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.

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

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510 L Street, Suite 410
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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.

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Participants: Rob Henderson, Doug Wooliver, Jeff Edwards, Kathy Monfreda

Staff: Susie Dosik, Susanne DiPietro, Barbara Dunham

Legislative Update

Susie Dosik explained that there were two bills concerning expungement of marijuana possession crimes that were recently introduced in the legislature: HB 316 and SB 184. Kathy Monfreda said HB 316 had been scheduled for a hearing on Monday. DPS has been working with legislators on both bills. They probably aren't in their final form, as there are logistical problems; DPS put in a fiscal note for an additional employee, as these bills would require individual review of the case files.

Brenda Stanfill said this tracked with what the workgroup had previously learned from the court system about expunging these offenses. She wondered whether other states that had legalized marijuana had done this and if they might be a model. Greg Razo noted that California had. Kathy said that Sen. Begich had tried to model his bill on California's, but they have a different system there and it wasn't entirely applicable.

Brenda wondered whether having a record of these crimes affects anyone. Greg said that it did, and shared that when his son was 18, some school resource officers searched his son's car and found a marijuana pipe. His son received a $50 fine and a ticket for a violation of MICS 6. His son didn't think much of it at the time, but shortly thereafter his son was working as a property manager, and the company took on the management of state office buildings. They ran a background check and his son was no longer eligible to work in state buildings.

Brenda asked if DPS would need the extra staff person for one year. Kathy said no, it would have to be for several years, as it would require a lot of research. Brenda asked if it would be different if marijuana offenses were not expunged across the board but added to the expungement petition process, perhaps just using an administrative process rather than a court process. Kathy said they would still need to verify the application by

looking up the judgement. They would still need another person but it might be more doable.

Overview of new draft recommendation

Barbara Dunham walked the Commission through the latest draft recommendation. She had added language at the beginning to put the recommendation in context and to explain its intent. She had also added more language explaining the factors judges should consider in weighing expungement petitions and added offender age and prior offenses to the list of factors.

She explained that at the last meeting, the group had expressed interested in looking at two options for the standards judges should use in making their determinations, one that just suggested the legislature set a standard, and one setting the standards. For the latter, she had tried to simplify the proposed standards to reflect the discussion at the last meeting.

Barbara also explained that she had added language creating an appellate process, as a means of starting discussion on that topic.

Sex offender registration and misdemeanor sex offenses, pt. 1

Kathy asked what the effect would be on registration and reporting requirements for misdemeanor sex offenses if they were expunged. (Some offenses require registration for 15 years.) Brenda noted that she would not want a misdemeanor offense expunged if there was also a felony sex offense charged in the same case. Doug Wooliver reminded the group that the court system could not expunge single charges from a case, it would have to be the whole case.

Susie said one option would be to eliminate all sex offenses from expungement eligibility. Another option would be to alert the legislature to this problem, or include registration requirements in the factors for judges to consider. Kathy added that eligibility could begin after the offender is no longer required to register.

Greg said he thought that the legislature would probably exclude misdemeanor sex offenses if there is an expungement bill. Doug agreed, and thought there was a 0% chance the legislature would ever agree to expunge sex offenses. Justice Bolger suggested adding language to the section on misdemeanors so that it would read “The Commission recommends that most misdemeanor convictions should be eligible for expungement except sex offenses.”

Greg said he thought that would be more palatable to the legislature. On the other hand, misdemeanor sex offense can involve things like a 19-year-old dating a 15-year-old which may merit expungement.

Susie suggested that eligibility for expunging misdemeanor sex offenses could be set when the registration requirement ends. Brenda noted that not all misdemeanor sex offenses are registrable. She suggested asking the sex offenses workgroup to address the issue.

Restitution

Greg noted that restitution was also a political hot button, and suggested recommending that unpaid restitution be reduced to a judgment when offenses are expunged. Brenda noted that the restitution workgroup had found that restitution judgements automatically become a civil judgement, but that it was hard for individuals to figure out how to collect on them. She said this group had had a lot of discussion on this. She and Law were hesitant to recommend allowing expungement if restitution is outstanding, but Quinlan Steiner had pointed out that that might lead to unfair outcomes if similarly situated defendants are be treated differently based on their economic status.

Greg said he thought the language in the draft recommendation made sense. He thought enabling better collection of restitution payments was a separate problem requiring a separate fix.

Dean suggested that the petitioner could specifically acknowledge the restitution debt at the expungement hearing.

Justice Bolger suggested that in the "effect" section of the recommendation, it should be made clear that expungement does not relieve an offender of the obligation to pay restitution. Dean agreed.

Brenda suggested that creating a process to re-acknowledge the outstanding restitution during the expungement process and make it clear to victims how to continue to collect it would be helpful. Dean stated that it would tie up a loose end. Kathy asked how it worked now. Justice Bolger explained that a restitution order is "enforceable" as a civil judgment. Dean asked if acknowledgement of this would be duplicative. Justice Bolger agreed that it would be but that it would still be helpful. Justice Bolger noted that Nancy Meade had said that since the court system took over restitution collection, no victim had used the civil process to collect. Brenda added that the restitution group last year found that the process is very confusing for lay people. She suggested pulling in the restitution recommendations from last year and addressing them with other groups.

Appellate process

Brenda wondered if it was necessary to have an appellate process, especially if the petition is granted. Justice Bolger noted that an appeal doesn't retry the case, but makes the argument that the trial court judge made a mistake. So in the case where a petition is granted, the state would need to say the judge made a mistake by granting the petition.

Justice Bolger said he thought it was unduly complicated to make the appeal discretionary, and noted there was no existing parallel to such a process. He thought it would be better just to have a standard appellate process. Even if the whole section on appeals was left out, it would be understood that there was a right of appeal.

The Commissioners present agreed to take out the appeal section of the draft recommendation.

Waiting periods

Susie explained that at the last meeting, Rob Henderson from the department of Law had suggested longer waiting periods for misdemeanors for drug cases (from 2 years to 4 years) and violent cases (from 5 years to 7 years), but staff were not certain whether the other group members agreed.

Susie also noted that the longer timeframes were based on her research about time to redemption, which itself was based on studies of younger offenders. She clarified that shorter timeframes would also be reasonable, given that younger offenders took longer to be "redeemed" compared to the overall population. For that reason, she noted at the prior meeting Dunnington Babb had advocated shorter timeframes. Susie noted that the group agreed to include youth as a factor for judges to consider at the last meeting.

Greg said he agreed that the waiting periods should be longer. Brenda asked if there were multiple eligible charges in a case, the longest waiting period would be used. Rob said that hadn't been discussed but it made sense.

Quinlan said he favored the shorter waiting periods but was willing to compromise for the sake of moving forward.

Brenda said that she had been tracking DV offenders in her program, and noticed that something happens at the 5-year mark, as they start to show up on their radar again (i.e. they are reoffending). It suggested to her there was a need to do a 5-year tune-up. So the 7-year timeframe for violent offenses would ensure those offenders did not get their offenses expunged too early.

To recap, Susie asked if the group was set on 4 years for drug offenses, 7 years for violent offenses, and 3 years for all other misdemeanor offenses. Brenda said it sounded like there was consensus for those timeframes and a solid evidentiary basis as well.

Susie asked if there was any objection to the 10-year waiting period for felonies, and there was none.

Sex offender registration and misdemeanor sex offenses, pt. 2

The group revisited the misdemeanor sex offense registration issue as representatives from Law and the Public Defender had joined the meeting.

Rob said that some offenses are sex offenses for the purposes of Title 11 but are not for other statutory provisions. Therefore some "sex offenses" are not registerable and/or not listed as a sex offense in the sentencing statute. So it would need to be clear how sex offense was defined for these purposes.

Kathy noted that the legislature was currently reviewing proposed legislation regarding how the Military Code of Conduct treated sex offenses.

Susie retrieved an Alaska Statute book. She noted that SAM4 is class A misdemeanor and reviewed the elements of that offense, which involved sexual contact with a person who has some kind of authority over the victim. She also reviewed SA4, which is a Class A misdemeanor and has similar elements of authority over the victim.

Brenda suggested that we needed more information about the Romeo and Juliet cases. Kathy said she could get the data on frequency.

Susie confirmed with the group that the intent was to exclude any sex offense that required registration.

Greg asked if this would mean that an offense could never be expunged if it requires the offender to register. Brenda said yes, and that the sex offenses working group could also take this issue up. Greg said that made sense.

Standards

Brenda noted that there was different language in the different standards – one used "likely to harm" and the other used "create a risk of harm." She asked if there was an intentional difference there. Justice Bolger said no, that the language should be identical.

Rob said he didn't think that recommending standards was necessary given that the recommendation also listed the factors the judges should consider. He stated that some of the factors themselves create a presumption and that they are hard to "disprove."

Susie noted that Dunnington had argued at the last meeting that if no standards were set, there was a potential that no one would get their offenses expunged.

Dean stated that other states have a presumption for expungement for lower levels of offenses and it is a way of compromising between automatic and discretionary expungement processes.

Quinlan said that if expungement was a guaranteed outcome if an offender followed the rules, it will be an incentive to encourage rehabilitation. If the benefit is discretionary, that is less of an incentive. Also, more judicial discretion can lead to more disparity. He also stated that without presumptive expungement, these cases could clog up the courts.

Kathy noted that in a recent conference, expungement effects in different states were discussed and that although Arkansas expected a flood of expungement requests to the courts, it did not happen.

Rob argued that expungement is an extreme remedy, so the burden should be on the person with the record.

Dean Williams said Title 4 was a good parallel. Giving minors one "pass" to get out of a Minor Consuming violation was a benefit because they got better outcomes with a "one and done" and it was automatic, administrative function.

Brenda said the thing that made her nervous about the lower standard for less serious offenses was that often serious offenses were pled down. Quinlan countered that offenses can be pled down because they were over-charged in the first place.

Susie asked if there was any offense Law would agree to a presumption of expungement for

Rob said he fundamentally disagreed with having that presumption and was not willing to accept that risk.

Brenda asked what would happened if judges were also not willing to accept that risk? She wanted to have some guarantee for expungement if an offender hit a certain threshold.

Greg stated that he would like to see some easier process for misdemeanors and that he favored a presumption of expungement in those cases.

Justice Bolger said that he had suggested striking the language about standards before because he didn't think there was much chance of finding a compromise, but he liked the compromise option in the current draft. Greg agreed. Quinlan said it wasn't his preferred option but he preferred the compromise to leaving it purely discretionary. Rob said he reserved his disagreements but was willing to compromise if it moved the recommendation forward. He thought it was important to have an expungement statute.

Susie said that the recommendation could make note of the differing schools of thought.

The group decided to keep the compromise standards with some edits.

Justice Bolger suggested adding "to determine whether the offender has been rehabilitated or is likely to harm the victim or the public" after "consider the following factors."

Brenda brought up a question of how an expungement might affect civil consequences, especially custody presumptions. She will ask the victim community for their thoughts.

Petition timeframes

Brenda suggested putting all burdens on the petitioner including serving the prosecutor with a copy. Quinlan said that seemed unnecessary burden if the court can just send the copy. Rob said there was already a "walk through" mechanism in place for defense or victim documents and that it works well.

In terms of timeframes, Justice Bolger had concerns about placing additional burdens on the court; in some places there are CINA or criminal cases piling up. Rob added that some cases may be archived and it will take the court time to get the file. Susanne DiPietro wondered if the court could just set its own timeline.

Justice Bolger suggested requiring the trial court to issue a scheduling order by 90 days and strike the language about the written order. He noted the usual 6-month rule would apply.

Next meeting

The group set the next meeting for Thursday, March 8.

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
January 22, 2018, 10:30 AM - 12:30 PM

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

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

Participants: Joshua Spring, Karen Cann, Clinton Lageson, Rob Henderson, Doug Wooliver, Kaci Schroeder, Teri Tibbet, Jeff Edwards, Dunnington Babb

Staff: Susie Dosik, Barbara Dunham

Time to redemption

Staff member Susie Dosik had circulated a memo on time to redemption to the group, and she walked the group members through her research. She explained that "time to redemption" referred to the time that needs to pass until an ex-offender poses a reasonable risk of reoffending. There are two ways of looking at this: the time it takes to reach the same risk level as the general population (around 10%), including former offenders; and the time it takes to reach the same risk level as the population of persons who have never been arrested (around 3%).

The most extensive study was of around 8000 first-time arrestees in New York. The study began in the 1980s and followed the arrestees over a number of years. The people in this cohort demonstrated that it generally took 7 to 10 years from the first arrest to the point where their risk of arrest was the same as the general population.

One study looked at whether time to redemption was affected by the number of prior convictions an offender had—but since this was a Dutch study, it may have limited bearing on Alaska's offender population. The study looked at both the age of the offender and the number of prior convictions and found that a greater number of convictions and/or a lower age at time of arrest significantly increased time to redemption.

Another study looked at whether the offense type made a difference; the time to redemption (to equal the risk of the general population) was 4-7 years for violent offenders, 4 years for drug offenders, and 3-4 years for property offenders.

The bottom line was that the 7- to 10-year range was the range most consistently established by the research; there was a more nuanced picture if age at first arrest, number of priors, or offense type were taken into consideration.

Dunnington Babb asked whether there was a difference if the initial arrest was somehow not a barrier. Susie said that one study she came across suggests that, and she could look into it further. Dunnington said that he feared that the 7-10 year range was too long. Susie said that the 7-10 range was based on studies focused on youthful offenders; the time to expungement could be shortened if age were included as a factor for the judge to consider. The type of offense matters too—time to redemption is longer for violent offenders than property offenders or drug offenders.

Doug Wooliver asked if that suggested a matrix, similar to what is being used in bail decisions now. Susie said she wouldn't go that far, as the evidence is not extensive enough to put these factors into a grid. She thought these studies could be used as a guide for the general concepts they represent. She noted that the bail grid was the result of extensive data mined specifically from Alaska.

Rob Henderson suggested summarizing the information from Susie's memo to include in the recommendation. He noted that the research on the offender's age was counterintuitive at first blush, and he wanted to make sure the judges don't read the recommendation the wrong way.

Doug asked to clarify- the research suggested that after around 7-10 years, most offenders reach the same risk of offending as the general population. He was not sure this was the right tool to determine an offender's risk. Susie noted these were general guidelines, and not guarantees of an individual's risk in a given case.

