

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

MEETING SUMMARY
September 22, 2017

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

Commissioners Present: Quinlan Steiner, Joel Bolger, Brenda Stanfill

Participants: Doug Wooliver, John Skidmore, Kathy Monfreda, Karen Cann, Claire Sullivan, Kara Nelson, Devin Urquhart, Jeff Edwards, Rob Henderson, Donald Revels, Cathleen McLaughlin

Staff: Susanne DiPietro, Barbara Dunham

Expungement

Barbara Dunham explained that at the last full Commission meeting, the Commission had considered the expungement proposal forwarded from the workgroup but ultimately decided to remand the issue to the workgroup. However, it was not clear what mission the group had been tasked with. Accordingly, Barbara had sent out a survey to the Commissioners to get a sense of their thinking on this issue and to get some direction for the workgroup.

Justice Bolger recalled that after hearing from Nancy Meade about what the court system could and could not easily achieve there had been some concern about costs. Brenda Stanfill said that she would like to put off discussion of costs and focus on what is the right policy. There will be a fiscal note to any expungement bill no matter what, and she was concerned that the Commission was tying its hands by worrying about costs and the court system's abilities. If the Commission's ultimate recommendation comes with costs, the Commission could also recommend using reinvestment funds for that.

Barbara explained that the survey garnered 8 responses from the Commissioners, which were anonymous. The results of the survey tended to be mixed, with only a few responses garnering an outright majority. The first question asked what form of expungement Commissioners preferred. The responses to this were quite mixed, possibly because Commissioners did not envision a "one size fits all" approach to expungement, and possibly because there was a glitch in the questionnaire. Responses indicated a strong dislike of destroying all records and a certain amount of support for allowing a person to claim they were not convicted of the offense.

The next question asked whether Commissioners preferred automatic expungement, expungement via administrative process, or expungement via a court hearing and order. Court hearings had the most support. There was a certain amount of support for automatic expungement but also a strong dislike from some commissioners.

The next question asked which process should be used for different kinds of offenses. Offenses were broken down into level and type (violation/misdemeanor/felony and violent/non-violent, etc). Notable results in this question included:

- Fairly strong support for automatic expungement for violations and minor offenses.
- Strong support for automatic expungement of successful SIS cases.
- Strong support for automatic expungement of Minor Consuming Alcohol cases.
- Strong support for automatic expungement of simple possession of marijuana cases (with two votes against any expungement for these cases).
- Some support for expungement of first-time DUI cases via administrative process.
- Some support for expungement of misdemeanor and felony cases using a court hearing process.
- For each level/type of offense, one or two commissioners opposed any kind of expungement.

The next question asked how much time should pass between a conviction (or set-aside, in the case of an SIS) and expungement. Options were immediate, 1 year, 3 years, 5 years, 10 years, 15+ years, or no expungement. Notable results included:

- Some support for expungement of violations and minor offenses after one year.
- Strong support for immediate expungement of simple possession of marijuana (though two Commissioners opposed any expungement of that offense).
- Support for a longer wait for felonies and first-time DUIs (in the 5- to 15-year range) and support for a lesser wait for misdemeanors (in the 1- to 5-year range).

The next question asked whether a person should have a clean record between conviction and expungement. The majority said yes, with two people saying that arrests would be okay but the person should have a clean record otherwise.

The next question asked whether an offense had to be a standalone offense (the only offense in the case) to be eligible for expungement. No one answered yes to that question. Commissioners supported expungement of an offense if it was in a case with other offenses that are similarly eligible, or if it was a minor offense or violation.

The last question asked whether the Commissioners supported a pilot Ban the Box program. Most respondents supported it.

Justice Bolger said he thought there were two distinct categories. One category contained things like SIS and MCA, which many Commissioners though should be automatically expunged. Those could easily be taken off CourtView right away. The other category would contain all other offenses and would need a hearing process to decide case-by-case. He wasn't sure whether administrative or court hearings would be best. The two categories would create two recommendations; one that could be forwarded to the Commission now, and one requiring further deliberation.

Brenda Stanfill wondered whether that was essentially what the previous proposal tried to do. Justice Bolger recalled that at the Commission meeting, there had been some testimony from Nancy Meade on the DWLS provision which slowed down the discussion; the question was never called. His proposal was just to take SIS and MCA off of CourtView. John Skidmore pointed out that not everyone would view that as expungement. His perception of the meeting was that the Commission generally

wanted more information, but just taking MCA and SIS off of CourtView would be more immediately palatable.

Karen Cann suggested the workgroup should come up with two or three options for the Commission, highlighting what the workgroup thought were the best examples from other states. Brenda said she was not sure about leaving things so open as the group might end up back in this same place, going in circles.

Doug Wooliver agreed with that and also thought the workgroup should define expungement. He thought the proposal to take MCA and SIS off of CourtView was doable in the near term, and would address some issues experienced by people with these cases on their records. Employers and others who don't usually do background checks often just check CourtView instead. For a working definition of expungement, he liked the proposal developed by Law, with a component of sealing at DPS.

