

Alaska Criminal Justice Commission  
WORKGROUP ON BARRIERS TO REENTRY

**Meeting Summary**  
**November 28, 2017, 9:30-11:30 AM**

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

Commissioners: Quinlan Steiner, Joel Bolger, Brenda Stanfill

Participants: Tom Begich, Kathy Monfreda, Rob Henderson, Doug Wooliver, Joshua Spring, Donald Revels, Karen Cann

Staff: Barbara Dunham

**DPS Background checks**

Barbara Dunham explained that she had circulated a brief memo on background checks to ensure that the workgroup could address the various aspects of criminal history recordkeeping at DPS. DPS provides Alaska criminal history records to any person in a basic background check, which releases conviction information and current offender information. DPS also provides background checks to “interested persons”; those background checks provide conviction information, nonconviction information (information on charges that did not result in an indictment, were dismissed, or resulted in an acquittal) and current offender information. An “interested person” is someone who employs or hires as a volunteer people who have supervisory or disciplinary power over a minor or dependent adult.

DHSS has a separate background check system whereby it accesses APSIN directly to verify the criminal history information of any potential employee or licensee (including foster parents). To this end, DHSS is designated a “criminal justice agency” per AS 47.05.310(e). To get national criminal history information, DHSS asks DPS.

All national criminal history information must be obtained through DPS. Certain licensing bodies and “interested persons” may ask DPS for this information.

Alaska also sends information on Alaska criminal history records to the national databases maintained by the FBI; Alaska does not necessarily have control of that information once it is sent to the national databases. Alaska could ask the FBI to expunge an Alaska record, but if a record is expunged in the FBI databases it is deleted permanently for all purposes.

Barbara noted that this related to what the effect of expungement should be. The group indicated an interest in maintaining criminal history information for law enforcement purposes, meaning that the record should not be destroyed. If the record is not destroyed, however, the national record may still be accessible in other states. This would potentially create a conflict with a provision that allows an offender to say the conviction for that record never existed. The Arkansas statutes had a similar

provision; Barbara noted that John Skidmore was still waiting to hear back from people he has contacted in Arkansas.

Rob Henderson asked what the FBI standards were for removing criminal records. Kathy Monfreda said that the standards have changed over the years. At one point all minor offenses were expunged. If the record is expunged, it is gone entirely. She has been trying to think about a way to get around that.

Doug Wooliver noted that there are commercial aggregators operating nationally who accumulate information every week. Even if erased from the FBI database it may still exist somewhere. Rob suggested this was a reason to also look into certificates of rehabilitation. Barbara said she thought people might find government sources more trustworthy than commercial websites. Rob said he wasn't sure about that; he thought that a lot of national companies are too busy to get an official background check and may go to those sites instead. Kathy noted that her office often gets calls from people who want to get erroneous information off of commercial sites. Tom Begich suggested that any expungement could come with a note that the criminal record may still be accessible in other jurisdictions and a certificate of employability.

Karen Cann said she thought it would work as most employers would do the full background check after a job interview, at which point the applicant could explain the expungement. Kathy said that wasn't the case in all fields; in nursing, for example, they run background checks on all applicants before offering interviews.

Quinlan Steiner asked what DPS does in cases where a defendant's conviction is reversed on appeal. Kathy said they change the status of the record in APSIN and send the information to III (the FBI database), where the record gets pulled.

Barbara said it would be helpful to know how other states approach this problem. If the record disappears, it can't be used if the person happens to reoffend, but leaving the record in the national database would probably not be an effective expungement. Kathy noted that she was going to a national conference next week and could ask people there how this is approached in other states.

Kathy also noted that there is an alternative system where the state can just leave a marker in the national database that the state has a record on the subject—but the record would not be in the national database itself, it would just refer back to the state where the record existed. Alaska is working towards using this system. Karen said that might work.

### **Marijuana possession and MCA**

Barbara noted that she had drafted a proposed expungement recommendation with variables yet to be decided highlighted in yellow. She had approached it slightly differently, mostly basing it on standards of judicial discretion rather than categorical exclusions. There were two carve-outs, one for automatic expungement of simple possession of marijuana and minor consumption of alcohol (MCA) cases, and one for SIS cases that are set aside.

