

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
May 22, 2017, 1:30-3:30 PM

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

Commissioners present: Steve Williams, Brenda Stanfill, Greg Razo

Participants: Jon Woodard, Donald Revels, Mary Geddes, Amber Nickerson, Brad Gillespie, Allison Biastock, Josh Sopko, Doug Wooliver, Devon Urquhart, Don Habeger, Wilma Osborne, Natasha McLanahan, Teri Tibbet, Jeff Edwards, Rachel Kosakowski, Kaci Schroeder, Karen Cann, Dunnington Babb, Michael Jones, Chris McLain

Staff: Susie Dosik, Susanne DiPietro, Brian Brossmer, Barbara Dunham

1. Reentry Coalitions

Steve Williams from the Trust reported that the Dillingham, Ketchikan, and Kenai Peninsula Reentry Coalitions were getting up in running. He was just at a planning meeting for the Kenai coalition; they were in the process of setting up a peer support program (including defining peer support) and what that would look like for the coalition, with an eye toward possibly being able to bill Medicaid if the program is structured correctly. Brenda Stanfill said she'd like to hear more about this possibility.

The funding for the four coordinator positions through the Trust is being renewed, and the FY18 reentry grants are also open for RFPs right now. Devon Urquhart, coordinator for the Anchorage Reentry Coalition, noted that the Coalition is looking at getting federal funds to expand case management capabilities.

2. Barrier Crimes regulations

Barbara Dunham explained that the Dept. of Law had sent along the new regulations. They have not yet been given final approval by the lieutenant governor's office; Barbara was not sure where in the process they were. The regulations seem to lessen some restrictions but retain the matrix. Staff will continue to go through the regulations (they are lengthy).

3. Removal of SNAP ban for certain felony offenders – implementation issues

Group members had not heard anything new about whether offenders were better able to file for SNAP benefits. Barbara will get in touch with the staff at the food banks to check on this.

4. Ban the Box

Staff research analyst Brian Brossmer explained his memo on existing Ban the Box studies. There are three major studies on Ban the Box, none of which are peer reviewed. The studies found that when

the box was banned, employers tended to use race as a proxy for incarceration status. Ban the Box policies tended to benefit white men disproportionately. It is unclear how Ban the Box would affect hiring in Alaska, because Alaska has a different racial makeup. Donald Revels theorized that the same type of proxy discrimination might affect Alaska Natives as had affected black men in the studies.

Barbara asked what, if any, action the workgroup wanted to take in terms of forwarding a recommendation to the Commission.

Commissioner Greg Razo said that removing any barrier to employment made sense—it gives people with a record a better chance of getting a foot in the door. Banning the Box, despite the potential of negative consequences, is better than doing nothing at all. Racism will always be present in hiring no matter what.

Karen Cann, representing DOC, wondered if there was any way to run a test program or study in Alaska. Greg thought that was a possibility—since the proposal would likely only be for public employers, perhaps a pilot project in one division.

Josh Sopko asked Brian if everyone could get some benefit out of Ban the Box, even if some were getting more benefit than others. Brian replied that it was essentially a zero-sum game. Brian also noted that hiring in the public sector usually has to follow more rules, including anti-discrimination rules, so a policy that only affects public employment might be more successful at avoiding racial disparities. Karen said she was concerned about the discrimination factor, and thought that a trial program would be good—if it does end up having negative consequences, the program can be undone.

Commissioner Steve Williams asked Brian what other limitations there were to the studies. Brian said that for example, one study didn't differentiate among age groups or gender, but there were no big red flags in any of the studies and no reason to dismiss them out of hand. The sample sizes were quite large. Steve said he was inclined to eliminate known barriers to reentry and would support a recommendation for an initial project.

Commissioner Brenda Stanfill noted that private employers in Fairbanks don't seem to have a problem with hiring people with a record; the problem is government employers. She thought the Commission should take this on and see what happens. She thought there might be different results in Alaska.

Dunnington Babb and Kaci Schroeder, representing the Public Defenders and the Dept. of Law respectively, said they did not oppose the concept.

Brenda asked if there was already a specific proposal. Mary Geddes said that a proposal had been sent to the Dept. of Administration last year and was theoretically still awaiting review. She suggested someone could poke the nest. Susie Dosik suggested waiting until a budget has been signed.

Greg proposed that this item be added to the next Commission agenda; staff will find the original proposal and modify it to propose a pilot program, and will put it on the agenda for the next Commission meeting. Greg will contact Leslie Reidel in the Dept. of Administration to see whether they would be amenable to a pilot program and what state agency might be best for a pilot if so.

5. Employment- Alaska Workforce Investment Board, Dept. of Labor

Allison Biastock of the Alaska Workforce Investment Board (AWIB) spoke to the group about what AWIB does. The Board has 25 members representing all sectors of the economy. They have many committees, one of which is the Workforce Readiness, Employment, and Placement (WREP) Committee. The WREP Committee has been tasked with looking at barriers to employment for justice-involved individuals. After some brainstorming and discussion, they decided to focus on outreach efforts to employers.