Justice Bolger observed that the group had been leaning towards a shorter time to expungement period for drug offenders, but the study looking at offense type seemed to suggest their time to redemption was the same as property offenders. Susie said that was true, but that study may not have just looked at possession crimes (as the proposed recommendation did). So it would not be unreasonable to have a shorter time period if felony/dealing crimes were excluded.

Karen Cann noted that if the main study was of cohorts arrested between 1980 and 1990, that might have less bearing on the current drug offender population. With the opioid crisis, the system may be dealing with a different kind of offender now.

Dunnington said that if a drug user was going to continue to use, they would likely reoffend within the two year timeframe. Barbara Dunham noted that the recommendation as drafted called for an individualized determination; if a judge was not convinced that a drug user was totally clean, the judge could deny the petition and the applicant could try again in a year.

Effect of expungement – protection from firing

Barbara reminded the group that at the last meeting, the group had decided that the effect of expungement would include the offender's ability to choose not to disclose the conviction, and not to be held guilty of perjury for failing to disclose the conviction. Most of the group had agreed that the offender would also be protected from being fired for not disclosing the conviction; however, Rob had indicated that the Department of Law was reluctant to sign off on that.

Rob said that Law was still hesitant to sign off, and they were still actively looking into what protection from being fired would legally mean. Nevertheless, he thought it could be included in the recommendation with the caveat that Law may no longer support that provision if legal issues come to light.

Dunnington asked how this protection would come into play—would the statute say that the offender has a claim against the employer for wrongful termination? Rob said that was the concern Law had and was looking into. Justice Bolger noted that there are common law duties of honesty and fair dealing, so a statute would need to have some stated protection for these individuals to overcome that. Dunnington said he agreed having some kind of protection was worth pursuing but agreed it was complicated.

Effect of expungement – guns

Barbara next explained that the group had previously discussed whether gun rights should be restored. There had been general agreement not to worry about any potential conflict with federal laws and that offenders should simply be warned that even if state law permits gun ownership, federal law may prohibit it. The group had wanted more information on whether SIS cases included DV offenders before making a decision on whether gun rights should be restored. Kathy Monfreda had provided information that some SIS cases that were set aside included DV offenders, although it was a small percentage.

Rob said he would be less hesitant about restoring gun rights if it excluded DV offenders. He noted that the current draft of the recommendation expunged felony SIS cases five years after the date of unconditional discharge.

Brenda Stanfill said that the DV gun laws in Alaska were all over the place. Often law enforcement will take the offender's gun if it was involved in the offense but charges are often dropped to misdemeanors, in which case they don't. Sometimes law enforcement will use a hybrid policy which is not consistent.

Rob said that in Alaska, gun rights are restored 10 years after the date of unconditional discharge from a felony. In the federal system, he was fairly sure that gun rights are permanently revoked for felonies and DV misdemeanors. Justice Bolger suggested adding language to ensure that offenders are given a proviso or warning that the expungement may not effect federal law.

Karen wondered why expungement wouldn't just automatically mean that all rights are restored. Barbara explained that since expungement could mean many different things depending on the jurisdiction, Alaska could decide whether expungement included restoration of some or all rights.

Brenda said that she thought all rights should be restored; the purpose of expungement is to make the person who has been rehabilitated whole again. But she thought that the timeframes in the proposal, as written, were too short for her to be comfortable with that, especially for misdemeanor DV cases. Most DV felonies are dropped to misdemeanors, even DV cases involving guns.

Susie said that a recent study by AJiC supported Brenda's point that DV offenders should be treated differently; the study found that DV offenders recidivate at a higher rate and for a longer period of time than other offenders.

Dunnington wondered if Brenda would be satisfied to exclude DV offenders from those who are eligible to have gun ownership rights restored. Brenda said that would satisfy her concern but noted there may be other concerns that she hadn't thought of, and that it might be better to exclude all violent offenders.

The group decided to table the issue of gun rights until after discussing the timeframes.

Expungement process – timeframes

Barbara reminded the group that they had not come to any conclusions on timeframes (e.g. the waiting period before an offender may apply for expungement). The current draft of the recommendation was based on timeframes proposed in the Arkansas statute, modified to reflect the opinions of the Commissioners gleaned from polling them last fall.

Dunnington noted that violent offenses were treated differently and wondered what the definition of "violent" was. Rob said he assumed it meant any offense in 11.41.

Rob suggested using the timeframes suggested by Susie's research: for misdemeanor offenses, the waiting periods should be 3 years for a nonviolent offense, 4 years for a drug possession offense, and 7 years for a violent/sex offense; the waiting period for a felony should be 10 years.

Dunnington asked Susie whether the study that said time to redemption was 4 years for drug offenders applied to all drug offenders or just misdemeanor offenders. Susie said it included all offenders. Dunnington said that it seemed like the drug felons would be more likely to reoffend and extend that number. For just misdemeanors, 4 year seems long. As a public defender, if he is going to see a client again, it will be soon after release; it is rare to see a client again 2 years after release because if they have been sober for two years they are more likely to stay sober.

Susie noted that the rate of rearrest for offenders generally was on a steep curve that flattened out after 3 years. Dunnington said that was also reflected in the Pew research on recidivism rates three years after release. He noted that if a misdemeanor offender has one year of supervision, then two years after the date of unconditional discharge would be the same as three years after release.

Brenda noted that in Arkansas, a lot of offenses were carved out and put in the 5- year category. She thought the recommendation might be more palatable to the Legislature that way. Barbara noted that the current proposal was very broad because the group had indicated it wanted to leave eligibility broad but have an individualized review by a judge. Brenda said she was worried that the Legislature might just brush the recommendation off entirely if it was too broad, and suggested that the recommendation should at least note that carve outs were an option. She agreed with Rob's recommended timeframes.

Justice Bolger said he would like to take a look at the recidivism study. Susie made copies of the study and emailed it to those who were participating on the phone. The study looked at whether the offender committed a new criminal offense resulting in a conviction, and at what time after release the offender recidivated. It showed a much higher trajectory for DV offenders than for other offenders—around 40% at the one-year mark for DV, 20% at the one-year mark for other offenders. For all offenders, recidivism began to level out at the three-year mark. Misdemeanor offenders had a slightly higher recidivism rate than felony offenders until about the 5-year mark, with misdemeanor recidivism falling below felony recidivism by the 7-year mark.

Expungement process – standards

Rob said that he was comfortable with the timeframes, modified as he had suggested, but was not comfortable with the standards for judicial discretion as written. He was concerned about the

sections in the draft recommendation which said the "shall grant" the petition in certain circumstances. He would prefer to have a statute that is robust in terms of eligibility but wide discretion for the judges. He thought all categories of offenses should have the most permissive level of judicial discretion, and the court should be required to consider and make findings on the factors listed in the draft (similar to the sentencing process).

Justice Bolger didn't think it was necessary to make any recommendations on the burden of proof; he suggested removing the paragraphs referring to judicial standards, including those regarding the process when the prosecutor is not opposed.

Dunnington said he was concerned that if granting an expungement petition was fully discretionary without any guidance for judges, it won't be a robust tool that will be used often. Some prosecutors may be inclined to oppose the petition as a matter of course, and some judges may then be inclined to deny the petition as a matter of course.

Justice Bolger clarified that he was not suggesting that the recommendation not be included in the eventual statute, but that it not be mandated in the recommendation. Brenda said that the Commission has left some details of recommended legislation up to the Legislature before, but thought that it would be prudent to at least highlight that the Commission did recommend setting standards and certain carve outs, which should be clearly noted in the text of the recommendation.

Steve Williams said he thought that if the Commission doesn't give the Legislature a place to start, it could lead to legislation that that the Commission doesn't want. The Legislature is looking to the Commission for guidance, and he thought that the language of the recommendation should at least note the thought process behind it. There could be a notation such as an asterisk to note details that are not part of the consensus recommendation.

Susie noted that the Court System had had efficiency and resource concerns about expungement in the past and wondered if detailed guidance would help with that. Doug said that the more direction the court has, the more efficient the process will be. If an applicant meets the expungement criteria, and the prosecutor doesn't object he didn't see any reason not to grant the petition without a hearing. Generally if the judges have more direction there will be fewer hearings.

Rob asked whether, in cases with no objection, the judge should make an independent finding. He thought yes – expungement is an extreme remedy. It would be similar to Court of Appeals cases where the state concedes error: the Court still independently determines whether reversal is appropriate. He did not want to make things too automated.

Justice Bolger suggested putting the options for standards in brackets in the next draft so that the group could compare the options side-by-side.

Public comment

Clinton Lageson said he was with the Kenaitze Indian Tribe, and the Tribe supports the work of the Commission. He explained a bit about his past: he had a difficult childhood and became a foster kid. He went through many foster homes; in one year he was placed in 27 different homes. He became a protector of his younger siblings. At age 15 he was attacked by a group of guys in an ambush meant for his brother. He fought back and hit one of his assailants with a hammer, an act he now regrets. He got

into trouble for that action, but he resolved not to let it stigmatize him and he was able to move forward with the help of his community.

He suggested getting local community leadership involved in the expungement process—people who are seen as pillars of the community, and can help with job opportunities. It is hard for the tribe to hire its own people because of their past history, so the tribe would like to see opportunities for expungement. The people who can really benefit from expungement will turn things around to make it happen. He thought the recidivism and time to redemption numbers might be different if people were given an opportunity for expungement.

Next meeting

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

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
December 11, 2017

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

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

Participants: Tom Begich, Kathy Monfreda, Rob Henderson, Doug Wooliver, Joshua Spring, Karen Cann, Nancy Meade, Karen Benson, Heather Parker, Kaci Schroeder, Jeff Edwards, Clinton Lageson, Clare Sullivan

Staff: Susie Dosik, Barbara Dunham

DHSS Background checks

Karen Benson from DHSS spoke to the group about the DHSS background check system. DHSS performs background checks for all potential employees or licensees who will be working with kids or vulnerable adults in their jobs. About 80-90% of the applicants are people who will be working with kids; some jobs are public and some are private. DHSS also sets flags in APSIN for current employees/licensees to be notified of any new arrests.

DHSS checks a variety of sources of information for background checks, including APSIN, the national sex offender registry, CourtView, and ORCA. They begin the fingerprint-based FBI background check with DPS at the start of this process; by the time the FBI check comes back they typically have completed checking the other sources and given the applicant provisional approval.

DHSS barrier crimes regulations create 3-year, 5-year, 10-year, and permanent barriers to eligibility depending on the crime. Assault 4, for example, is a 5-year barrier crime while Assault 1 is a permanent barrier crime. Civil protective orders are not considered for eligibility but might be considered for variance requests. An arrest does not create a barrier, but a charge does. An SEJ is considered a current charge; an SIS is considered a conviction.

DHSS will directly notify the applicant of any barrier and the applicant can at that point seek a redetermination (if they think the barrier was found in error), or can seek a variance (if the barrier was not found in error but the applicant believes it should not be a hindrance). Variances are granted by a special committee. The employers are not notified of the specific barrier, they are just told that the applicant is not eligible (unless the employer is OCS, which is given details). Kathy Monfreda noted that DPS will notify both the applicant and the employer of the result of a DPS background check.

Karen Benson explained that DHSS does about 22,000 checks per year, getting a "hit rate" of around 18%, and about 4-5% of those reveal barriers. did not know offhand how often barriers were

found, nor how often a person is given a provisional approval and then declined based on the result of the fingerprint-based FBI background check. Kathy Monfreda noted that about 15-20% of national background checks reveal a criminal history, though often the applicant knows this will be the result.

Karen Benson said that a majority of variance requests are granted; grants depend on the type of barrier and the type of job. The regulations recently changed so that a variance is now for the most part valid indefinitely—applicants used to have to keep reapplying.

DHSS gets its information on charges from CourtView. The group discussed the fact that CourtView is the only complete repository of charges. Rob Henderson noted that prosecutors at the Department of Law get a case referred to them and if they decide to file charges, they will send the charges to the court. If not, they will inform DPS.

Nancy Meade said she was concerned that people were using CourtView as an official record; DPS was supposed to be the official repository of criminal justice information as they are subject to audits, etc. She suggested that Law could send the charging information (whether they are filing charges or not) to DPS in all cases. Kathy Monfreda explained that following up with dispositions in open cases was a national problem. The FBI was pouring money into it, and DPS had a staffer dedicated to it full time.

Karen Benson explained that DHSS does not consider expunged cases; even if the record still exists but is labelled "expunged," DHSS will view it as not being in the person's criminal history. DHSS does not have any official definition of expungement and it is very rare to see expunged offenses come up on someone's background check.

Rob Henderson said it seemed to him that it was best to have an individual court order for expungement given that every agency and every employer looks at different criteria. Getting a court order would allow an ex-offender to present his or her specific circumstances and would be the best way to get something like a variance from DHSS. He thought it would let the applicants have a conversation with a potential employer and that bringing up a court ordered expungement and any associated findings would carry more weight.

Karen Cann noted that it was more difficult to get individual determinations and wondered what else a judge might consider other than the passage of time with a clean slate. Barbara Dunham noted that it seemed from previous meetings that the restitution issue could not be determined automatically. Nancy Meade said it could be automatic if it were a simple yes/no determination (i.e. either restitution is paid or not). Anything more nuanced would require individual determination.

Information in the FBI database

Kathy Monfreda reported back from her national conference on different states' approaches to what to do with expunged records in the FBI database. The newest trend seemed to be that states are leaving the record in the database labelled as expunged. Every state has a different definition; the majority remove the record altogether. States can send expungements to the FBI as a disposition code.

Barbara Dunham noted the Commission had recently received a public comment from William Riley, who explained that he had an SIS from 2009 that was set aside in 2013. He had not been able to get into Canada because they didn't recognize a set-aside, though the officer told him they would accept

an expungement or a pardon. Kathy said that many people had been turned away from Canada even if the record was expunged. It seems to be discretionary. DPS gets many calls about this.

The group decided to recommend that the information on an expunged record be left in the FBI database but to send the "expunged" disposition to the FBI to label the record accordingly.

Level of detail in recommendation

Barbara Dunham asked if the group was ready to determine whether expunged records should be released to "interested persons" or not. Kathy Monfreda explained that 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; these people are allowed access to more criminal history information (including information on charges) than the average person.

Rob Henderson wondered if the recommendation needed to reach that level of detail. He suggested the recommendation could just define expungement and let each agency work out the details in regulations. He was worried that the recommendation might leave something out otherwise. Nancy Meade noted that every Commission recommendation has this issue—how in-depth the recommendation should be.