Barbara noted that the provision for simple possession of marijuana and MCA cases called for automatic and immediate expungement of standalone offenses. She asked if this reflected the will of the group and there was general agreement. Kathy asked if the non-criminal MCAs would be expunged as well. Doug said that was the effect of the current provision barring publication of MCA violations on

CourtView. Quinlan said he didn't think it was discussed but it made sense to include violations along with the crimes. Rob asked if the court system could do this easily. Doug said yes, if they were standalone offenses.

Rob suggested including the statute citation for simple possession of marijuana in the draft. He also suggested looking at the analogous municipal provisions. Barbara said she would get that information.

### **Effect of expungement – DHSS background checks**

The group talked about the effect of expungement as written in the draft and the implications it would have if records for SIS cases were automatically expunged one year after the date of a set-aside. Barbara explained that the draft proposed recommendation provided that an expunged record would be made confidential for purposes of Court System records. For DPS records, the workgroup would need to decide whether the expunged record would be unavailable in all cases. The workgroup could limit the expungement so that the record would be withheld in a regular background check but available to DHSS for its background checks, for example.

Kathy explained that this is why it was problematic that DHSS was labeled a “criminal justice agency” in statute. An expungement law would likely make the record available to criminal justice agencies for law enforcement purposes. It would be possible to strike out the reference to DHSS being a criminal justice agency and instead just allow access to APSIN for employment purposes – just as the public defenders may now access APSIN for discovery purposes.

Justice Bolger asked whether the DHSS background checks were for foster parent licensing. Kathy said they were, as well as for daycare licensing, hiring social workers, and more. She noted that if DHSS were treated differently for expungement purposes, it could lead to unequal treatment depending on the entity doing the licensing. Karen added that there could be a scenario where a person was licensed as a teacher but not as a foster parent.

Rob said he was concerned about the effect withholding expunged records from licensing authorities in SIS cases, which were proposed to be expunged automatically. Might there be a situation in which a licensing authority should have the information? Kathy noted that some older SIS cases involved sex offenses. Justice Bolger added that that could be the situation where someone with an expunged theft offense in their background applies to be a caregiver for a vulnerable adult. This might be a concern if there are SIS cases with B and C felonies.

Karen said she thought this wasn't as much of an issue because the suggested 5-year time period after a successful set-aside for felonies was ample time to see if expungement was really warranted. Someone who could spend that time (after successfully completing probation) without a new offense is probably successfully rehabilitated.

Rob suggested including someone from DHSS in future meetings. Kathy suggested Karen Benson.

### **Effect of expungement – gun licensing**

Kathy asked whether expungement would include restoration of gun ownership rights. Rob noted that clemency restored those rights—to some extent it depends on whether the effect of the expungement would satisfy the standards in the federal statute. He noted that state laws banning felons

from buying firearms are different- state law refers to concealable firearms only. DV cases are also excluded.

Kathy said she could look into how many DV cases are SIS cases. Brenda Stanfill said there should not be many, and Rob noted it was the Dept. of Law's policy to object to an SIS in those cases. Quinlan and Brenda both noted there are some offenses which are not eligible for an SIS.

Kathy said she could also look into how the expungement would affect federal firearm laws. Quinlan noted that federal laws are not always consistent with state laws, and that it would be best to pick the right policy for the state. Justice Bolger wondered if the recommendation shouldn't mention guns. Kathy noted that DPS gets calls daily about restoring gun rights. Quinlan said that he thought the recommendation should state that gun rights can be restored under state law, but that federal rights may be different.

Doug noted that if expungement allowed someone to possess a gun under state law but not federal, that would mean that someone with an expunged record could still not pass a background check to buy a gun but if they were using a shotgun for hunting would not face state charges. Quinlan added that such a person also would not likely be a priority for federal law enforcement.

### **Expungement of SIS cases**

Barbara asked if felony SIS cases should be removed from automatic expungement. Karen thought they should remain automatic. Rob said he was not opposed but also thought the group might want to consider what is politically palatable; there might be hang-ups with automatic expungement. But he also knew that practitioners assumed originally that SIS cases would be akin to expungement.

Quinlan thought the 5-year waiting period before an automatic expungement of a felony SIS was long enough (especially after completing probation) that it shouldn't be too problematic, and those records should be cleared. They will still be available for law enforcement purposes, and there is a lot of benefit to allowing those with a successful set aside to sidestep the more onerous application process.

Kathy asked whether the offender would have to be free of arrests during the waiting period or just convictions. Quinlan thought it should be convictions. Doug added that an arrest is just an accusation and can sometimes be based on false information.