Justice Bolger agreed with that definition and also thought that the Arkansas statute (provided as an example in the meeting materials) could be used as a template and modified.

Kathy Monfreda informed the group that for purposes of sealing information at DPS, it is possible to leave a record available for an APSIN search and to also restrict public access to the information, but it the information would still be available to DHSS.

John Skidmore said that the Arkansas expungement statute (which had been distributed to the workgroup as an example) might be a model. It seemed to him that the lawmakers in Arkansas had thought through many of the same issues that would come up in Alaska.

Quinlan Steiner suggested that the group determine several levels of expungement based on the type of offense because the legislature will tinker with the recommendation anyway. He suggested explaining the Commission's thought process and reasoning behind the options. He also didn't object to modifying the Arkansas proposal, however.

Barbara said it sounded like the group wanted to go forward with a limited recommendation at the next Commission meeting to take MCA and successful SIS cases off of CourtView (without any other action), and then propose an expungement recommendation at a later date, one that offers the Arkansas model as an option and defines various levels of response for each type of offense. Brenda asked whether the limited recommendation was the same thing the Commission discussed at the last meeting. John said it was different in that it would only cover MCA and SIS (the previous proposal included other offenses) and only took those cases off of CourtView (the previous proposal made the file confidential).

Justice Bolger said that he was leaning toward one recommendation from the committee for the latter option as he thought that a range of options might engender endless discussion. John agreed and said he was not sure about giving a wide range of options to the legislature. Quinlan said he was not suggesting an open-ended proposal, but rather suggesting that the Commission explain the options that exist and make a recommendation out of those options. Karen suggested putting a recommendation forward and identifying any issues or difficulties that might arise from it.

Barbara asked if the group wanted to go forward with removing MCA and successful SIS cases from CourtView as a recommendation at the Oct. 12 meeting, and at the same meeting give the

Commission more information and background on expungement. The workgroup would reconvene after that, and come back to the Commission in December with an expungement proposal.

Kathy asked whether the MCA and SIS cases would just come off of public CourtView or the court system's internal CourtView as well. The group agreed it would just come off public CourtView.

Justice Bolger said he agreed with that plan and suggested the MCA/SIS recommendation could be in the form of a recommendation to the Alaska Supreme Court to issue a court order to that effect. He said it should be clear that the recommendation for MCA/SIS was not expungement and that a different proposal regarding expungement would be forthcoming.

Karen said she agreed with the idea of modifying the Arkansas statute and said she did not want to lose momentum on expungement.

Kathy pointed out that the Arkansas statute limited who could access the sealed information, but DPS reports all arrest information to the FBI and Alaska has no control of where that information goes from there. Barbara noted that there were also commercial aggregators of information found on CourtView; some states have responded by prohibiting expunged information being released by a commercial entity. Doug added that some commercial aggregators collect CourtView information weekly and the Court System has no control over it.

John said that this could be where a certificate of rehabilitation like the one used in Ohio might actually be better. Doug noted that it could work like a notice of invalid lien; a frivolous lien does not disappear but a notice is added to it to ensure that creditors know it is frivolous.

Barbara said that while there was a lot of information out there that could not easily be restricted by Alaska, expungement would restrict access to a lot of information in meaningful ways. Employers and landlords who just check CourtView or pay for a basic background check would not see an expunged record, and the Court System and DPS may be considered to be more official sources than a commercial aggregator. Doug agreed and said that sometimes it was best not to let the perfect get in the way of the possible.

Justice Bolger said that a certificate of rehabilitation could be in addition to expungement or an alternate form of relief. Quinlan suggested the certificate could ride with the court or DPS file.

The group agreed to go ahead with the recommendation to take MCA and successful SIS cases off of CourtView for the next meeting, and to present the Commission with information on expungement at the next meeting as well, letting the Commission know that the workgroup was working on a larger expungement package.

Ban the Box

Barbara explained that the Commission had discussed the proposed recommendation for a pilot Ban the Box program, but had put discussion of the proposal off to talk about expungement first. The Commission did not return to the topic after discussing expungement.

Rob Henderson said he recalled that the concern at the Commission meeting had been about the potential unintended consequence of racial discrimination and the thought that expungement was much more important.

Barbara explained that the workgroup had discussed the potential unintended consequence of racial discrimination at previous meetings. The studies that indicate this might be an effect were mixed and not peer-reviewed or duplicated, and the workgroup had reasoned that a pilot program in a state agency would not be as susceptible to that kind of unintended consequence.

Rob asked if it might be better to wait until studies were more conclusive. Quinlan agreed, and said that he wouldn't want to support a recommendation that could lead to discrimination. Brenda added that the studies were national and indicated there was some discrimination based on age too.

Barbara asked if the group wanted to table the issue of Ban the Box until further research comes out. The group agreed.

Public comment

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

Next meeting

Barbara asked whether other items that the group had been discussing but had put on the back burner, such as barrier crimes and employment, should go on the next agenda. The group decided to focus on expungement for now and return to those other topics once the group has finished with expungement.

The next meeting was set for November 3 at 9:30.