Barbara asked Sen. Begich whether legislators might find it more or less helpful to have a very detailed recommendation. Sen. Begich noted that the details would likely be changed in committee, but having a thorough background would be helpful to the legislature as they are going through that process. Having the full details helps keep the process moving, though the finer points should be summarized.

Brenda Stanfill thought it seemed like the group was struggling over details based on worries that the person might not be truly changed. To her, expungement should be for those who are truly a different person than they were when they committed the crime. She thought three years was not enough to show real change and was problematic in the DV context—that is when DV offenders tend to reoffend. She also noted that many crimes charged as felonies are plead to misdemeanors.

Sen. Begich said he agreed, but thought that records based on conduct that was no longer a crime should be expunged more immediately. He thought the timeframe should be based on data, and looking at what was done in other states. Brenda explained that the states were all over the place on expungement. Barbara noted that while there was data on recidivism, there didn't seem to be any data on what expungement timeframes are the most effective. Recidivism studies suggest that most recidivism happens within the first year of release from prison. Susie Dosik noted that she had read research that recidivism risk drops dramatically after seven years to the point where an ex-offender's risk is no greater than that of the general population. She offered to provide the group with research.

Brenda said she was more comfortable with seven years. Karen Cann agreed and suggested that the group might need to look at DV cases separately. Steve Williams agreed with the seven year timeframe idea.

The group decided to provide an explanation of the intricacies of the various background check systems but not to make a specific recommendation beyond not releasing records in the standard background checks.

Effect of expungement

The group discussed the Arkansas statute's provision that an expunged offense is deemed to have never have occurred; the group was reluctant to recommend that effect and didn't think the legislature would be interested in taking expungement that far. Doug Wooliver noted that the Missouri statute did not go as far, providing that a person granted expungement did not have to disclose the conviction to an employer if asked, unless certain circumstances apply. Susie Dosik noted that certain employers were listed in the statute as exempt. Rob Henderson wondered what juvenile offenders were told to say about juvenile offenses; those offenses are deemed completely confidential.

Brenda said that the Commission as a whole had seemed most interested in allowing the person to answer no to inquiries about criminal records from employers. Sen. Begich said he would like a provision that bars employers from asking about criminal records, so that expungement would be meaningful.

Rob said that the easiest or most palatable option would be to recommend that the person could choose not to disclose the conviction, and would be protected from perjury based on failure to report the conviction. Quinlan Steiner said he thought the recommendation should go further, and protect the person from being fired because they didn't disclose an expunged offense. Brenda and Steve Williams agreed. Steve said the legislative process might narrow down the effect and it would be better to start with a broader recommendation. Sen. Begich agreed.

Quinlan said the ability not to disclose a conviction would be meaningless if the person can be fired for not disclosing. Anyone giving a person legal advice about an expungement would tell them to disclose it. Without the protection from firing, expungement would be more like a certificate of rehabilitation, which would still be valuable to former offenders but less so than expungement. Barbara said she believed that some states also protect employers from liability from hiring someone with an expunged record.

Brenda noted that the purpose of expungement is to get someone through the door, not to get them hired. They need to be able to say they were not convicted without fear of consequences. Rob said he was reluctant to say that Law would concur.

Questions left to answer

The group agreed the following was left to decide:

1) The effect of expungement
2) The timeframes
3) The process/standards

Brenda also requested a list of the barrier crimes by timeframe for the next meeting.

Public comment

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

Next meeting

The next meeting was set for January 22 at 10:30.

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.

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
November 17, 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

Participants: Devin Urquhart, Tom Begich, Kathy Monfreda, John Skidmore, Rob Henderson, Doug Wooliver, Nancy Meade, Christina Shadura, Donald Revels, Fred Dyson, Karen Cann

Staff: Susie Dosik, Barbara Dunham

Issue with CourtView Recommendation

Barbara Dunham, staff attorney for the Commission, explained that the workgroup's previous recommendation, that the Supreme Court remove SIS and MCA cases from CourtView, had been approved by the Commission. After that, however, Mike Matthews at DOC informed staff that one of his duties at DOC is to verify whether someone is disqualified from PFD eligibility due to serving time in prison. He uses CourtView to verify the information and if SIS records are removed, DOC might not be making correct determinations. A small group would get together at a later date to discuss this.

Nancy Meade, General Counsel for the Court System, wondered why DOC was not using APSIN for this purpose. APSIN is the official database of criminal justice information and CourtView may not be as accurate. Kathy Monfreda, Chief of the Criminal Records & Identification Bureau at DPS, confirmed that SIS cases are on APSIN though they may not always get the information if the cases are set aside.

Justice Joel Bolger said that the set aside part wouldn't necessarily matter for purposes of verifying PFD eligibility. The Supreme Court will hold off taking action on this recommendation until this issue is worked out.

Expungement

Barbara explained that she had given a presentation on expungement at the last meeting of the full Commission. The Commission had agreed that this group should work on trying to modify the Arkansas statutes to suit Alaska's needs. She had prepared a summary of the Arkansas statute and made some preliminary suggestions for modification.

Terminology

Barbara noted that the Arkansas statute used the word "sealing" while this group had been using the word "expungement." Kathy explained that in the world of criminal justice record keeping, sealing typically means retaining a file and limiting access while expungement means destruction of the record.

Barbara said that the Court System has two avenues for limiting access to records; one is to make the file confidential and one is to seal the file. In earlier meetings the group had discussed making the court file confidential as sealing is more extreme.

Nancy suggested this could be cleared up with drafting that makes it explicit as to what would happen to the file. If the statutory language just says "sealed" it would be problematic for the court system.

Eligibility

Barbara explained that the Arkansas statutes restricted eligibility for expungement to certain misdemeanors and felonies. Felonies included in the Arkansas statutes were all felonies of the lowest level of classification, all unclassified felonies, Class A and B drug felonies, and solicitation for those felonies. It also included nonviolent felonies committed when the offender was under age 18. Barbara suggested, among other things, that unclassified felonies should be excluded (those tend to be the worst types of offenses in Alaska), as well as all sex offenses.

Rob Henderson, Deputy Attorney General, asked what should be done about non-classified felonies. John Skidmore, Director of the Criminal Division at the Department of Law, noted they were scattered throughout Alaska's statutes. Rob suggested listing excluded offenses would be easier than listing included offenses. Doug Wooliver, Deputy Administrative Director for the Court System, asked whether the Arkansas statute allowed the offender to have one prior felony in addition to the one sought to be expunged. John said that was his reading, and Rob suggested that provision could be modified to allow expungement for first time felonies only.

Sen. Tom Begich asked if the idea was to just list the offenses that are not allowed to be expunged. John said that would be consistent with the practice in many other states. Justice Bolger asked if the excluded offenses should be unclassified felonies, sex offenses, and attempt or solicitation of those offenses? John said that the drafters of the law would have to be very careful—if this becomes a recommendation, the recommendation should warn drafters that there are two places in statute where sex offenses are defined, and it would behoove them to ensure that all sex offenses are included in that definition. Kathy noted that AS 12.63 contained the sex offender registry provisions, including misdemeanors, which could be referenced for drafting.

Sen. Begich asked if the idea was to exclude those with prior felonies, what would happen in a case where a felony was expunged and then the offender committed another felony, and also how out of state felonies would be considered. John noted that most other states with expungement laws have a provision that allows expunged offenses to be used as a predicate; the records are kept so that in the case of a petition for expungement of a second felony, the state would know. As to the latter question, John explained there is existing language in statutes that can be used to consider convictions from other states.

Nancy wondered from what point the waiting period should be measured. Rob suggested using "date of unconditional discharge" which is language that exists elsewhere in Alaska's statutes. There is already case law on how to interpret it. The group discussed that this would be a finding of fact for parties to argue before a judge.

Restitution

Barbara asked how restitution should be handled—whether the offender's waiting period would start once restitution was paid off, whether the offender should have paid it off by the time they petition for an expungement order, or whether the offender needed to show satisfactory installment payments.

Public Defender Quinlan Steiner said that would have to be dealt with carefully, as some offenders can have huge judgments for restitution that they may never be able to pay. He was wary of verging on territory where someone could be punished or have probation/parole revoked for not being able to pay. There may be cases where there is no difference between two similar offenders looking to get a record expunged other than the fact that one has enough money to pay restitution and the other doesn't.

Judicial Council staff attorney Susie Dosik pointed out that the point of expungement is to make someone more employable. If an offender becomes more employable, that increases their ability to pay restitution. Quinlan added that this would serve victim interests. Rob said that if restitution had not been made, the victim had not been made whole, and questioned whether the offender should be make whole by having a record expunged at that point. The amount of restitution is a result of the offender's actions.

Quinlan said that the restitution order becomes a civil judgment which will remain in effect. Justice Bolger wondered whether there would have to be some provision about accessing an expunged record for that purpose.

Nancy noted that there might be an issue with making the file confidential anyway. Older files are converted to electronic format and it may not be possible to go back and search the electronic files and limit access to an individual case record. Susie asked if instead, it would be possible to have the court clerks be the gatekeepers; rather than change or move the record (whether paper or electronic), court clerks would have a flag in the system so they would know not to release a particular record. Nancy thought that was possible—she said she would need to think about it.

Justice Bolger said the group would have to be careful in discussing restitution judgments—no separate file is automatically created when a restitution order is issued; rather, the law provides that the victim can enforce the order as a civil judgment.

Nancy noted that since the Court System assumed the duty of collecting and enforcing restitution payments, only one person has opted for civil collection. Most of the restitution orders are to pay the State of Alaska, State Farm Insurance, and businesses. Susie asked if the Court System was collecting restitution, whether it would be able to tell the status of a given order for the purposes of making a determination for expungement. Nancy said she thought so.

John noted that it was common in other states to require full payment of restitution. Quinlan said the group should let the Commission decide. He thought it was a fairness issue, because similarly situated offenders may or may not get expungement depending only on their ability to pay restitution. He thought there could be a provision allowing expungement if the offender has made regular payments.

Barbara wondered whether there could be a provision allowing expungement where the offender has outstanding restitution if the victim consents. Quinlan said it could also be up to the judge's discretion. Rob said he would be more comfortable allowing expungement where an offender still owed

restitution if the victim consented. Nancy pointed out that often the victim can't be located to receive restitution payments. Justice Bolger suggested a provision allowing for expungement if the offender has made voluntary payments rather than just garnishment. Quinlan said that the prospect of expungement in such cases could provide an incentive to make payments.

Assemblyman Fred Dyson said that in cases where the real victim is the insurance company, it doesn't feel as personal. There is pending legislation to expand bridging funds for restitution. The bridging payments are made up front to the victim and then the offender pays the restitution to the fund later. It was never intended to let the offender off the hook however.

Barbara asked if the various options for dealing with restitution should be presented to the Commission for a vote: (1) expungement is allowed if restitution has not been paid; (2) expungement is not allowed if restitution has not been paid; (3) expungement is allowed if restitution has not been paid but the victim consents to expungement; (4) if restitution has not been paid, that is a factor for the judge to weigh using discretion. The group concurred.

Violent vs. Nonviolent Felonies, Felonies by Offenders Under 18

The group discussed whether all violent felonies should be excluded from expungement eligibility. John noted that other states have excluded all violent or all higher-level felonies. Rob said that in the case of a first-time Assault 3, he would be comfortable leaving it up to the judge's discretion. John said that it may come down to the standard the judge would use in those cases. He suggested excluding all unclassified, Class A, and Class B felonies in AS 11.41. Quinlan said he would prefer leaving it to the judge's discretion in those cases.

In the case of offenses committed by offenders under 18, Rob noted that would cover very few cases, only those who were subject to automatic waiver of juvenile jurisdiction—i.e., very serious crimes. Justice Bolger wondered if they would therefore be covered under the other exclusions. John said the offenses not covered would be Robbery 1, Assault 1, Arson, and Attempted Murder. Rob said there might be some juvenile robbery cases where expungement was appropriate. Quinlan said that expungement may be appropriate for adults in those cases. Justice Bolger suggested leaving the AS 11.41 Class A and B off the list for all offenders in that case; it would be left up to the judge's discretion, and the seriousness of the offense would be taken into consideration.

The group agreed to the following absolute exclusions (regardless of the age of the offender): unclassified felonies, sex offenses, and attempt and solicitation of those offenses. Other offenses would be subject to varying standards for judicial discretion depending on the level and type of offense. Justice Bolger suggested including the fact that the offense was a Class A or B 11.41 offense as a factor the judge should weigh in consideration.

Quinlan wondered if the group would consider lowering the 10-year range for the felonies. Some people have long sentences followed by long probation and parole periods; an additional 10 years would be a very long wait. John pointed out that the 10-year lookback period was used to determine a person's priors for purposes of presumptive sentencing.

Misdemeanors

Regarding misdemeanors, Justice Bolger wondered if having a three-year waiting period for DUIs would interfere with the lookback period for DUI sentencing. Rob noted that there is a provision for using

the expunged offense as a predicate for charging and sentencing in future crimes. Quinlan noted that provision could equally apply to felonies.

Barbara asked if there should be any absolute exclusions for misdemeanor expungement. Rob said he didn't think it was necessary so long as there was a provision allowing each case to be heard by a judge.

Doug, looking at the provision for drug offenses, asked what "drug-free" meant in this context. He wondered if there was an objective way to determine that. John suggested it would mean no new charges, convictions, or PTRPs for drug use. Justice Bolger suggested that could be used as a factor to be weighed by the judge.

Doug noted that it might be best to have expungement cases determined solely on the record in a majority of cases, to make the process as automatic as possible and avoid hearings, which are costly. Rob said he didn't necessarily disagree for misdemeanors, but there should be a higher standard for DV cases.

For SIS, MCA, and marijuana possession cases, the group agreed that those standalone offenses should be expunged automatically, without the necessity of a petition. For SIS cases, Kathy thought that DPS could likely program their system so that SIS cases would all be reviewed one year after set-aside—so long as DPS is notified of the set-aside from the Court System.

Public comment

Assemblyman Dyson asked if the group was going to address the list of barrier crimes that prevent a person from getting certain jobs or licenses. John noted the group has been concerned with getting expungement done. Nancy said she recalled that there didn't seem to be any low-hanging fruit on the list and that tackling it would be a substantial project. Assemblyman Dyson said he would be interested in looking at the list, and Susie said she would email it to him.

No other public comment was offered.

