Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
March 23, 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, Joel Bolger

Participants: Rob Henderson, Yulonda Candelario, Kathy Monfreda, Marsha Oss, Karen Cann

Staff: Susie Dosik, Barbara Dunham

Terminology

Barbara Dunham walked the group through the revised draft recommendation for expungement. She began with the title, and explained that the group had not yet settled on what they were calling the proposal (though the group had been referring to it as expungement proposal). She noted that Kathy Monfreda had mentioned that in among criminal justice information professionals, "expungement" typically means the record disappears completely.

Barbara also noted that she had tuned into a Senate Judiciary hearing in which the committee members were discussing Sen. Begich's bill to limit access marijuana records. That bill would operate very similarly to the current proposal. The senators in the committee had distinguished the bill from expungement, and said that what Sen. Begich's bill was doing was different. They seemed to also assume that the definition of expungement means the record is destroyed.

Rob Henderson said he had been at that hearing and agreed that that's how the committee viewed expungement, and agreed that using a different word might be less confusing and also more palatable to legislators who would be uncomfortable with the concept of destroying records.

The group noted that "sealing" and "confidential" were both terms of art with a specific meaning for the Court System and DPS, so the term used could not be either. The group decided that using the word "redaction" would be suitable, and agreed to replace "expungement" with "redaction" throughout the draft.

Introductory language

Barbara explained that the introductory language for the proposal explained that the Commission had determined that having a criminal record was a significant barrier to reentry. It also included language about the research and findings the Commission had made, and a footnote adding more detail about the "time to redemption" research. Justice Bolger suggested editing the footnote for clarity.

Marijuana and MCA cases

Barbara explained that the group had agreed that marijuana possession and MCA cases should be expunged automatically and immediately. Kathy noted that the word "immediately" could be problematic; as she had explained to Sen. Begich's office, it will probably take DPS 5 years to comb through the old marijuana convictions to ensure they are redacting the appropriate offense.

Rob suggested adding a footnote to the effect that this provision would have a fiscal impact. Justice Bolger suggested deleting the word "immediately" since the word "automatically" would seem to cover that. Quinlan Steiner said he would rather leave in something to indicate that the intent was to get this done as soon as possible. He thought that the legislature would recognized that "immediately" would not be taken absolutely literally and noted that this recommendation would not be the actual bill itself.

Kathy noted that cases that were dismissed or not prosecuted were not included in this draft and thought it would be fairer to include them. The group agreed.

Sex offenses and misdemeanor redaction

Kathy noted that the draft recommendation excluded misdemeanor sex offenses for which there is a registration requirement, and asked whether that applied for the duration of the registration period only. Rob said that was not the intention and suggested adding a footnote to make it clear that registrable sex offenses would never be eligible for expungement even if the registration period was over.

Barbara explained that she had distributed a memo explaining which offenses were on the registry and which were not. Brenda wondered how often registrable crimes were pled down to non-registrable crimes. Rob said he didn't have any numbers of that, but said that generally speaking if a person is convicted of an offense, that represents the extent of their criminal liability. It would be tricky to sort out cases where the offense charged was registrable and the offense pled to was not.

Quinlan said that some cases were over-charged, but agreed there was no good way to sort out those cases with integrity. It is not just sex offense cases that get over-charged and the situation of pleading to a lesser charge applies across the spectrum of offenses.

Rob said that one way of addressing the situation could be to add a factor to the list, so judges would also consider the facts and circumstance of the underlying offense. Justice Bolger noted that "the seriousness of the offense" was already on the list. Rob said

he didn't necessarily think that would cover offenses that have been pled down, and thought it could be made clearer. Justice Bolger agreed.

Karen Cann said she didn't want to muddy things up by considering the original charge, and thought the process should be focused on the charge of conviction. Rob said he understood her point but thought that courts are good at making these kind of judgment calls.

Justice Bolger said that the "facts and circumstances" language could be useful in other kinds of cases. For example in an assault case where there was a finding of maliciousness or a racial animus for the assault, the "facts and circumstances" language would allow the judge to look into that.

Dean Williams said he was concerned that adding more discretion into the process would disproportionately affect minority populations as a judge's inadvertent bias might play a role. He noted that the prison population already had a disproportionate number of minorities. He thought more bright-line rules would allow the system to overcome the inadvertent bias somewhat. Barbara suggested that the "facts and circumstances" language could also potentially allow judges to account for that systemic bias. Dean said that was possible but it would assume the judges are on the lookout for that.

