Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
March 8, 2018, 9:30 AM - 11:30 AM

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

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

Participants: Rob Henderson, Doug Wooliver, Josh Spring, Kara Nelson

Staff: Susie Dosik, Barbara Dunham

Overview of new draft recommendation

Process

Barbara Dunham walked the group through the latest draft recommendation, noting where changes had been made to incorporate the discussion from the previous meeting.

Barbara noted that she had added language requiring the court to issue a scheduling order after 90 days per the previous meeting's discussion. Rob Henderson suggested removing the "shall hold an evidentiary hearing" language from the process section, so that the paragraph at issue would read

> If the prosecutor opposes the petition, the prosecutor may consent to a determination on the pleadings. If the prosecutors does note consent to a determination on the pleadings, the court shall issue a scheduling order within 90 days of receiving the prosecutor's response.

Sex offenses

Barbara noted that "sex offenses for which there is a registration requirement" were excluded from the misdemeanors eligible for expungement. Brenda Stanfill noted that at the last meeting the group decided the Sex Offenses Workgroup could take up the issue of sex offense expungement. But she said she thought all sex offenses would be excluded from this recommendation. Rob said that the problem was just coming up with a definition of "sex offense"—using the category of offenses that require registry was one way to accomplish that, and would cover a majority of offenses that could be considered sex offenses. Barbara said she would compile a list of offenses that could be considered

sex offenses that would not be included in this definition, and she would send that list to the group.

Brenda also suggested reworking the misdemeanor section so that the waiting time periods for drug and violent offenses were noted before the time period for misdemeanors generally.

Factor relating to substance use

Quinlan Steiner thought the factor regarding drug and alcohol use should be reworded so as not to require completion of treatment. He thought that not all people with convictions involving drugs or alcohol would necessarily need to complete treatment or live a life of 100% sobriety. A person might make a mistake while using alcohol or drugs but might not have a substance use disorder.

Rob said he didn't read that factor as necessarily requiring treatment, but rather just listing it as one thing to consider. Greg Razo wondered if the language could include whether someone was assessed and not recommended for treatment. Quinlan said that some people are not even assessed. He thought Rob's was a fair reading of the language but he was concerned that other people might read it as a requirement.

Dean Williams noted that the same issue often came up in the probation context; avoiding alcohol is often a condition of probation and can be used overly broadly. He suggested that the factor could be included with the "anti-social behavior" factor. He was also concerned this factor would be viewed as a requirement and noted that it was difficult to prove a negative.

Susie Dosik suggested adding "if referred to treatment" to the existing factor. Steve Williams suggested rewording the factor to say "If drugs or alcohol were involved in the offense, whether the offender complied with court-ordered treatment requirements." The group agreed to this language.

Brenda suggested using "petitioner" instead of "offender." Quinlan thought that "offender" should never be used, because it can dehumanize people and reduce them to a label. He saw it as an affront to a person's dignity.

Age at time of arrest

Brenda suggested adding more explanation of the "petitioner's age at the time of arrest" factor. She said it was not clear what the Commission was expecting of the judges. Rob agreed and said it was a factor that was counterintuitive; he suggested adding "for the purposes of assessing time to redemption." Brenda agreed that the research was somewhat counterintuitive and thought the recommendation should somehow let the legislature know the reasoning behind it. Greg said that the first three paragraphs of that section provided some explanation of the research.

Quinlan was concerned that this factor used aggregate data to determine the outcome for an individual. He was concerned that there was not necessarily any nexus between the factor and the individual to whom it would be applied. Rob said that it fit within the Commission's practice of crafting data-driven recommendations. Quinlan said

it was different because it tied an individual's fate to aggregate data; the only other place where the Commission has made such a recommendation was with geriatric parole.

Susie noted that the research on age and time to redemption had been reflected in the waiting periods; the group had elected to use the longer periods based on that research. As such the factor itself could be taken out. Brenda thanked Susie for the reminder and agreed—she didn't want to add time unnecessarily for younger petitioners. Greg said he thought there was a good argument to remove the factor and noted that the language explaining the research might work better if moved up to the beginning of the recommendation.