Next meeting

The next meeting was set for Nov. 28 at 9:30. Barbara said she would revise the Arkansas model further based on this meeting's discussion and circulate another draft. She also said she would recirculate the memo from the Dept. of Law circulated earlier in the year.

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.

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary

August 9, 2017, 9:00 AM

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

Commissioners: Jahna Lindemuth, Greg Razo, Dean Williams

Participants: Rob Henderson, Karen Cann, Nancy Meade, Doug Wooliver

Staff: Susie Dosik, Barbara Dunham

Expungement

Barbara Dunham summarized the last meeting: group members had expressed interest in tackling expungement for a few specific offenses (or offenses that were now violations). She had compiled a list of those offenses and suggested forms of relief for expungement. She also had an alternate proposal for sealing, which the group had intended to return to at the end of the last meeting.

Rob Henderson circulated a memo on behalf of the Dept. of Law with a definition of expungement that Law supports:

- For purposes of the Alaska Court System, the court case record would be made confidential as that term is understood in the court rules;
- Access to the court record would be restricted to:
  - The parties to the case
  - Counsel of record
  - Anyone with a court order granting access
  - Court personnel for case processing purposes.
- The court record would not be accessible on CourtView, nor would the paper file be accessible to the public.
- Law is comfortable sealing Dept. of Public Safety records per AS 12.62.180 so long as the records are available for law enforcement.

Jahna Lindemuth explained that Law wanted a definition written down to facilitate discussion. She said any concerns Law had with expunging the offenses being considered were addressed by this definition. She agreed with Doug Wooliver's point from the last meeting: that picking the low-hanging fruit was a way to get something through the Commission and the Legislature this year.

Nancy Meade noted that the suggested relief for the offenses that were now violations (attending an exhibition of fighting animals, disregard of a highway obstruction, non-DUI-based driving

with license suspended (DWLS), gambling, minor consuming alcohol (MCA), obstruction of roadways) was to change the designation on CourtView. She pointed out that post-SB 91 these were now classified as minor offenses on CourtView; this was not, however, retroactive. It would be somewhat difficult to parse through some of the pre-91 offenses to retroactively change their designation; DWLS, for example, was not necessarily distinguished by whether it was based on a DUI or not. MCA might also be tricky because of its various permutations over the years. Gambling would be easier. This would cost a certain amount of money for the court system.

Rob wondered whether DPS might have the data on old DWLS convictions to determine whether they were based on DUIs. He said Law would be happy to expunge all MCAs. Nancy said that for MCAs, making the case confidential would be a bigger step than the legislature had contemplated in SB 165 (which directed the Court System to take prospective cases off CourtView).

Rob said he had reached out to DPS to discuss how to seal records but leave law enforcement access to them. Law's position is that they would like law enforcement to have access to the expunged record if the person is arrested/booked.

Nancy wondered whether the effort to expunge the minor offenses was worth the effort—are these records harming people? Rob pointed out that MCA is often a barrier. Jahna said that recommendations for DUI and SIS would probably have the greatest effect. Karen Cann said minor offenses might still be important in that in an application process, if an employer has two equally qualified candidates, the employer will pick the one without the minor offense. Jahna said it would be worth changing the designation to be consistent with SB 91.

Rob wondered whether the court system could get data on the number of people affected by minor offense convictions. Nancy and Doug said they could.

Dean Williams said he agreed with Karen on minor offenses. He had been looking through a national database on expungement and was thinking about ways to create an avenue for expungement of misdemeanors and some felonies. In places like Indiana, Kansas, and Kentucky they have had laws like this for a while- expungement after 5 years for a misdemeanor, 10 years for a felony. He wanted this group to keep this option on its radar.

Jahna said she didn't think anything like that could get through the legislature this year, but she was open to discussing those options in the future. She thought the DUI and SIS proposals would help a lot of people and she didn't want to do too much to jeopardize that. Dean said he agreed but thought of the current proposals as "phase I" and wanted to keep "phase II" on the agenda for the future. He had been looking at a 50-state survey and one promising idea from South Dakota was to reduce felonies to misdemeanors in some cases. He wanted to direct staff to look at all possible ideas.

Jahna proposed going forward with automatic expungement for the enumerated offenses on the table.

Nancy said that first-time DUI offenses might be tricky because they wouldn't necessarily be labeled as first offenses. It would require someone to go through those offenses. Jahna said it would still be less expensive than having hearings, and Nancy agreed. She said the court system could make it work—it would have some impact on their fiscal note but staff time was less expensive than judge time.

She also noted that she had been communicating with staff during the meeting and they said it was possible to make files confidential retroactively, whether paper or scanned files.

Rob asked whether there could be a simple form for people to fill out to seek expungement of DUIs. Nancy said it would be easier to do it all at once and then let people apply if they think they were left out of the expungement pool erroneously. The court system already has a form on the web for a similar situation. Rob suggested Law could be a gatekeeper for a simple application, though there might be difficulty if the rejected applicants want to appeal. Barbara suggested the administrative appeal process. Nancy said that the court system uses this for cases people want off of CourtView—it takes some work but there is a process in place.

Doug suggested the group consider whether the first-time DUI offenses would be counted if there were no other offenses or only no other DUIs, and also whether the expunged offenses should count as a prior offense for the felony lookback period. Rob said that the offenses would be expunged after the lookback period.

Nancy said that DUI expungement got negative attention in the media before; Doug agreed and said that he wouldn't necessarily count on DUIs as being low-hanging fruit. SIS might be easier because the legislature originally thought those offenses would be expunged.

Jahna said that Law was comfortable with having first-time DUI offenses expunged after 15 years and SIS set asides expunged after 5 years. Nancy said it would be hard to tell when folks were off probation. Rob said the expungement period should be calculated from the date of set aside; the DUI expungement period would be calculated from the date of conviction (the lookback period for the felony offense was also calculated from the date of conviction).

Nancy asked whether simple possession of marijuana cases would be just standalone MICS 6 cases. The court system can remove whole cases from CourtView but not individual charges. The group agreed that cases with just MICS 6 and a first-time DUI or decriminalized offense would be okay but MICS 6 or DUI with any other offense would not be expunged. Nancy asked to clarify that all MCA charges would be expunged, even the habitual ones- the group said yes.

Jahna asked if the Court System could get data on the volume of the offenses under consideration by the August 23 meeting. Nancy said they could try.

The final decision of the group was to recommend:

- The offenses that were decriminalized in SB 91 (attending an exhibition of fighting animals, disregard of a highway obstruction, non-DUI-based driving with license suspended (DWLS), gambling, and obstruction of roadways) should be reclassified retroactively to Minor Offenses in CourtView.
    - This would only apply to standalone offenses or cases where the only charges were in the above list.
    - Barbara will check to see if the designation can also be changed in DPS's data, and how violations are reported in background checks.
- All MCA and simple possession of marijuana cases should be expunged immediately according to the definition from Law stated above.

- First-time DUI offenses should be expunged (also according to the definition from Law stated above) automatically after 15 years from the date of conviction.
- Successful SIS cases should be expunged (also according to the definition from Law stated above) automatically after 5 years from the date of set-aside.
- Cases would only be expunged if they were standalone charges or cases, or if the case only included charges in the list of expungeable offenses.

Sealing

The group discussed an alternate sealing proposal (having rejected a proposal that involved court hearings at the last meeting). The alternate proposal would amend the administrative process currently in place. Rob pointed out that de novo review of a denial would be a big departure from current practice; he thought it was unnecessary.

Doug pointed out that there is a big difference between the two grounds for sealing, mistaken identity and false accusation. False accusation could potentially include some untruthful recanting victims, while mistaken identity is a relatively straightforward matter to verify. Rob said he assumed the standard of proof was "beyond a reasonable doubt" for this reason.

Jahna said she would like to hear from DPS on how they treat dismissed cases. The Commission has received one complaint and there is no evidence that there is a real problem. She suggested leaving this as an agenda item for the Commission to discuss and hear from DPS.

Public comment

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

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary

July 26, 2017, 9:30 AM

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

Commissioners: Brenda Stanfill, Jahna Lindemuth, Greg Razo, Joel Bolger, Steve Williams

Participants: Rob Henderson, Regan Williams, Karen Cann, Nancy Meade, Doug Wolliver, Donald Revels, Allison Biastock, Jeff Edwards, Teri Tibbet, Natasha McClanahan, Alysa Wooden, Laila Allen, Suki Miller

Staff: Susanne DiPietro, Barbara Dunham

1. **Ban the Box**

Barbara Dunham explained that the full Commission had not had time at its last meeting to discuss the proposed recommendation for a pilot Ban the Box program within one state agency, which had been agreed on at the last Barriers meeting. She noted this was just a draft and could be reworded. Brenda Stanfill asked whether this was the same proposal that had been discussed last year. Barbara said that it was. Brenda noted that a lot of work had gone into crafting that proposal last year. Greg Razo moved to forward this draft recommendation to the Commission. Steve Williams seconded the motion.

Nancy Meade asked whether the Department of Administration could choose which agency; group members confirmed this was the case. Rob Henderson asked whether there was a time frame for the program; he noted that Ban the Box was not evidence-based. Susanne DiPietro said that staff analyst Brian Brossmer's research showed the evidence was inclusive.

Brenda said she knew that program evaluations were expensive—would it be possible to include on in this recommendation? Susanne said that evaluations don't have to be expensive, and it depends on the kind of evaluation you want. Brenda said she didn't think every Commission recommendation had to be based on peer-reviewed evidence; it would be good to study the pilot program but she didn't want the recommendation to come with a large fiscal note.

Susanne asked if staff should add language recommending a study of the pilot program. Brenda said yes. Greg said it could be as simple as looking at who was hired compared to other agencies. He suggested including language suggesting that the Department seek assistance from UAA to evaluate the pilot program. He also suggested presenting the research on Ban the Box to the Commission along with the recommendation. Brenda noted that a state agency would be less likely to screen out applicants because of a name; this pilot may be successful.

Greg called for a vote on the motion (with the language in the draft amended as discussed). There was no opposition.

2. Clemency

Barbara Dunham explained that the group had agreed to forward a recommendation to the Commission and a draft recommendation had been circulated; like the Ban the Box recommendation, the full Commission had not had time at its last meeting to discuss the draft.

Rob Henderson and Jahna Lindemuth explained that there were some factual inaccuracies with the draft regarding the clemency application process and who drafted the proposed changes to the process—it was the parole board administrator, not the ECAC. They also pointed out that as the pardon power rests solely with the governor, the last sentence of the recommendation (outlining priorities for addressing applications) should be removed. Jeff Edwards also noted that in terms of addressing the backlog, the governor's office would need to initiate that process.

Suki Miller asked whether the Commission would recommend that former applicants reapply. Jahna noted that the recommendation asked the governor's office to address the backlog. Jeff said that if that happens, the parole board would then send out a packet to each applicant to restart the process.

Greg moved to forward the recommendation with the changes proposed by the Department of Law. Jahna seconded the motion. There was no opposition. Jahna noted that the Commission can work with Jeff on the final draft to make sure the wording is accurate.

3. Sealing

As with Ban the Box and clemency, a draft recommendation to amend the sealing statute had been circulated but not discussed at the last Commission meeting.

The group first clarified what was meant by sealing; sealing at the court system means the file will be removed from CourtView and sealed so only the parties and judge on the case may access it; sealing at DPS means the record is only accessible in very limited circumstances, and will not appear in background checks or APSIN. (There are two types of background checks provided by DPS: one that anyone may access for a fee, and a more intrusive check that is for employers of caregivers. The former will reveal convictions but not charges; the latter will reveal both convictions and charges.)

Brenda Stanfill asked whether this was really just a form of expungement and whether this should be included in that discussion. Nancy Meade noted that this discussion began before AS 22.35.030 (removing records from CourtView where cases have been dismissed or a defendant acquitted), which has fixed a lot of these issues. The focus of the discussion now is how to get these records off APSIN and background checks.

Brenda and Jahna Lindemuth said they were uncomfortable taking charges off of APSIN. Barbara asked whether this was the case for charges based on false accusations or mistaken identity. Rob Henderson suggested that individuals in those cases should go through a court hearing. He has done one of these evidentiary hearings, though they are rare. The defendant had to prove mistaken identity beyond a reasonable doubt. Nancy noted that changing the standard from beyond a reasonable doubt

to clear and convincing evidence would have a smaller fiscal note. Rob noted that Law has also asked DPS and the Court System to remove records when it was clear the charges were completely unfounded due to a false accusation or mistaken identity.

Brenda said she was uncomfortable having a full evidentiary hearing for every DV case that was dismissed for lack of evidence. Barbara noted that attorney Ryan Bravo had submitted an alternate proposal to amend AS 12.62.180 that clarified and strengthened the current administrative process for sealing records; this would only apply to cases of mistaken identity and false accusation.

Brenda suggested that the group take a look at expungement and then come back to this topic; it may be covered by the expungement discussion.

4. Expungement

Though discussed at previous meetings, an expungement proposal had not been universally agreed upon; staff had circulated some ideas. Susanne DiPietro noted that expungement could take many forms. Nancy Meade said the purpose of expungement was essentially to let people deny the existence of a conviction on an application and be backed up in that assertion with the results of a background check. Jahna Lindemuth noted that another option would be to allow people to say the record was expunged.

Brenda Stanfill said that to her mind there were two problems to be solved—cases involving a successful SIS (the Commission has received a good deal of testimony from individuals with an SIS who had been under the impression the conviction would disappear entirely), and cases where an individual has shown real evidence of rehabilitation over a period of time.

Nancy noted that it was possible to make this process automatic after a number of years has passed—that option would be nearly free and it would be easy to accomplish. Brenda countered that she wanted a way to be able to capture those that have truly turned their lives around. Rob Henderson suggested that those people might be candidates for certificates of rehabilitation. Brenda and Susanne said that the group had previously looked at certificates of rehabilitation and research tended to show that they weren't very effective—they weren't used often in the jurisdictions where they were available and there was no evidence they helped. Rob wondered if there was a way to make them more effective and Brenda said it might be possible.

Susanne suggested looking at expungement of offenses that have been decriminalized first. The group discussed the offenses that were decriminalized in SB 91.[1] The group generally agreed that failure to appear (FTA) and violation of conditions of release (VCOR) should not be eligible for expungement. Nancy said it would be a relatively easy fix to take these offenses off of CourtView—with the exception of Driving with license suspended, which she said was hard to tell in the electronic system whether it was based on a DUI or not.

