunged felony SIS cases five years after the date of unconditional discharge.

Brenda Stanfill said that the DV gun laws in Alaska were all over the place. Often law enforcement will take the offender's gun if it was involved in the offense but charges are often dropped to misdemeanors, in which case they don't. Sometimes law enforcement will use a hybrid policy which is not consistent.

Rob said that in Alaska, gun rights are restored 10 years after the date of unconditional discharge from a felony. In the federal system, he was fairly sure that gun rights are permanently revoked for felonies and DV misdemeanors. Justice Bolger suggested adding language to ensure that offenders are given a proviso or warning that the expungement may not effect federal law.

Karen wondered why expungement wouldn't just automatically mean that all rights are restored. Barbara explained that since expungement could mean many different things depending on the jurisdiction, Alaska could decide whether expungement included restoration of some or all rights.

Brenda said that she thought all rights should be restored; the purpose of expungement is to make the person who has been rehabilitated whole again. But she thought that the timeframes in the proposal, as written, were too short for her to be comfortable with that, especially for misdemeanor DV cases. Most DV felonies are dropped to misdemeanors, even DV cases involving guns.

Susie said that a recent study by AJIC supported Brenda's point that DV offenders should be treated differently; the study found that DV offenders recidivate at a higher rate and for a longer period of time than other offenders.

Dunnington wondered if Brenda would be satisfied to exclude DV offenders from those who are eligible to have gun ownership rights restored. Brenda said that would satisfy her concern but noted there may be other concerns that she hadn't thought of, and that it might be better to exclude all violent offenders.

The group decided to table the issue of gun rights until after discussing the timeframes.

Expungement process – timeframes

Barbara reminded the group that they had not come to any conclusions on timeframes (e.g. the waiting period before an offender may apply for expungement). The current draft of the recommendation was based on timeframes proposed in the Arkansas statute, modified to reflect the opinions of the Commissioners gleaned from polling them last fall.

Dunnington noted that violent offenses were treated differently and wondered what the definition of “violent” was. Rob said he assumed it meant any offense in 11.41.

Rob suggested using the timeframes suggested by Susie’s research: for misdemeanor offenses, the waiting periods should be 3 years for a nonviolent offense, 4 years for a drug possession offense, and 7 years for a violent/sex offense; the waiting period for a felony should be 10 years.

Dunnington asked Susie whether the study that said time to redemption was 4 years for drug offenders applied to all drug offenders or just misdemeanor offenders. Susie said it included all offenders. Dunnington said that it seemed like the drug felons would be more likely to reoffend and extend that number. For just misdemeanors, 4 year seems long. As a public defender, if he is going to see a client again, it will be soon after release; it is rare to see a client again 2 years after release because if they have been sober for two years they are more likely to stay sober.

Susie noted that the rate of rearrest for offenders generally was on a steep curve that flattened out after 3 years. Dunnington said that was also reflected in the Pew research on recidivism rates three years after release. He noted that if a misdemeanor offender has one year of supervision, then two years after the date of unconditional discharge would be the same as three years after release.

Brenda noted that in Arkansas, a lot of offenses were carved out and put in the 5- year category. She thought the recommendation might be more palatable to the Legislature that way. Barbara noted that the current proposal was very broad because the group had indicated it wanted to leave eligibility broad but have an individualized review by a judge. Brenda said she was worried that the Legislature might just brush the recommendation off entirely if it was too broad, and suggested that the recommendation should at least note that carve outs were an option. She agreed with Rob’s recommended timeframes.

Justice Bolger said he would like to take a look at the recidivism study. Susie made copies of the study and emailed it to those who were participating on the phone. The study looked at whether the offender committed a new criminal offense resulting in a conviction, and at what time after release the offender recidivated. It showed a much higher trajectory for DV offenders than for other offenders—around 40% at the one-year mark for DV, 20% at the one-year mark for other offenders. For all offenders, recidivism began to level out at the three-year mark. Misdemeanor offenders had a slightly higher recidivism rate than felony offenders until about the 5-year mark, with misdemeanor recidivism falling below felony recidivism by the 7-year mark.

Expungement process – standards

Rob said that he was comfortable with the timeframes, modified as he had suggested, but was not comfortable with the standards for judicial discretion as written. He was concerned about the

sections in the draft recommendation which said the “shall grant” the petition in certain circumstances. He would prefer to have a statute that is robust in terms of eligibility but wide discretion for the judges. He thought all categories of offenses should have the most permissive level of judicial discretion, and the court should be required to consider and make findings on the factors listed in the draft (similar to the sentencing process).

Justice Bolger didn’t think it was necessary to make any recommendations on the burden of proof; he suggested removing the paragraphs referring to judicial standards, including those regarding the process when the prosecutor is not opposed.

Dunnington said he was concerned that if granting an expungement petition was fully discretionary without any guidance for judges, it won’t be a robust tool that will be used often. Some prosecutors may be inclined to oppose the petition as a matter of course, and some judges may then be inclined to deny the petition as a matter of course.

Justice Bolger clarified that he was not suggesting that the recommendation not be included in the eventual statute, but that it not be mandated in the recommendation. Brenda said that the Commission has left some details of recommended legislation up to the Legislature before, but thought that it would be prudent to at least highlight that the Commission did recommend setting standards and certain carve outs, which should be clearly noted in the text of the recommendation.

Steve Williams said he thought that if the Commission doesn’t give the Legislature a place to start, it could lead to legislation that that the Commission doesn’t want. The Legislature is looking to the Commission for guidance, and he thought that the language of the recommendation should at least note the thought process behind it. There could be a notation such as an asterisk to note details that are not part of the consensus recommendation.

Susie noted that the Court System had had efficiency and resource concerns about expungement in the past and wondered if detailed guidance would help with that. Doug said that the more direction the court has, the more efficient the process will be. If an applicant meets the expungement criteria, and the prosecutor doesn’t object he didn’t see any reason not to grant the petition without a hearing. Generally if the judges have more direction there will be fewer hearings.

Rob asked whether, in cases with no objection, the judge should make an independent finding. He thought yes – expungement is an extreme remedy. It would be similar to Court of Appeals cases where the state concedes error: the Court still independently determines whether reversal is appropriate. He did not want to make things too automated.

Justice Bolger suggested putting the options for standards in brackets in the next draft so that the group could compare the options side-by-side.

Public comment

Clinton Lageson said he was with the Kenaitze Indian Tribe, and the Tribe supports the work of the Commission. He explained a bit about his past: he had a difficult childhood and became a foster kid. He went through many foster homes; in one year he was placed in 27 different homes. He became a protector of his younger siblings. At age 15 he was attacked by a group of guys in an ambush meant for his brother. He fought back and hit one of his assailants with a hammer, an act he now regrets. He got

into trouble for that action, but he resolved not to let it stigmatize him and he was able to move forward with the help of his community.

He suggested getting local community leadership involved in the expungement process—people who are seen as pillars of the community, and can help with job opportunities. It is hard for the tribe to hire its own people because of their past history, so the tribe would like to see opportunities for expungement. The people who can really benefit from expungement will turn things around to make it happen. He thought the recidivism and time to redemption numbers might be different if people were given an opportunity for expungement.

Next meeting

The next meeting was set for February 23 at 9:30.