Justice Bolger thought Dean raised a good point and suggested adding a footnote in that despite the standard being somewhat broad, the Commission did not want to encourage any implicit bias.

Quinlan also thought Dean had a good point and said he was also concerned about additional judicial discretion as that had the potential to create mini-trials, which in turn would create more opportunity for bias to creep in. With a more automatic process there was also more incentive to do the work necessary to get one's record redacted.

Rob responded that limiting the judges' discretion might also have the effect of limiting the eligibility for redaction. Quinlan agreed that was a potential consequence.

Brenda said that if the factor weren't changed she thought that the non-registrable offenses would have to be excluded from eligibility too. Quinlan said he was fine with the "facts and circumstances" language and noted that this would all be reviewed in the legislative process.

Rob thought that the tension between discretion and eligibility was at the heart of why finding a middle ground for this recommendation was so difficult and why it had taken a year. He suggested explaining that in the footnote.

Kathy noted that there was a bill in the legislature now that would add additional offenses to those required for registration. Quinlan thought that the registration list should be revisited and thought that was a task for the sex offenses workgroup.

Expunging multiple offenses

Barbara explained that she had added a subsection on expunging multiple offenses to reflect the discussion at the previous meeting. She had added language stating

that the Commission intended that people would be able to redact multiple offenses in one petition, but that it was meant to be a one-time option for people who have permanently turned away from a life of crime. If a person wanted to redact multiple offenses with one petition, they would have to make sure the offenses in the petition were eligible.

As drafted the recommendation had a parenthetical explaining that while typically a person could only be granted a redaction once, if a person wanted to expunge the misdemeanors on their record first before the felonies were eligible, they could do that and later petition for the felonies. Barbara said she had included this in case the group wanted to include it for a scenario where a person's misdemeanor history may be more significant a barrier for them than their felony history.

Rob said he thought the parenthetical was inconsistent with the rest of the recommendation and he would take it out. Quinlan agreed. He could see why someone might want to do that but it would be hard to write into a statute and could open up a can of worms. Brenda said she preferred to have the higher timeframe apply if a person had multiple offenses. The group agreed to take the parenthetical out.

Barbara also explained that she edited the "factors and standards" section to reflect that multiple offenses could be redacted at once.

Effect of redaction

Kathy suggested adding a footnote that the redacted records could also be released from the court system to DPS, to make sure that DPS gets the information about the redaction.

Karen asked why the language about being able to use the record for impeachment was included. Barbara explained that the Arkansas model included that provision. Rob said it was also consistent with Rule 505. It could be used to benefit either a prosecution or a defense witness. Justice Bolger said in the criminal context crimes of dishonesty up to five years old were considered relevant, and use of prior crimes in civil cases was also not unlimited. He also thought that if the impeachment language were taken out it might raise a red flag for legislators unnecessarily. Quinlan added that the use as an impeachment tool was only about questioning a witness under oath and didn't have any relation to rehabilitation.

Barbara noted she added some language to the draft stating that the Commission recommended making the restitution judgment identifiable to the victim. Justice Bolger wondered if "accessible" might work better than "identifiable." Quinlan said there would still need to be something to tell the legislature that the victim would need to find the judgment, and Rob agreed. The group decided to add the word accessible and keep identifiable.

Justice Bolger suggested that the definition of "confidential" might needed to be altered to include a victim who is owed restitution.

Brenda noted that in child custody cases, there is a presumption of custody if a parent has two DV events on their record. The Network may have issues if that information is redacted but she thought those issues could be worked out in the legislature. Rob suggested adding a footnote to that effect.

Rob also suggested adding "including certain state agencies" to clarify that some employers who might need access to redacted records would also include state employers.

Certificates of Rehabilitation

Justice Bolger noted that petitioners may want to have a certificate of rehabilitation as an alternative or in addition to a redaction, and suggested substituting the word "also" for the word "instead" to effect this. Quinlan suggested adding a footnote to clarify that receiving a certificate would not prevent a person from later petitioning for redaction.

Forwarding the recommendation to the Commission

There was no objection to forwarding the recommendation, amended to reflect this meeting's discussion, to the Commission. Barbara said she would send around an updated draft as soon as she could along with a PowerPoint to be used in the Commission meeting.

Public Comment

There was an opportunity for public comment but none was offered.

Next meeting

Brenda said there would be a hiatus until the next meeting of this workgroup; staff needed time to collect some data about the topics that had previously been tabled.