[1] Disregard of highway obstruction, obstruction of highways, attending an exhibition of fighting animals, gambling, violating conditions of release, failure to appear, and driving with license suspended for an offense other than DUI/Refusal were all reduced from misdemeanors to violations in SB 91.

Natasha McClanahan noted that her office had received many calls about expunging minor consuming alcohol offenses (MCA).[2] Greg Razo noted that many job applicants at CIRI got flagged for having consumed a beer when they were teenagers long ago. Rob said that for a long time, the only MCA that was a misdemeanor was the defendant's third or fourth misdemeanor (though all MCAs older than 1995 were misdemeanors).

Rob Henderson wondered if the group could agree on a process. Brenda wondered if the process could be done with a form and no court hearings. Karen Cann noted that it would be good to have the defendant jump through certain hoops with a determined outcome—it would be nice to inform defendants who have made some mistakes that there is a way toward expungement if they meet certain benchmarks.

Rob suggested creating a list of offenses that would be suitable for expungement and then addressing the process once those offenses were identified. Nancy cautioned that any process would cost some money. Brenda suggested that reinvestment dollars could be used for those offenses that were decriminalized in SB 91 (as a one-time expenditure).

Justice Bolger said the process of sealing a court file is pretty drastic—removing a record from CourtView and labelling a file confidential is easier. Nancy said this was essentially the former version of an expungement bill, but it was controversial and did not play well in the media. Rob said this was because the public felt they had a right to know about certain offenses.

Brenda reiterated that she also wanted to have an option that has meaning for those who have turned their lives around—a confidential designation would be sufficient for those applicants. The group noted that while there was a process for designating files as confidential in the court system, there was no similar designation at DPS—a record would either be sealed or not. (It was suggested that staff check with Kathy Monfreda at DPS to verify this).

The group went on to discuss potential expungement of nonviolent misdemeanors. Though the proposal that had been circulated suggested tolling a period of time for expungement from the date of an offender's unconditional discharge ("off paper" in DOC parlance), group members noted that this would not necessarily mean that the offender had paid all restitution and fines. Brenda suggested that expungement would need to be conditioned on proof of payment of both restitution and fines.

Nancy reiterated that this kind of individualized determination would have a cost—it might mean opening up courtrooms on Friday afternoons, for example. Rob said that nevertheless Law would like to have hearings, and suggested reinvestment money could go towards the cost. Nancy suggested that the Department of Law could just sign off on the application. Rob agreed that that would solve the question of creating a legal mechanism, but would not address what to do in case of disputes. Doug Wooliver suggested building guidelines into the statute. Brenda said that there might then be concerns that Law would say "no" too often. Nancy said that victims' advocates might do the same.

Justice Bolger said that there might be situations in which an offender does not have any new criminal activity on the books but there are indicators that the offender has not been rehabilitated—this

[2] Until 1995, MCA was a class A misdemeanor; it then became a violation. In 2001, the legislature created a tiered MCA system, with different punishments for first, repeat, or habitual offenders. The habitual MCA offense was a class B misdemeanor. In 2016, SB 165 did away with the tier system, making all MCA offenses violations.

is where judges would need to find positive evidence of rehabilitation. Karen added that offenders could be off probation relatively quickly—and would not have a PO watching them. Susanne pointed out that misdemeanants will not have anyone watching them at all.

Brenda said she liked the idea of having a certain passage of time with no new arrests. Nancy noted that the Dept. of Law wanted a certain amount of discretion. She wondered what the minimum length of time would be that everyone could agree on was—10 years? Brenda said perhaps, and certain offenses would have to be excluded—sex offenses, for example.

Doug suggested starting with baby steps to make the idea more palatable to the legislature. For example MCAs would probably be acceptable. Susanne added that SIS would be a good addition, as the Commission had heard a lot of testimony from people who thought those convictions would disappear. Brenda noted that some judges thought so too. Justice Bolger said that a successful SIS might be a more reliable indicator of rehabilitation than just the passage of time. Brenda said that it would also account for victim notification. Nancy said that it might not account for payment of fines and restitution.

Rob suggested compiling a list of potential offenses that would be uncontroversial for expungement. Jahna said Doug's point about being conservative to begin with was well-taken; if the process works well it could be expanded over time. Brenda said she agreed and didn't want to step into something as controversial as SB 91. There are some offenses that won't be controversial for expungement.

Doug said that even just MCA and SIS would cover a lot of people. Susanne said that those are the ones that the Commission has heard a lot about, along with DUI. Jahna said that people with only one DUI cover a broad cross-section of Alaskans. Brenda thought the single DUI convictions could be automatically expunged after 15 years, and Rob agreed. Brenda asked whether drug possession, and/or marijuana possession, should be included. Nancy said that might be more controversial.

5. Public comment

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

6. Future meetings

The next meeting was set for August 9 at 9 a.m.

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 expungment 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.

Alaska Criminal Justice Commission
WORKGROUP ON BARRIERS TO REENTRY

Meeting Summary
March 20, 2017, 1:30-3:30 PM

Attorney General's Office
Brady Building, 5th Floor Conference Room
1031 W. 4th Avenue, Anchorage
Audio teleconferencing: Dial 1-800-768-2983, then enter 5136755 (Access Code)

Commissioners: Brenda Stanfill, Dean Williams

Attendees: Rob Henderson (DOL), Doug Wooliver (ACS), Cathleen McLaughlin (Partners for Progress), Rachel Kosakowski (DOC), Alysa Wooden (DBH), John Woodward (public), Donald Revels (Dept. of Labor), Yulonda Candelario (U.S. Attorney re-entry coordinator), Janice Weiss (Mat Su re-entry), Steve Williams (Mental Health Trust Authority), Stacie Kraly (DOL), Shea Siegert (Rep. D. Johnson), Barbara Armstrong (AJC-ret.).

AJC Staff: Susanne DiPietro, Barbara Dunham, Brian Brossmer.

1. **Reentry Coalitions**

- Alysa Wooden
    - First technical assistance training occurred on March 9 and 10, 2017; working with case managers to ensure that they have the training they need.
    - What's next:
        - Kenai hired reentry coordinator
        - Kenai and Nome in their assessment phases
    - Asked whether there is any assistance that they need or that the Commission can provide
        - Be sure to loop in as appropriate
        - State will operate tracking mechanism via AKAIMS, which will provide data.
- Yulonda Candelario
    - Yulonda Candelario recently brought on; new re-entry position in US attorney's office.
    - Working to build statewide resources for reentry
- Brenda Stanfill
    - Specific things that are being measured in coalitions?
- Dean Williams
    - Are there targeted goals of the coalitions?
- Steve Williams
    - Two funding streams FY17 (Trust – Anchorage, Fairbanks, Juneau and Matsu @ 100k/each; Recidivism reduction funding (State) – Kenai @ 50k, Nome @ 25k); also, an RFP is outstanding so total could increase by 75k (25k each for Bethel, Dillingham and Ketchikan)
        - Coalitions were already in existence in communities; developed at grassroots

level. As a result, each coalition is different but all have the common goal of reentry.
- The goals of the coalitions include the following: provide reentry services in the communities, interface with community (build support), and liaise with DOC re. barriers they are seeing on the ground.
- Recidivism reduction is overall goal.

2. Barrier Crimes regulations

- Stacie Kraly
  - Advised Dept. of Law agency review has been completed. Next step is a technical edit performed by DOL legislative attorney.
  - Will send a copy of the regulations to the committee.

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

- Question: for individuals who are no longer overseen by DOC, are there issues getting access to SNAP benefits, are there issues getting someone to 'sign off' on eligibility.
- Cathleen McLaughlin
  - No recent issues. Partners regularly signs individuals up for Medicaid and SNAP. Janice Weiss will email the other re-entry coalitions to see if their SNAP-eligible clients are having problems receiving the benefit.

4. Ban the Box

Staff have circulated additional information on ban the box.

- Brenda Stanfill
- the question is whether or not to support 'ban the box' based on the research – memo from Barbara.
  - To whom would it apply (State/private)
  - Governor indicated last summer he would implement it via executive order, but has not done so to date.
  - Some research seems to indicate that by removing that question, employers are using other means by which to screen individuals – e.g., apparent ethnicity of a name.

- Rob Henderson
  - If ban the box is limited to State employment, the Governor only needs to sign an executive order; to extend to all employers the Commission would need to recommend and the legislature pass a statute.
  - How good are the studies – methodologies? **Brian will check on methodologies, strength of findings, and report back to the group.**
- Cathleen McLaughlin
  - Target (a private employer) has banned the box; as a result, they seem to be hiring more people who have accessed services at the reentry center – getting to the interview prior to

disclosure appears to help.

- Donald Revels
    - Much of Dept. of Labor supports ban the box as a concept but often there are hard barriers that come up via background checks, which ban the box alone would not remove.
- John Woodward (Public)
    - Background checks and internal company/agency policies have been barriers, not just banning the box
- Barbara Dunham – is it possible to change employer thinking, for example, incentives?
    - Donald Revels - Fidelity bonding; work opportunity tax credit

- ***Make a decision by May meeting on whether to pursue.***

5. Expungement, Clemency, Sealing Records

Staff have circulated information on the various clemency options:

- Certificates of Relief—see Susie Dosik's Employment Barriers Option Memorandum
- Record sealing—See Memo re: record sealing
- Expungement and Limiting access to criminal case records—See Alaska Justice Forum Article
- Pardon and Commutation—See CCRC Guide to Pardon, Expungement & Sealing

- Brenda Stanfill
    - Pursue all options or focus on the best one?

- Dean Williams
    - Support developing an expungement proposal. Particularly around youthful offenders, criminal history is a major hurdle; a conservative, small approach as a proof of concept, which could be built upon in 5 years, should be considered. Distinct from pardons or any case-by-case system, the policy ought to be automatic and apply to all qualifying offenders.
- Susanne DiPietro
    - ***By March 31, workgroup members submit thoughts about how to draft a proposal***:
        - Things to consider: What do we mean by "expungement" – remove case from public Courtview, make court case file (paper record) confidential; make notation on APSIN; allow person to claim that he or she was not convicted, etc.; to what offenses should it apply (e.g., felony or misdemeanor; property versus person crimes); how much time should elapse before expungement available.
- Yulonda Candelario
    - Experience from Texas, expungement goes through the court, must show genuine reentry into society, reason why record should be changed (barrier to job, etc.); judge decides
- Barbara Armstrong
    - Will send link to updated list (50 state comparison).

6. Employment- Comments for the Alaska Workforce Investment Board

AWIB is interested in reaching out to employers and HR groups on hiring returning citizens.

- Fidelity bonding, and work opportunity tax credit – ***are these in use, are there problems with their use?***
    - ***Invite to next meeting***

7. Public comment

- John Woodward
    - Re. Ban the box: legislation should move forward on this notwithstanding unintended consequences. It should apply as broadly as possible.
    - Re. expungement, ought to work in a way similar to restoration of rights (that is, in the same way that an individual can regain voting rights, serve on a jury, etc.); for certain crimes, let an amount of time pass beyond probation, after which expungement is triggered.
        - Even if records exist on third-party sites, this would provide individuals with far better legal footing.

8. Next meeting – May

- Barbara will send an email to set.

To do

1. Brian Brossmer will review studies of the effects of "ban the box" and report back before the May meeting on methodologies and strength of findings.

2. At our May meeting, this group will make a decision whether to pursue a recommendation for banning the box in Alaska.

3. By March 31, workgroup members agreed to submit thoughts about how to draft a proposal on expungement. Susanne will send a separate email reminder about this.

4. Invite Ak Workforce Investment Board to make a presentation at May meeting about who they are, what they do. Talk to them about fidelity bonding, work opportunity tax credit.

5. Barbara send email to set May meeting; participants will respond timely.

ACJC Workgroup on Barriers to Reentry
Meeting Summary
January 26, 2017, 1:30 PM,
Snowden Training Center + teleconference

Commissioners attending: Brenda Stanfill, Dean Williams

Participants: Barbara Armstrong, Alysa Wooden, Doug Wooliver, Morgen Jaco, Karen Cann, Devon Lewis, Gail Sorensen, Donald Revels, Stacie Kraly, Grace Jeon, Sarra Khifli, Indianna Turkisher, Doreen Schenkenberger, Wilma Osborne, Janice Weiss, Rachel Kosakowski

Staff present: Susie Dosik, Barbara Dunham

Reentry Coalitions

The group first heard an update on the Anchorage Reentry Coalition from Devon Lewis, Coalition Coordinator. She explained that the Coalition had been meeting every 3 months and that the meetings were typically attended by 40 or so stakeholders. The Coalition has a steering team and has been working on developing bylaws and branding. The Coalition was just awarded a reinvestment grant from DBH that will go to hire a case manager, who will be housed at CITC.

The Coalition also has a section of each meeting devoted to education about aspects of SB 91. Earlier that day, the Coalition heard from Keith Thayer, Coalition Chair and a Chief of Field Probation at DOC, who spoke about the changes to probation as a result of SB 91. He said it was too soon for real feedback and outcomes but the changes appeared positive. (Morgen Jaco, Reentry Program Manager for DOC, told the workgroup that DOC will be able to monitor data and track any changes.)

Janice Weiss, Coordinator of the Mat-Su Reentry Coalition, said that they were in the process of building capacity. They were also awarded an investment grant and additionally received funds from the Mat-Su Health Foundation to fund case managers at Hiland and Goose Creek.

Morgen also updated the group on the other reentry coalitions. They are in various stages of development; Kenai and Nome are coming on board. Not all coalitions have coordinators yet. Through the reinvestment grants, four coalitions will have case managers. They are working on drafting a manual for the case managers and doing a lot of work on reentry planning pursuant to the requirements in SB 91. Not all reentrants will have a case manager. The idea is that the case managers will have a caseload of about 40 people who have a medium or high risk score on the LSI-R. The hope is that reentry will be coordinated statewide.

Barbara Dunham, project attorney for the Commission, asked how the working group could supplement or work with the coalitions. It was noted that the Commission is tasked with recommending statewide legislative and policy changes, so if the coalitions identify any statewide changes that need to be made, they can bring those issues to the working group. The group

agreed that the coalitions would have a regular spot on the agenda for updates and potential troubleshooting. Morgen will solicit any burning issues from the reentry coordinators.