The Commissioners all voted to take the factor out of the recommendation with the exception of Rob who voted against it. He said he'd like the counter-intuitive aspect of the research on age and time to redemption be clearly stated.

The group also agreed to move the explanatory language about the research up to the beginning of the document.

Effect of expungement/restitution

Barbara noted that in the "effect of expungement" section, she had added language clarifying that expungement does not relieve the petitioner from any restitution obligation.

Rob asked Doug Wooliver whether, after a record is expunged, the court system could convert the restitution judgment to a civil judgment to be sure that the victim can find it. Doug thought that all restitution judgments were already automatically also civil orders, but would need to double check. Rob said his concern was that if the court record was sealed, the victim would not be able to find the restitution order.

Greg suggested that the order could be recorded. He also suggested that all restitution judgments be recorded as a matter of course; that way the person owing restitution would have to deal with the recorded lien any time that person needed a loan.

Doug said that most victims don't collect restitution on their own. He also didn't think the recommendation needed to be too detailed; as drafted the intent was clear.

Quinlan said that Rob's concern was that the victim might want to collect on restitution years later and with the criminal case record sealed, the victim wouldn't be able to find the case on Courtview and therefore wouldn't be able to find the restitution judgment. He suggested adding language to make it clear that the Commission didn't intend for the restitution judgment to disappear.

Expungement process- multiple expungements

Barbara explained that one of the things the group had yet to decide was whether multiple offenses could be expunged. The language in the current draft said that for misdemeanors, multiple counts or charges in a single case could count as one, as well as multiple cases in a continuing course of conduct; felonies would be expunged only once.

Rob said he agreed that multiple charges in once case could be expunged with one petition but thought it was trickier if there were multiple cases in a continuing course of conduct. Quinlan noted that some global plea agreements resolve unrelated cases at the same time. Rob said that the course of conduct language was tricky and he was wary of using it here. He would prefer using "resolved as part of a global plea agreement."

Quinlan said he thought the recommendation should capture situations in which multiple convictions are related to the same underlying cause but not necessarily the same case or the same course of conduct. Brenda agreed; she noted that someone might have a bad run with 4 convictions over a 3-year period, all related to the same underlying issue.

Barbara said that as the recommendation was currently written, misdemeanors could be expunged at any time so long as the petitioner was eligible. Rob said he didn't agree with that; he didn't want to have someone expunge an offense at age 20, then at age 24, then at age 29, etc. He thought that would defeat the purpose of expungement which was to offer a fresh start for people who have really turned their lives around.

Quinlan said that could be resolved by putting multiple cases in one petition.

Kara Nelson offered to recount her own criminal history as an example. She has a list of criminal convictions, all of which stem from a time when she was struggling with active addition. She has 40 entries in Courtview—not all from one case or one year. She would want to be able to expunge all that history with one petition. She thought that if a person has done well for 10 years, turned their life around and stayed on a new path, there was no reason not to expunge all their old cases. It didn't make much sense to only pick one.

Quinlan and Rob agreed that was what the purpose of expungement was. Rob said expunging multiple cases was only a problem if it was a series of expungements over time. Quinlan thought the recommendation should just make that clear; the petition could list multiple cases but it would be a "one and done" petition.

Barbara said she could draft language expressing that and asked if there should be any limitations. Rob said he would need to think; one concern he had was that the list of factors was written as if it were only one case. Quinlan suggested making the relationship of the cases sought to be expunged one of the factors. Rob was also concerned about the cases in which there was a presumption of expungement. Barbara offered to draft language and send it out to Rob and Quinlan to see if there was a way to give effect to the intent they were expressing.

SIS and expungement

Barbara explained that the group had earlier agreed to automatic expungement of SIS cases in which the conviction had been set aside; the expungement would occur on year after the date of set-aside for misdemeanors and 5 years after set aside for felonies. The group had not, however, decided on what to do with past SIS cases; the group had wanted more information on the number of sex offense cases that had gotten an SIS in

the past. She explained that Kathy Monfreda had gotten that information, and that all the past successful SIS cases comprised 49,903 charges. Of those, 111 charges were for sex assault or SAM cases—the dates for these ranged from 1980-1993.