The group discussed how SIS set-asides operate, noting that there is a process where a judge reviews the case to determine if a set-aside is merited. Quinlan noted a judge would not be likely to grant a set-aside if the behavior was escalating. Brenda wondered if a judge would be less likely to set a conviction aside if there was a prospect of automatic expungement after a time. Justice Bolger said that as a trial judge, when he was considering whether to grant a set-aside, the biggest factor for him was whether DOC objected. He might also consider it a red flag if the case file revealed a lot of issues with probation violations. There was always the option of discharging the offender from probation without setting the conviction aside.

Brenda thought it seemed that there were a lot of checks on the process already if every SIS case is reviewed by a judge before it is set aside. She said she was comfortable with leaving both felony and misdemeanor SIS expungement as automatic. She asked whether the Department of Law signs off on granting an SIS. Quinlan said that an SIS could be imposed over the prosecutor's objection, but he was not sure how often that happened.

Brenda asked how the victim might be involved Rob said that the victim always has input at sentencing, but the prosecutor may not be able to give the victim advance notice of a possible SIS or to discuss it before the sentencing hearing. The victim typically is not contacted once the case gets to the set-aside stage.

## **Restitution**

Brenda said she thought that restitution should be paid in full before someone can be eligible for expungement. Quinlan said he wanted to be cautious about that because he didn't want to condition expungement on financial ability to pay complete restitution; similarly situated offenders in different financial situations would be treated unequally. Conditioning expungement on making payments but not completing restitution would be different, and could create an incentive to make regular payment. Expungement would also increase an offender's ability to pay restitution

Rob said that he would be very reluctant to sign off on expungement if restitution weren't paid. Expungement is something that must be earned. Restitution is also key to what Alaska is trying to make happen with criminal justice reform. He was concerned about automatic expungement where restitution is not paid.

Brenda said this is where worlds collide— the idea of restoring the victim and the idea restoring the offender working at cross purposes. Alaska has not yet built a mechanism to truly make a victim whole, and she was not comfortable going forward with expungement if the victim would not be made whole.

Barbara asked if there was a way to bar automatic expungement in SIS cases if restitution weren't paid. Doug said that would not be an automatic process. The Court System also does not have historical records of restitution payments. He added that for Court System purposes, if a conviction has been set aside, the case is over.

Justice Bolger said that restitution is a factor that a judge can weigh in granting a set-aside. He suggested tightening up the language on this in the draft recommendation. He also wondered if the restitution judgment would still be available to the victim once a set-aside SIS case was expunged. Rob noted that the case would be confidential and not accessible to the victim automatically, and Barbara added that the victim could ask for a court order to access confidential files.

Brenda wondered if there was an automatic process to get the victim that information so that the burden was not on the victim to ask for it. Justice Bolger said that might be a reason to just take the case off CourtView and not make it confidential. Brenda said that if it were not made confidential that would not really be expungement.

Brenda also noted that many SIS offenders were told their convictions would truly go away. Rob noted that was particularly true before *Journey v. State* was decided in 1997. The group was not sure what to do about old SIS cases, but going forward the set-aside process could be changed to address the issue of unpaid restitution.

The group agreed to leave the SIS recommendation as is (automatic expungement 1 year after set-aside for misdemeanor SIS cases, 5 years for felony SIS cases) but also recommend that going forward, the prosecutor should raise the issue of any outstanding restitution to be paid when objecting to a set-aside. The question of what to do about past cases would be left open pending more data.

**Public comment**

Sarra Khifli of the Alaska Food Coalition said that she would like to talk about how to get more people who are now eligible for SNAP enrolled. Before SB 91 was enacted, about 489 felony drug offenders in Alaska were rejected from SNAP. Some of them have now reapplied but not as many as she had hoped. She had spoken to the group about this before and it was still a problem for those who were off paper a long time ago or did not have the ability to get the right proof of eligibility for some other reason. She believed there were 237 people out there who were eligible who had not reapplied. She wondered if DOC would facilitate a pre-release application for SNAP, similar to what DOC does for Medicaid. Brenda suggested that Sarra contact Alysa Wooden at DHSS.

Clinton Lageson thanked the group for its hard work and said he would offer a full comment at the next meeting.

**Next meeting**

The next meeting was set for Dec. 11 at 9:30. Barbara said she would revise the draft recommendation further based on this meeting's discussion and circulate another draft.