Barrier Crimes regulations

Stacie Kralie provided the group with an update on the regulatory process for barrier crimes. The new regulations have been finalized and they are about to be submitted for a legal review. After that they will be sent to the Lt. Governor's office where they will sit for 30 days before going into effect.

ACJC Commissioner Brenda Stanfill noted that last year, the Commission had asked to work with DHSS on barrier crimes regulations—were the regulations that were just finalized the same regulations? Stacie said that they were not the same regulations that the workgroup had looked at last year. They had gone through significant revisions after a public comment period. She understood that there had been some dialogue with the Commission and there could be further regulations beyond what was just finalized –DHSS Commissioner Davidson had been open to that—but they needed to get something new finalized in the meantime. She was willing to provide a copy of the finalized regulations to the group.

Stacie gave an overview of what was in the regulations.

- Removed all 1-year barrier crimes.
- Made the variance process more user-friendly.
- Limited the look-back for a criminal history check to 5 years to be consistent with federal law.
- Extended provisional status from 60 to 90 days.
- Did not create a central registry; the various registries were made clearer/easier to use.
- The reconsideration period was extended from 30 to 90 days.
- CINA findings are no longer a permanent barrier unless the parent's rights were terminated.

Stacie will provide a copy of the regulations to staff and staff will circulate them to the workgroup.

Removal of SNAP ban for certain felony offenders – implementation issues

Sarra Khifli and Indianna Turkisher of the Alaska Food Coalition discussed their experiences in helping felony offenders apply for SNAP. The Food Coalition made it a priority last session to see through the provision that removed the lifetime ban for felons.

Indianna has been working with clients to apply for SNAP. Some of them have run into difficulties because the statute requires applicants to be in compliance with or to have successfully completed a term or probation or parole. This is relatively simple for people who are currently on probation or recently completed and are able to contact their PO. But for people who completed probation a while ago, they are having difficulty proving they successfully completed. Often their PO no longer works as a PO. Sometimes they can show compliance by attending something like an NA group, but this seems onerous for someone who has successfully completed

probation and no longer needs treatment. Also, there is no way for people who have been flat-timed have no way to show they're compliant.

Morgen asked whether a voter registration card might work. Indianna said that clients are finding they need to provide some proof of complying with programming. Sarra pointed out that the level of proof required is up to DHSS—"to the satisfaction of the department." Morgen suggested that reentering citizens could be given a packet of documentation that would be needed for applying for SNAP, but that wouldn't solve the problem for people with older felonies.

Indianna said that another issue is that the SNAP recipients need to find someone to sign off on their compliance every 6 months. Brenda said that she didn't think that was what was intended. She suggested working on some statutory language that would clarify that a person would only need to prove compliance once. Sara stated that she was aware of language from other states and would work on some suggested language for a possible amendment. Brenda noted that a clean-up bill would be introduced next week.

Ban the Box

Susie Dosik, staff attorney with the Alaska Judicial Council, explained the group's previous efforts at a Ban the Box initiative, aimed at preventing employers from requiring disclosure of a criminal record on job application forms. The last the Commission had heard, Governor Walker was planning to roll out a Ban the Box initiative last summer, but that never came to fruition.

Susie also explained that since the workgroup last met, studies have come out questioning the effectiveness of banning the box. (An article explaining these studies had been circulated to the group.) In some cases, banning the box can actually lead to more discrimination in hiring because employers use race (or, more specifically, assumptions about a person's race based on their name) as a proxy for criminal history.

Brenda asked if there were any anti-discrimination hiring laws in the places where these studies were conducted. Susie wasn't sure, but noted that Ban the Box worked (i.e. did not have a discriminatory effect) in New York City, which has a very strong anti-discrimination law. It has also worked in places that are very diverse. She could make more of a presentation on this at the next meeting.

Brenda noted that in Fairbanks, having a criminal record doesn't seem to be a problem—they hire convicts. She wondered if there was a way to get a feel for employer attitudes, perhaps with a survey.

Donald Revels of the Dept. of Labor said that often the problem with hiring is with insurers and other third parties—the employer themselves often don't mind hiring people with a criminal record. He said a good way to address this might be to have a way to reduce a felony to a misdemeanor post-conviction. (Susie noted this was a form of expungement, which was also on

the agenda.) Touching on Brenda's question about surveys, Donald said employers will self-report information to the Dept. of Labor, and he has compiled information from his clients.

Doreen Schenkenberger from Partners for Progress noted that part of the problem is simply the economy. Most of the returning citizens who are getting employed are getting entry-level jobs in the service industry.

Morgen Jaco said that it helps to communicate with employers. They are willing to hire but need more information—often there is a variance process for some barrier crimes but it's costly for employers. Susie said that the new regulations will hopefully help with that. Doreen said developing relationships with employers is huge—at Partners for Progress, some employers will call them for hiring. Susie recalled that there was an insurance bonding program and wondered if this was still going. Morgen said that it was, they just needed to get the word out to employers. She noted that most of the reentry coalitions have employment subgroups—she can get the word out to those groups.

Sealing Records and Expungement

Attorney Ryan Bravo informed the group that AS 12.62.180 and associated regulations provide for sealing a criminal record, upon request, when the underlying charge or conviction was based on mistaken identity or a false accusation. The request form must be signed by both the arresting officer (or that person's superior) and the prosecutor (or that person's superior), attesting that, beyond a reasonable doubt, the charge resulted from mistaken identity or false accusation. If the form is signed, the head of the agency requested to seal the record (i.e., the court system, DPS, or DOC) must approve sealing the record.

In practice, Ryan has found that APD will not sign seal requests as a matter of course. (He believes the same is true for the DAs There is no appeal to a denial at this stage. In theory, if a form is signed, and the agency head does not approve sealing, the requestor may appeal this decision to the court. But if the requestor is denied a signature by either the DA or the officer, there is no appeal or recourse to that denial. This is the case even if the case has been dismissed with prejudice. One option might be to bring a constitutional challenge in court, but that would be a public court case, and the reason a person asks that records be sealed is so the person may regain some measure of anonymity.

Doug Wooliver, Administrative Director of the Alaska Court System, noted that they have taken cases off of CourtView before—he recalled one case in Palmer where the wrong name was put on a charging document. Ryan said that even if a record is taken off the public CourtView the record is still not sealed—it will come up in background checks and the person would still have to tell their employers.

Dean Williams, Commissioner of the Dept. of Corrections (and ACJC Commissioner), said that this area was a priority for him. He wanted to work on expungement issues. Alaska currently doesn't have any expungement, but he believes there is interest in creating some form of expungement. He wanted to do some homework on this, possibly looking at the framework in other states. Susie

said that the Council had done a lot of research on this a couple of years ago, but there hadn't been much interest. Commissioner Williams said he thought Alaska was "under a different sky" now and that the issue was worth revisiting.

Susie and Barbara agreed to provide the workgroup with research on a range of expungement and clemency issues, including sealing. Ryan said he would provide his research to the group as well.

Housing
Housing had been identified as an area of interest before, but the workgroup had not looked at this issue. Barbara asked whether the group was now interested in looking at it. Brenda noted that there were a lot of facets to this issue, and that it was something the reentry coalitions were working on. Morgen agreed to seek input from the housing subgroups in the reentry coalitions, to see if there was any particular issue the Commission might take up.

Public comment
Wilma Osborne of Nome thanked the group for looking into expungement. She had asked the Commission to look into this at the plenary meeting in December.

Next meeting - March
The group set the next meeting for Monday, March 20 at 1:30.

ACJC Workgroup on Barriers to Reentry
Staff Notes and Member Assignments from June 17, 2016
at the Brady Building, 5th floor conference room

Commissioners absent: Dean Williams, Jeff Jessee, Brenda Stanfill, Greg Razo
Participating: Tayler Matthew, Central Peninsula BH; Doug Wooliver (ACS); Kara Nelson (Haven House); Jimmie Chynoweth (DOC Parole Board); Kathy Hansen, OVR; Deb Periman (UAA)
Staff present: Mary Geddes, Susie Dosik

Next meeting is: TBD

Ban the Box status. Leslie Ridle had written Mary Geddes stating that Ban the Box would be considered by DOA Commissioner and others on June 17. However, we have not yet heard back as to the response.

Barrier Crimes. DHSS proposals to amend its regulations re registry and waiver process for barrier crimes have not yet been finalized. ACJC hopes to work together with DHSS to review the barrier crimes matrix.

Clemency process. The pardon power, except in cases of impeachment, is vested in the Governor alone, "subject to procedure prescribed by law." Alaska Const. art. III, § 21; AS § 33.20.070. The power has been rarely used, with only 188 grants since statehood and no grants at all since 2006. The last gubernatorial grant of clemency - during the waning days of the Murkowski administration – spurred legislative reforms.

> By statute, the governor "may not grant executive clemency to a person" unless the case has first been referred for investigation to the Board of Parole and at least 120 days have passed. § 33.20.080(a). The Board is required to investigate each case so referred and report to governor within 120 days. It must also, within five days of receipt of notice from governor, notify the Department of Law, the Office of Victim's Rights, and the victim if a crime of violence or arson. § 33.20.080(b). [1]

A governor can theoretically grant relief to a class of persons (e.g. like pardoning all persons previously convicted of Minor Consuming). Oregon has recently enacted measures pertaining to marijuana convictions. Deb Periman thinks that the procedures prescribed by the Alaska Legislature in 33.20.080 (a) could arguably bar class-wide relief, since the statutory mechanism requires individual case scrutiny. Mary Geddes thinks that class wide relief could be made conditional, on fulfillment of certain requirements.

Deb Periman noted that clemency can come in many forms (commutation, pardon, etc). Periman mentioned a pending law suit in Virginia challenging that state's governor's recent action. He granted a specific form of clemency – to right to vote – to 200,000 persons. In Virginia, both state constitution and statute permanently bar all felons from voting or holding office.[2] Eligibility for restoration depends upon completing all terms of sentence, including payment of all fines and restitution.

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[1]From Collateral Consequences Resource Center website pages on Alaska, (http://ccresourcecenter.org/state-restoration-profiles/alaska-expungment-pardon-sealing/) citing to Ronald S. Everett & Deborah Periman, "The Governor's Court of Last Resort:" An Introduction to Executive Clemency in Alaska, 28 Alaska L. Rev. 58 (2011).

[2]In Alaska, any person convicted of a felony who is in prison, on parole or on probation loses their right to vote, see serve on a jury, and by implication, their right to run or hold public office. Those rights are automatically restored upon completion of sentence.

Kara Nelson asked whether the group had previously discussed certificates of rehabilitation, in the absence of any other clemency measures. She had heard that NY's system works relatively well. Susie Dosik reported on her past study of certificates; she was underwhelmed with their value and with the rate at which they have been issued.

Jimmie Chynoweth from the DOC/Parole Board office reported that the Parole Board continues to receive clemency applications but governors have not chosen to review them for the past ten years. Although there was once a proposal to reform the Executive Branch process, it has not been implemented. Most who apply have finished their sentences. At least half of the persons who applied specifically mention employment barriers. Many are also concerned about the loss of firearm rights. Jimmie noted that a lot of the applicants have only a single conviction. Doug Wooliver asked, if without an accompanying expungement, wouldn't the court system still maintain a court record of conviction, and isn't that the relief that people are really seeking. Deb noted that it's the permanent record of conviction which really disables job seekers. There was further discussion about the difficulty of overcoming the digital footprint. Deb Periman noted that some states do have expungement provisions, and some states deal with the perpetual electronic record problem by granting immunity to employers. Kathy Hansen expressed concern with expungement measures. Perhaps if the act is significant enough to punish, it should not be forgotten. She saw expungement as a last resort.

The group then specifically discussed how an Alaska clemency process might work. Deb Periman likes the Connecticut model which essentially allows the Governor to delegate the function to an executive branch agency, i.e. the Parole Board. The Governor restricts which persons can apply for clemency based on the type of offense and the number of years since it took place. Those restrictions limit eligibility. Having this delegation to the Parole Board insulates the Governor from blowback, by de-politicizing the process and giving it to an agency which already has investigative functions. Our Parole Board does have staff which could be assigned to the clemency function, but clearly a change in the culture might result in a need for more staff.

There was a broad-ranging discussion of whether there should be limits on what offenses might be considered for clemency. Without deciding, we discussed various 'funnels' for clemency eligibility: misdemeanor/felony and unclassified/classified dichotomies; property, non-violent and drug offenses; first-only convictions versus multiple; driving offenses and status offenses.

Jimmie Chynoweth thought it would be important to consider the length of the time elapsed since re-offense (rather than the date of the crime) and that any elapsed time exclude time on probation or parole.

Doug Wooliver suggested that cost has to be a paramount consideration and urged the group to consider universal fixes. For example, the automatic removal of certain barriers after 5 years.

With the Commission's schedule in mind (August plenary meeting) Deb Periman agreed to get deeper into the weeds in terms of looking at other statutory schemes for clemency, either with or without expungement provisions, and to sketch out options for recommendations to the Commission.

There was time allowed for public comment but none was offered.