The group agreed that the past SIS cases should be treated the same as the cases going forward.

Barbara also explained that the group had wanted to ensure that before an SIS case is set aside, the judge considers any outstanding restitution so that would be accounted for once the offense is automatically expunged. The group had wanted the prosecutor to notify the court of the outstanding obligation. Barbara was not sure whether this was meant to be a requirement or not.

Rob said that the Department of Law wouldn't necessarily know about the outstanding restitution obligation and thought the court should be encouraged to look into it when the conviction is eligible for set-aside. Doug said the court system should have that information. The group agreed to reword the draft accordingly. Quinlan suggested that the set-aside hearing would also be a good point to record the restitution obligation.

Certificates of Rehabilitation

Barbara said that the group had previously expressed some interest in including certificates of rehabilitation as an option.

Rob thought there should be a robust certificate of rehabilitation process. He thought that expungement would be a powerful tool but shouldn't be the only tool. Conviction information won't always disappear (it may still exist on commercial aggregator sites, for example) and some people will want an official certificate signed by a judge to combat any assumptions.

Quinlan asked if the idea was that the judge would pick which form of relief to grant. Barbara said that as written, the draft recommended that the petitioner could elect the certificate as an option. Quinlan said he would assume that everyone would want expungement. Barbara suggested that it might be another option if a person's petition for expungement is denied. Rob said he thought that there were benefits to being able to apply for either or both.

Brenda said that it could also be an option for people who have not yet reached their eligibility date. She recalled that research showed that these certificates were not useful, however. Barbara said that more recently, a study from Ohio showed modest employment benefits to formerly incarcerated people with such certificates.

Susie asked whether the group wanted to include certificates of rehabilitation with the expungement recommendation or forward an expungement recommendation first and work on certificates later. Rob said it made more sense to forward them together.

Quinlan said he'd like to clarify that getting a certificate doesn't preclude later expungement. He didn't want judges to default to the certificates. He thought it could be a step towards expungement.

Kara said that she knew people in other states who have gotten certificates like this and she has written letters of support for them in some cases. She said that 10 years can be a long time to wait for expungement and thought that this could work similarly to a variance for licensing/DHSS but would be more universal. She said that having a record hindered her in getting some employment opportunities and that things might have gone better if she'd had a certificate. She thought that a certificate system would work well in Alaska where people live in close-knit communities and people will value the work it takes to get such a certificate. She also agreed with Rob that it could be a useful tool even if the petitioner was also granted expungement.

Rob asked if there would be any limit to eligibility. Barbara said that as written, the draft didn't limit eligibility. Rob noted that as written the draft used "shall" language to create a presumption of granting the petition. He said this was a concern and thought that the certificate should have the same standards as expungement.

Quinlan asked if he would be comfortable with using a "shall" standard for the offenses eligible for expungement and "may" for offenses not eligible. Rob said he was not sure and wanted to give it more thought. If a certificate was something everyone could get, it might dilute its effectiveness.

Quinlan asked about excluding sex offenses. Rob said he was not sure but was open to discussion about it. Susie wondered whether judges would be comfortable issuing certificates for people convicted of a sex offense, even if it was 25 years later. Rob said it was possible. A certificate would acknowledge that the petitioner had done a lot of hard work to rehabilitate themselves.

Quinlan thought a certificate could help a person with a criminal record succeed and noted that it would not be changing the record at all, unlike expungement. Kara noted that the process still would not be easy, that the petitioner would need to document rehabilitation, and that would require building relationships.

The group discussed the fact that the "floodgates" did not open when expungement was enacted in Arkansas and debated adding a footnote to that effect to the draft.

Public Comment

Kara Nelson said that she appreciated the work that the Commission was doing and the time and effort involved in drafting this recommendation. She echoed Quinlan's suggestion that the Commission should not use the word "offender" and offered to send examples of person-centered alternate language. Quinlan said he would like to put that on the agenda for the next Commission meeting.

Kara said she would be interested in the data on younger offenders and the time to redemption. Susie said she could send that research to her.

Kara concluded by expressing the importance of expungement. Having a criminal record is a huge barrier to successful reentry and it was hard to understate the magnitude of having a record.

Next meeting

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