Part of AWIB's outreach will include providing opportunity for employers to give input on what other efforts could be made to encourage hiring people with records. They will ask employers to rethink how they go about looking at someone with a record including: (1) asking about convictions later in the interview process; (2) looking at whether there's any nexus to the crime of conviction and the potential employee's tasks, and (3) looking at how much time has passed since the conviction. They will also inform employers about support available from the Dept. of Labor and initiatives like the tax credit and fidelity bonding.

Brad Gillespie and Donald Revels from the Dept. of Labor also spoke to the group about their efforts in this area. The fidelity bonding program has been quite successful—typically the bond will be about \$5000, but this can be adjusted. They have never had any default on the bond in the history of the program. Labor has also reduced the paperwork necessary to get the bonding. They are also trying to get the word out about the tax credit—there are companies hiring eligible individuals who don't know about it.

Labor is also doing employment after incarceration workshops at Goose Creek and Hiland. They also have group sessions every Friday where they help individuals with various skills. Josh Sopko from Partners for Progress said that they have a similar program. The Dept. of Labor also has a job skills program for people ages 55 and over who also have barriers to employment (including prior convictions). They train program participants for 20 hours per week for a number of months.

Donald said that they received grant funds concurrent with the passage of SB 91 to address the higher turnover rate in prisons—specifically, training those who will be released soon on job skills and resume building. They are trying to get 200 people in to case management and additional 500 with classes. The challenge is to find the individuals who need these services.

Brad told the group about the Wildwood Work Release program—inmates are hired to work in seafood processing facilities and are released on EM to do so—they also receive full pay. There is a similar program at Hiland. Donald mentioned that it might be possible to take a visit to the Kenai program to see how they operate. Group members were interested in this.

Greg Razo suggested that the Dept. of Labor work with the Alaska Native Justice Center and to present to the Alaska Federation of Natives to collaborate on these efforts. Donald said they had been working with ANJC; Greg said he could facilitate a presentation to AFN. Chris McLain of the Fairbanks Reentry Coalition said that they had been partnering with Tanana Chiefs Conference for reentry projects and found it fruitful.

6. Expungement, Clemency, Sealing Records

Barbara Dunham briefly went over her memo which explained options for sealing, expungement, and clemency, and made suggestions for new/revised laws or procedures for each.

Sealing

The group first discussed sealing. Alaska law currently provides for sealing cases that have been dismissed where the applicant can show, beyond a reasonable doubt, that the charges were based on a false accusation or mistaken identity. However, there are practical limitations to this statute, including the requirement that the investigating officer and prosecutor sign off on the request. Law enforcement personnel are reluctant to sign off on sealing requests at the “beyond a reasonable doubt” standard, which makes sealing these cases nearly impossible.

There were two proposals to improve the sealing process. Barbara proposed that rather than getting an application certified by law enforcement, that applications should be submitted directly to the court with proof that the charges at issue were based on a false accusation or mistaken identity. The court can entertain objections from law enforcement or prosecution, and if there are any, hold a hearing. The court must grant relief if the applicant meets the criteria by clear and convincing evidence. Barbara also suggested expanding eligibility to cases where all charges are dismissed or the defendant is acquitted of all charges.

Attorney Ryan Bravo, who first raised this issue suggested maintaining the current process where the application is submitted to law enforcement, but modifying that process. He proposed to make the eligibility criteria clear, to reduce the burden of certification to clear and convincing evidence, and to provide for de novo review of the agency’s decision in superior court.

Greg Razo thought that law enforcement shouldn’t have to bear the burden of certifying these requests, and favored the first proposal. Karen Cann agreed—even with a lower burden of proof, law enforcement officers will still be reluctant to certify these requests. She was in favor of this proposal—for some it will be helpful to be able to say they haven’t been charged with a crime and not have to go into an explanation about false accusations, etc.

Group members questioned what happens when one charge is dismissed but others remain on a case. Doug Wooliver informed the group that in such cases the whole record stays on CourtView. Susanne DiPietro asked how much of a lift this might be for the Court System. In terms of sealing the records, Doug said that it would not take much more work if they are already removed from CourtView. They have already done a lot of work on removing records from CourtView- it was a significant number of cases.

Group members wondered what the effect would be on an APSIN record if it is sealed. Barbara said she would look into this. [Note: according to Kathy Monfreda at DPS, sealed records are removed from APSIN. DPS still has a record on file which may only be viewed by the subject of the record or used for criminal justice employment purposes, so that an employer can verify that a charge was based on a false accusation or mistaken identity. In Kathy’s experience most sealing cases tend to be mistaken identity because people will give someone else’s name upon arrest.]