Administrative Clemency: State Comparison

	Alabama	Connecticut	Georgia	Idaho	S. Carolina	Utah
Issuing Agency	Board of Pardons and Paroles	Board of Pardons and Paroles	Board of Pardons and Paroles	Commission of Pardons and Parole	Board of Probation, Parole, and Pardon Services	Board of Pardons and Parole
Authority	Ala. Const. Art. V, § 124 (AL CONST Amend. No. 38, CONST. of 1901) (providing legislature instead of governor has power to provide for and regulate pardons, retaining governor's authority to commute and reprieve death sentences); Ala. Code § 15-22-1 et seq.; 15-22-36(a).	C.G.S.A. Const. Art. 4, § 13 (giving governor authority to issue temporary reprieves and implicitly authorizing general assembly authority over final action); Conn. Gen. Stat. § 54-1124a et seq (delegating authority to Board)	GA Const. Art. 4, § 2, ¶ II (Board is vested with power of executive clemency, including pardons and removal of disabilities).	ID Const. Art. IV, § 7 (authorizing legislative Board of Pardons; authorizing governor power to act until next Board session)	S.C. Const. Art. IV, § 14 (reserving to governor reprieves and commute death sentence to life imprisonment); S.C. Code Ann. § 24-21-13 (duty of board to consider cases for pardon and any form of clemency)	U.C. 1953, Const. Art. 7, § 12 (creating Board of Pardons and Parole, authorizing Board to commute punishments and grant pardons, authorizing governor to grant clemency through next board session)
Eligibility	Completion of 3 yrs parole or expiration of sentence that was less than 3 yrs. Pardon based on evidence of innocence any time after clear proof filed and approval of convicting judge	*Pardons:* expiration of parole or probation and 3 yrs after disposition of most recent misdemeanor conviction/5 yrs after disposition of most recent felony conviction. *Clemency:* while serving sentence of less than 8 yrs, after 50% of sentence served/while serving sentence of more than 8 yrs, after serving 4 yrs. *Certificates of employability*: while on parole, after successfully completing 90 days/after supervision, following 90 days in community with no new arrests. *Expedited pardons:* process likely available July 1, 2016 for nonviolent offenses with no victim interest.	*Pardon:* 5 yrs after completing sentence w/no intervening offenses and all fines, restitution paid *Restoration of Civil Rights:* 2 yrs after completion of sentence w/no intervening offenses *Sex Offender Pardon:* 10 yrs after completion of sentence w/no intervening offenses and fines/restitution paid.	*Pardon:* 3 yrs after discharge of felony or misdemeanor sentence on non-violent and non-sex offense convictions/5 yrs after discharge of felony or misdemeanor sentence on violent crimes, sex crimes, and crimes against persons	*Probationers:* after discharge from supervision and restitution paid. *Parolees:* after 5 yrs successful supervision or if maximum parole period is less than 5 yrs, any time after discharge, completion of parole and any restitution payment. *Persons discharged from sentence:* any time after discharge once any restitution paid *Inmates*: any time prior to becoming parole eligible on showing of extraordinary circumstances *Inmates w/ terminal illness:* any time after afflicted with terminal illness w/ life	5 yrs after termination of all offenses, sentences, and supervision with exemplary citizenship and prior application for Expungement Certificate of Eligibility.

	Alabama	Connecticut	Georgia	Idaho	S. Carolina	Utah
					expectancy of one year or less.	
Offenses Covered	Misdemeanors and felonies (state and federal) (treason and impeachment excluded – sex crimes excluded from voting relief)	Misdemeanors and felonies	Misdemeanors and felonies	All offenses except murder, voluntary manslaughter, rape, kidnapping, lewd conduct w/minor, manufacture or delivery of controlled substance/listed offenses referred to governor for decision w/commission recommendation	Misdemeanors and felonies	Misdemeanors and felonies. Excludes treason and impeachment.
Relief Available	Restoration of voting rights and pardons including relief from civil disabilities w/no expungement (separate expungement procedure available for limited offenses)	Certificate of Employability; full pardon and expungement of record (absolute or conditional); clemency	Pardon and Restoration of Rights w/no expungement. (separate expungement process available)	Pardon w/no expungement; Restoration of Firearms Rights (separate expungement process available)	Pardon w/no expungement (separate expungement process available)	Pardon. Separate application for expungement required.

CLEMENCY DISCUSSION

I. The Public Costs of Barriers to Employment Resulting from a Criminal Record In Alaska

- In 2015 there were over 35,000 admissions of Alaskans to correctional facilities, with an average of 5,023 Alaskans in some type of correctional facility each day (Alaska Dept. of Corrections 2015 Offender Profile).
- More than 81% of Alaska Offenders held in institutions in 2015 were released within 36 months of admission (Alaska Dept. of Corrections 2015 Offender Profile), resulting in thousands of individuals moving from a correctional facility back into Alaska communities each year.
- A Sentencing Project study estimated that as of 2011 there were approximately 1,520 Alaska parents in prison; the majority of Alaskans released from prison each year are of parenting age.
- The American Bar Association's National Inventory of the Collateral Consequences of Conviction cataloged over 1,500 state and federal statutes and regulations that limit the employment prospects of Alaskans with a criminal record.
- Of more than the 200 clemency petitions currently pending in Alaska,[1] more than 50% are from applicants who have been fully released from the correctional system but are experiencing employment difficulties due to their criminal records.
- Loss of employment resulting from a criminal record adversely impacts Alaska's economy in significant ways:
    - The lost labor output of former offenders reduces the overall economic productivity of the state – researchers studying the national labor market in 2008 estimated that the inability of former offenders to find employment lowered the total male employment rate by 1.5 to 1.7 percentage points. "In GDP terms, these reductions cost the U.S. Economy between $57 and $65 billion in lost output." (Alaska Prisoner Reentry Task Force Five-Year Prisoner Reentry Strategic Plan, 2011-2016). See also, John Schmitt and Kris Warner, *Ex-offenders and the Labor Market, Center for Economic and Policy Research*, http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf (estimating that "ex-offenders lower overall employment rates as much as 0.8 to 0.9 percentage points; male employment rates, as much as 1.5 to 1.7 percentage points; and those of less-educated men as much as 6.1to 6.9 percentage points. These employment losses hit ex-offenders hardest, but also impose a substantial cost on the U.S. economy in the form of lost output of goods and services.")
    - Public funds are diverted from other projects to support the nutritional, housing, medical, and other needs of the children and other family members of former offenders who are unable to find work, as well as of the former offenders themselves
    - Lack of meaningful employment is a key factor driving up recidivism rates: increased recidivism diverts public funds from other projects to cover resulting increases in policing and correctional costs
    - Lack of meaningful employment is a key factor in relapse or increased levels of substance abuse, resulting in diversion of public funds from other projects to cover increased emergency

[1] Although the Executive Clemency Advisory Committee has an "active" status and two members of the current Administration are named members of the three member board, it has not met since ____.

services, hospital admissions, and other medical, mental health, and social welfare needs of former offenders related to substance abuse and treatment

Loss of employment resulting from a criminal record also reduces public safety in significant ways:

- Criminal behavior is statistically far more likely to be repeated when a former offender lacks meaningful employment.
- Joblessness is associated with increases in psychological and physical aggression.
- Unemployment or underemployment is a key predictor of domestic violence, one of the most significant public health and law enforcement challenges in the state.
- Family economic stress contributes to myriad physical and mental disorders including anxiety, sleep problems, digestive ailments, headaches, and increased drug and alcohol use.

II. Executive Action: Authority in Alaska for Clemency

- Article 2, Section 21 of Alaska Constitution provides that, "[s]ubject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures." There is no limitation specified on the scope of the power or specification that use of the power is limited to individual cases. The same is true of AS 33.20.070, which codifies this power.

- However, AS 33.20.080, added in 2007. establishes procedures the governor must follow in granting clemency, including providing prior notice to the Board of Parole. The Board, in turn, must provide notice of the proposed clemency to any victims and undertake an investigation of each case. Although the purpose of the statute is purely procedural, and not to control who may be granted clemency, all of the statutory terms are written in the singular, suggesting the legislature's understanding that grants of clemency are normally individualized. Whether this procedural requirement could be construed to bar acts of clemency providing relief to a class of individuals has not been specifically addressed. Such a conclusion seems unlikely given that it would extend the statute's reach far beyond its stated purpose. However, it would support an argument that the legislative branch has not viewed the executive clemency power as extending to grants of non-individualized clemency. And certainly it raises a separation of powers question. Moreover, as a practical matter, if the procedural requirements of AS 33.30.080 remain unchanged, the logistics of class clemency would be challenging.

III. Other States' Experiences with Class Clemency

A. Executive Grant of Class Clemency in Virginia

- In April 2016, Virginia's governor issued an executive order restoring voting rights to a class of felons instead of individually – covered all felons who've completed their sentences and released from probation or parole.

- Whether the governor's power to grant clemency may be applied to a group or is limited to individual cases will be addressed by the Virginia Supreme Court on July 19, 2016 in the adjudication of a lawsuit brought by the Republican Party.

B. Administrative Approval Mechanism (Delegation of Clemency Power to a Board of Parole)

- Six states -- Alabama, Connecticut, Georgia, Idaho, South Carolina, and Utah -- grant pardons to qualifying individuals through an independent board appointed by the governor. Katie R. Van Camp, *The Pardoning Power: Where does Tradition End and Legal Regulation Begin?*, 83 Miss. L. J. 1271, n.93 (2014).
- Connecticut is among the most active of the above in providing relief. It has for decades authorized a state agency, the Board of Pardons and Paroles, to administratively grant relief from collateral consequences – either through a pardon (full or conditional/provisional) or certificate of employability. (See generally, Connecticut Board of Pardons & Parole Pardon FAQ'S, http://www.ct.gov/bopp/cwp/view.asp?a=4331&q=508292)
- Individuals are eligible to apply for a pardon three years after a misdemeanor or five years after a felony conviction.
- It is an individualized review not merely of a criminal record, but of the severity of an offense, and the defendant's efforts at rehabilitation. It allows for input from the victim, the community and the prosecutor.
- This procedure appears to be providing fairly significant relief. Over the last three years the board has granted full pardons to 732 individuals (See attached Conn. Board of Pardons and Parole Pardons Statistics by Fiscal Year.)
- Given the current investigative obligation of the Alaska Board of Parole under AS 33.20.080, it does not appear that it would require a significant expansion of the Board's current role to develop this type of administrative clemency here.

Connecticut Board of Pardons and Paroles

Connecticut Board of Pardons and Parole
Pardons Statistics by Fiscal Year

PARDONS	2014-2015	2013-2014	2012-2013
Total Applications Received	1103	832	983
Applications Deemed Eligible	963	556	717
Granted (Full, COE/Provisional, Conditional)	317	241	333
Full Pardon	249	206	277
Certificates of Employability/Provisional	68	32	34
Conditional Full Pardons	8	3	22
Total Applications Denied	372	307	381
@ Prescreen	353	293	329
@ Full Hearing	19	14	38
Overall Grant Rate of Pardons	46%	44%	47%
COE Applications Received*	139	*these numbers are part of the total above*	
COE Granted	68		
COE Denied	18		

Please note, in Connecticut an expungement of the applicant's criminal record is obtained with a Full or Conditional Pardon ***only***. Once a Pardon is granted a collaborative effort between Board of Pardons and Paroles, Judicial, State Police, Court Support Services Division, and FBI commences this process. The entire Pardons process can take up to 2 years, depending on the volume of applications received.

As of June 30, 2013 - 175 Granted Pardons pending expungement
As of June 30, 2014 - 262 Granted Pardons pending expungement
As of June 30, 2015 - 178 Granted Pardons pending expungement

CLEMENCY OUTCOMES				
	Received	Incomplete	Denied	Granted
1980-2006	No available Records			
2007	3	0	0	0
2008	11	0	0	0
2009	37	0	37	0
2010	34	3	26	0
2011	85	54	35	0
2012	51	28	13	1
2013	48	26	21	1
2014*	64	38	7	0

All applications received in a calendar year may not be processed that same year.

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Talking Points Relief from Collateral Consequences at Sentencing

Model Penal Code/Uniform Collateral Consequences of Conviction Approach

- Both provide mechanism for Defendant to seek relief from collateral consequences at sentencing.
    - Provides holistic sentencing – all sanctions, civil and criminal, are evaluated and considered by sentencing judge
    - Reduces burden on courts by integrating with original sentencing rather than requiring new proceeding. Although existing proposals provide a model for petitioning the court for relief at any time, a narrower statute could be drafted requiring the petition at the time of sentencing if the court system is concerned about the financial costs and scheduling burdens of providing a new post-conviction relief procedure.

- **Sentencing Court Authority to Order Relief:**
    - **Section 306.6 of the Model Penal Code (1962)** provides that in specified cases a sentencing court may order that as long as the defendant is not convicted of another crime, the judgment of conviction will not be deemed a conviction for purposes of any collateral consequence.
    - **Tentative Draft No. 3 of the Proposed Amendments to the Model Penal Code § 6x.04** provides that at the time of sentencing, upon petition by the defendant and notice to the prosecutor, a court may grant an order of relief from an otherwise-applicable mandatory collateral consequence. (text below)
        - **Section 10 of Collateral Consequences of Conviction Act:** at sentencing (or at any point after) defendant may petition court for order of "limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing." (text below)
    - **State Examples:**
    - 2014 Vermont enacted UCCCA in entirety, including Section 10. See 13 VSA § 8010 (2016) (text below)
    - 2013 Colorado legislation authorizes sentencing court to issue an "order of collateral relief" to "relieve a defendant of any collateral consequences of the conviction, whether in housing or employment barriers or any other sanction or disqualification that the court shall specify." COLO. REV. STAT. §§ 18-1.3-107 (1), (3). (sentencing alternatives), 18-1.3-213(1), (3) (probation), 18-1.3-303(1), (3) (community corrections).
    - 2007 New Jersey amendment to its Rehabilitated Convicted Offenders Act allows sentencing court to issue a certificate "that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses." N.J. STAT. ANN. § 2A:168A-7 .
    - 2016 proposals to adopt section 10 of UCCCA
        - New York SB 355/AO 295 (referred to codes)
        - Pennsylvania SB 1090 (referred to Judiciary)
        - Wisconsin SB677/AB908 (failed to pass)

Like disenfranchisement, the justifications for banning convicted individuals from jury service appear primarily punitive. It is not clear what regulatory goals are served by barring felons from jury service, when as a practical matter, they may be struck by the parties during the voir dire process. As did the original Code, this provision takes the position that jury service should be prohibited during the period of the sentence only, because legitimate regulatory concerns justify such a limitation. Individuals who remain in or return to the community following conviction should see their right to jury service retained or restored.

PROPOSED NEW PROVISION

§ 6x.04. Notification of Collateral Consequences; Order of Relief.

(1) At the time of sentencing, the court shall confirm on the record that the defendant has been provided with the following information in writing:

(a) A list of all collateral consequences that apply under state or federal law as a result of the current conviction;

(b) a warning that the collateral consequences applicable to the offender may change over time;

(c) a warning that jurisdictions to which the defendant may travel or relocate may impose additional collateral consequences; and

(d) notice of the defendant's right to petition for relief from mandatory collateral consequences pursuant to subsection (2) during the period of the sentence, and thereafter pursuant to §§ 6x.05 and 6x.06.

(2) At any time prior to the expiration of the sentence, a person may petition the court to grant an order of relief from an otherwise-applicable mandatory collateral consequence imposed by the laws of this state that is related to employment, education, housing, public benefits, registration, occupational licensing, or the conduct of a business.

(a) The court may dismiss or grant the petition summarily, in whole or in part, or may choose to institute proceedings as needed to rule on the merits of the petition.