The group was in favor of the first sealing proposal. Barbara asked whether it should be expanded to include charges that have been dismissed or resulted in acquittal. Kaci Schroeder suggested this was

something the full Commission could talk about when they consider the recommendation. Greg Razo and Steve Williams agreed. Barbara will put this proposal on the next Commission agenda.

Expungement

The group next discussed the proposals for expungement; there were various proposals with different standards depending on level of criminal culpability/seriousness of the offense. Relief would either come in the form of removing the record from CourtView and being released in background checks, or in the form of a certificate of rehabilitation.

Group members doubted the effectiveness of a certificate of rehabilitation. Doug Wooliver thought it would be about as effective as an SIS, and might have some of the same problems (i.e. people granted relief will think that it disappears even if it doesn't).

Karen Cann asked how difficult it would be to remove cases from CourtView. Doug said that generally it was not—they have done this in the past, for example when laws were written to remove DV orders – it is a matter of writing the correct rule.

Brenda Stanfill said that victims and victims' advocates are typically resistant to things disappearing from CourtView. She noted that CourtView was never designed to be fully public. She asked whether the court system could charge a user fee. Doug said that the court system would be reluctant to do so. He agreed that people are generally hesitant to take records off CourtView which is why expungement bills have not passed.

Brenda suggested focusing on smaller issues— for people with a successful SIS, or people who have been rehabilitated for a long time. Karen said that DOC was concerned with opioid offenders who have no other record otherwise; she suggested there could be a series of hoops for them, like a specialty court, to give them a way to clear their record.

Greg Razo said he liked all of the proposals and noted they were all discretionary except the first. (Barbara pointed out that another one was not discretionary but she could rewrite the proposal.) He was prepared to send this slate of proposals to the Commission as is. He saw all of these options as tools that don't have to be used.

For the first proposal—granting relief automatically where a conviction was based on an offense that has been decriminalized or the classification has been lowered—Dunnington Babb wondered whether that would apply to the old felony drug possession statute (all simple possession crimes are now misdemeanors). He thought that would have a very positive impact. Susanne concurred and said it could apply to thousands of people. Doug said he was not sure how to change that designation on CourtView but said he would look into it.

Doug pointed out that these proposals would all come with a significant fiscal note for the PDs, OPA, the Dept. of Law, and the court system. He looked into processes in other states and found that in many cases, a hearing was required to grant relief. Essentially if there was to be a meaningful change, it would be expensive. Dunnington thought that these proposals were worth forwarding despite the potential fiscal notes. Greg, Steve, and Karen agreed that these should be brought before the full Commission.

Kaci Schroeder said that Law had some questions about these proposals and would want to take a closer look at them. Law was agreeable to expungement for certain offenses but probably not felonies.

She also wanted to think more about the burden of proof. Brenda agreed and suggested they consult together. She was not sure what to think about the youthful offenders. Susanne said that staff could provide some data to get a sense of how many people might be eligible for these provisions.

Greg suggested that those still on the fence think further and send their reactions to Barbara. It was decided that group members who are commissioners or designees would send any comments or further suggestions to Barbara by June 16. Barbara said she would email a reminder before that time.

Clemency

Barbara explained that clemency is an option best reserved for defendants whose particular case or circumstance warrants relief; it is a process that involves more extensive fact-finding and investigation. In Alaska, the governor has the final say in clemency. The current process starts when an offender petitions both the Parole Board and the governor for clemency. This process has been put on hold, pending revisions, since 2009. An advisory committee submitted recommendations for revisions some time ago, but the process is still on hold, though the parole board continues to collect applications.

The proposals were to recommend that the governor's office adopt the advisory committee's recommendations for improving the clemency process, and for the Parole Board to begin processing the backlogged applications. Jeff Edwards of the Parole Board said that there has been some movement on this recently, but that it wouldn't hurt for the Commission to support those efforts by submitting a recommendation.

Greg suggested this proposal be forwarded to the full Commission. Steve, Karen, Brenda, and Dunnington all agreed.

7. Public comment

Michael Jones commented that he had a DWI from over 20 years ago and has turned things around completely. He would like a way to be able to carry guns onto federal land. He does not want his record to disappear entirely; he thinks that having a conviction keeps people on the straight and narrow. But he would like to own a firearm and be sure he would not be charged with Felon in Possession. He agrees with having relief for people who have improved their lives. He noted that it was possible to get into Canada as a felon with a special permit, but he had to pay \$3000 to start that process and hadn't gotten the permit yet.

Wilma Osborne encouraged the group members to consider including violent offenses in those eligible for expungement. She had a misdemeanor assault on her record that was the product of mental illness. This is not uncommon and people do get better.

8. Next steps

The possibility of a next meeting was left up in the air depending on whether a consensus could be reached on expungement relatively easily. Barbara said she would keep the group updated and inform them if another meeting was necessary.