(b) When a petition is filed, notice of the petition and any related proceedings shall be given to the prosecuting attorney;

(c) The court may grant relief from a mandatory collateral consequence if, after considering any guidance provided by the sentencing commission under § 6x.02(2), it finds that the individual has demonstrated by clear and convincing evidence that the consequence imposes a substantial burden on the individual's ability to reintegrate into law-abiding society, and that public-safety considerations do not require mandatory imposition of the consequence.

(d) Relief should not be denied arbitrarily, or for any punitive purpose.

(3) When an administrative or other official is required by law to make an individualized determination whether a benefit or opportunity should be afforded to any individual, an order of relief under this Section does not bar a denial of the opportunity or benefit sought.

Comment:

a. Scope. This provision, new to the Code, provides assurance that convicted individuals are made aware of the collateral consequences to which they will be subject, and provides courts with a mechanism for alleviating some types of mandatory collateral consequences on a case-by-case basis. This provision recognizes that although collateral consequences can serve important regulatory goals, there are instances in which the application of a particular collateral consequence will unnecessarily impede a convicted individual's successful reintegration into the law-abiding community without advancing public safety. This is likely to be most true when the consequence bears little connection to the individual's risk of criminal re-offending.

This Section has two subsections. The first, subsection 6x.04(1), requires courts at sentencing to confirm that defendants have been provided with basic written information about the sources and types of collateral consequences to which they may be subject as a result of criminal conviction. This information, which may come from counsel or the court, includes a comprehensive list of relevant state- and federally-imposed collateral consequences (presumably drawn from the sentencing commission's compendium, see § 6x.02(1)), along with notice that the consequences may change with time or as a convicted person moves from one jurisdiction to another. While this information should be provided to the defendant at earlier points in the criminal process (such as at arraignment and plea), the sentencing court is obliged to confirm at the time of sentencing that the defendant has been given written notice of the laws that will govern his post-sentencing conduct. Such full disclosure is an improvement on current practice in most states, where individuals are provided with no (or very limited) information about the long-term collateral consequences of their convictions.

In addition to providing the defendant with notice, § 6x.04(2) authorizes the sentencing court, upon request from the convicted individual at sentencing or at any time during the sentence, to grant relief from the automatic imposition of specific mandatory collateral consequences whose burdens outweigh their regulatory benefits in the particular case. Under § 6x.04(2), a convicted individual may petition the sentencing court, at the time of sentencing or thereafter to grant relief from the mandatory nature of a collateral consequence that is imposed by state law and is related to employment, education, housing, public benefits, registration, occupational licensing, or the conduct of a business. Although the sentencing court is not obliged to grant relief, or even to hold a hearing on the petition, the court may grant relief when it finds, after consulting any

guidance offered by the sentencing commission under § 6x.02(2), that the defendant has shown "by clear and convincing evidence that the consequence imposes a substantial burden on the individual's ability to reintegrate into law-abiding society, and that public-safety considerations do not require mandatory imposition of the consequence." Section 6x.04(2)(c). When the sentencing court grants relief from a mandatory collateral consequence under § 6x.04(2), the court merely removes the mandatory nature of the consequence: it does not prevent other authorized decisionmakers, such as licensing boards, from later considering the conduct underlying the conviction when deciding whether to confer a discretionary benefit or opportunity. See § 6x.04(3).

Uniform Collateral Consequences of Conviction Act

SECTION 10. ORDER OF LIMITED RELIEF.

(a) An individual convicted of an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. The petition may be presented to the:

(1) sentencing court at or before sentencing; or

(2) [designated board or agency] at any time after sentencing.

(b) Except as otherwise provided in Section 12, the court or the [designated board or agency] may issue an order of limited relief relieving one or more of the collateral sanctions described in subsection (a) if, after reviewing the petition, the individual's criminal history, any filing by a victim under Section 15 or a prosecutor, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) the order of limited relief must specify:

(1) the collateral sanction from which relief is granted; and

(2) any restriction imposed pursuant to Section 13(a).

(d) An order of limited relief relieves a collateral sanction to the extent provided in the order.

(e) If a collateral sanction has been relieved pursuant to this Section, a decision-maker may consider the conduct underlying a conviction as provided in Section 8.

13 V.S.A. § 8010

§ 8010. Order of limited relief

Currentness

(a) An individual convicted of an offense may petition for an order of limited relief from one or more mandatory sanctions related to employment, education, housing, public benefits, or occupational licensing. The individual seeking an order of relief shall provide the prosecutor's office with notice of his or her petition. After notice, the petition may be presented to the sentencing court at or before sentencing or to the Superior Court at any time after sentencing. If the petition is filed prior to sentencing, it shall be treated as a motion in the criminal case. If the petition is filed after sentencing, it shall be treated as a post-judgment motion.

(b) Except as otherwise provided in section 8012 of this title, the Court may issue an order of limited relief relieving one or more of the mandatory sanctions described in this chapter if, after reviewing the petition, the individual's criminal history record, any filing by a victim under section 8014 of this title, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence that:

(1) granting the petition will materially assist the individual in obtaining or maintaining employment, education, housing, public benefits, or occupational licensing;

(2) the individual has substantial need for the relief requested in order to live a law-abiding life; and

(3) granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The order of limited relief shall specify:

(1) the mandatory sanction from which relief is granted; and

(2) any restriction imposed pursuant to subsections 8013(a) and (b) of this title.

(d) An order of limited relief relieves a mandatory sanction to the extent provided in the order.

(e) If a mandatory sanction has been relieved pursuant to this section, a decision-maker may consider the conduct underlying a conviction as provided in subsection 8008[1] of this title.

Credits

2013, Adj. Sess., No. 181, § 1, eff. Jan. 1, 2016.

Editors' Notes

UNIFORM LAW COMMENTS

Sections 10 and 11 attempt to harmonize society's interests in public safety and its interest in offender reentry and reintegrating offenders into society. Sections 10 and 11 create new mechanisms for relief of collateral sanctions under some circumstances. Section 10 is aimed at removing specific legal barriers for individuals first reentering society. It allows an individual to

apply for relief from a collateral sanction relating to employment, education, housing, public benefits, or occupational licensing on a showing that the relief will assist in leading a law-abiding life. Section 11 allows an individual to seek general restoration of rights after a period of time has passed in which the individual has demonstrated adherence to the law.

Sections 10 and 11 are based in part on the Model Sentencing and Corrections Act ("MSCA"), § 4-1005. However, this Act does not identify a list of prohibited collateral consequences, as do the MSCA and the ABA Standards. The MSCA, § 4-1001(b) provides that a convicted individual "retains all rights, political, personal, civil and otherwise", including, among others it lists, the right to vote. The ABA Standards has a list of sanctions which should never be imposed under any circumstances, such as "deprivation of the right to vote, except during actual confinement." ABA Standards for Criminal Justice: Collateral Sanctions and Discretionary Disqualification of Convicted Persons, Standard 2.6(a) (3d ed. 2004).

Relief under Section 10 (an Order of Limited Relief) may be granted by the court as a part of sentencing, that is, as part of the guilty plea process or after a jury's guilty verdict, until the close of the proceeding at which sentencing is imposed. If the individual does not obtain relief at sentencing, the order can be issued only by the board or agency (in many states it is likely to be the parole board) assigned responsibility for issuing the orders. The board or agency may act after sentencing even if the individual is still on parole, probation, or otherwise under the control of the court for other purposes. The procedure and evidence to be considered is addressed in Section 13.

Issuance of an Order of Limited Relief does not guarantee that an individual will receive the benefit or opportunity sought; it merely allows case-by-case determination under Section 10(e), and Section 8. Thus, while Section 10(d) provides that the state shall not impose a collateral sanction that has been relieved by an Order, Section 10(e) specifically provides that the decision-maker may examine the facts of the holder's misconduct under Section 8. In effect, a Section 10 Order converts a collateral sanction from which relief is granted into a disqualification.

For example, a regulation might prohibit all individuals with felony convictions from being licensed as Paramedics. An individual who had been a paramedic before conviction, or completed paramedic training after conviction, might persuade a court or the designated board or agency that it was appropriate for the individual to be licensed and employed as a paramedic, and therefore to issue an Order of Limited Relief. That would lift the absolute bar, but would not restrict the Paramedic licensing board from considering whether a license should issue, based on the conduct underlying the conviction, and the board's knowledge of the particular duties and functions of licensees. The decision maker is also entitled to consider the conviction conclusive proof that the individual committed every element of the offense of conviction. Agencies may by rule or policy require applicants to provide or disclose information necessary or helpful to the agency's decision.

The individual must show that relief would "materially assist" in obtaining employment, education, housing, public benefits or occupational licensing, and that the individual has "substantial need" for the benefit to live a law-abiding life. The "materially assist" requirement means that with the relief, alone or through satisfaction of additional conditions, the individual would be eligible for the benefit. The "substantial need" requirement means that the individual must show that the benefit is important in the particular case. Having some housing and employment or other lawful support are important to every individual. But if, for example, an individual already had private housing, and sought relief in order to enter public housing, the individual would be required to show that living in public housing will facilitate living a law-

abiding life. This might be shown if the public housing is in a location that will make employment feasible, or move the applicant away from an area that her probation officer says offers too many temptations to crime. A person already employed might nevertheless show substantial need for an occupational license if with the license the individual would earn enough to pay child support, restitution, or educational expenses.

Sections 10 and 11 differ from the MSCA by limiting its coverage to state actors, excluding private employers. Regulation of public employment and licensing is less controversial than would be reaching into the decisions of private businesses. In addition, public employment and licensing are often done with the public interest in mind (for example, in the context of veteran's preferences, or reserved opportunities for the disabled). If any category of employer is going to take a chance by helping individuals with convictions, it is likely to be the public sector. *See, e.g.*, ABA Commission on Effective Criminal Sanctions, Report to the House of Delegates on Employment and Licensure of Persons with a Criminal Record, No. 103C at 7-9 (Feb. 2007) (discussing municipal and state anti-discrimination policies and programs in New York, Florida, Chicago and Boston); Editorial, *Cities that Lead the Way*, N.Y. Times, Mar. 31, 2006 (discussing anti-discrimination policies for city agencies and city contractors in Boston, Chicago and San Francisco).

However, the Act contemplates that enacting states might choose to make private corporations performing government functions or services, by contract or statute, subject to Sections 10 and 11 through the definition of “decision-maker” in Section 2(4). It is far less intrusive to ask private companies who choose to do business with the state to comply with a policy like this; if a private company finds it objectionable, they may forego the business. Further, even if this is not a point upon which uniformity is likely, this section is not meant to discourage states from deciding on their own that private employers as a group should be covered; some now do and there is no reason they should not continue if it is consistent with their public policy. States should examine their laws governing public employment and licensing to ensure that they conform to this policy.

Sections 10 and 11 can be invoked by individuals facing collateral sanctions in the enacting state based on federal or out-of-state convictions. Section 10 relief granted in one state has effect only in that state, because no state has the power to relieve a sanction imposed by the law of a second state, in the second state's territory. Whether Section 11 relief from one state will be given effect in a second state depends on which alternative version of Section 9(e) is in force in the second state.

Vt. Stat. Ann. tit. 13, § 8010 (West)

ACJC Workgroup on Barriers to Reentry

Staff Notes and Member Assignments from April 22, 2016, 1-3 PM,

at the Brady Building, 5th floor conference room

Commissioners attending:	Brenda Stanfill, Greg Razo
Commissioners absent:	Dean Williams, Jeff Jessee
Participating:	Debbie Miller (DOC) ; Tayler Matthew, Central Peninsula BH; Alysa Wooden (DHSS), Barbara Armstrong (UAA Justice Ctr); Deb Periman; Doug Wooliver
Staff present:	Mary Geddes, Susie Dosik

Next meeting is: **TBD**

Reentry Planning: DHSS coordinator, Alysa Wooden, reported that she is reviewing the contract deliverables and outcomes for the FY16 Recidivism Reduction Program contract, which emanates from a SB64 directive. DHSS intends to continue with these services into FY17. In the past the focus was on deliverables:, e.g. housing, treatment referrals, bus passes, clothing vouchers, medical assistance such as Vivitrol. SB64 required DBH to cross coordinate with DOC on these contracts. As a result, she and Morgen Jaco work closely together, making sure that everyone is working with the same recidivism to measure success, and utilizing pipeline data from DOC.

A second effort is underway with the regional reentry coalitions. Debbie Miller at DOC has designated $500,000 (of Alaska Mental Health Trust money) to the groups in ANC, Mat-Su, Fairbanks and Juneau. This work is part of DOC's Alaska Prisoner Reentry Initiative (AK-PRI) framework, the result of an agreement between DOC and AMHT to restructure how DOC transitions offenders from the institution out into the community. Agnew Beck will be tracking, utilizing pipeline data from DOC. DOC is working to put together policies and procedures for more community in-reach to institutions; the goal is to anticipate and eliminate barriers. They are trying to simplify and improve the transitions between DOC institutions and field offices.

Comr. Razo asked how reentry planning back to rural Alaska is progressing. Wooden clarified that the only reentry program created from the Recidivism Reduction Program requirements is for the Anchorage area only. This is a different effort than under the AK-PRI framework, i.e. DOC's work with the regional reentry coalitions. Razo asked whether, in areas where no regional coalitions exist, could tribal entities be the partner, 50% of the population lives in rural Alaska, and tribal organizations are the community-based organizations who could provide reentry support. Thus fnding also needs to be provided to those regions as well for their planning efforts. Debbie Miller assured Razo that everyone involved concurs with that opinion, and that this is an area of need for more development. Wooden said that she would pass on the concerns to Diane Casto, the new Behavioral Health Policy Advisor. Razo asked if the Commission could get a report on reentry planning (AK_PRI) and the next Recidivism Reduction funding cycle[1]* at the June Commission meeting.

[1] At this point, the department (DHSS) is making preparations, but no formal announcements for criminal justice funding cycles, contracts, grants, etc. have been announced.

Executive Clemency Power

John Skidmore had been invited but was not present. Geddes noted that she had been in contact with Lacy Wilcox from the Governor's office who indicated interest in the topic. Jeff Edwards of the Parole Board has the resources to run Clemency investigations, but the process has not been activated.

Geddes provided a hand-out which outlined the options. (See attached) Mary Geddes noted that clemency can be exercised (through the executive branch if there is interest) to classes of people, not just individuals. Its efficient and can provide meaningful relief. Additionally there are states that structure relief by allowing petition to the court to vacate convictions for some nonviolent crimes under certain specified circumstances, like no subsequent criminal conduct.

Doug Wooliver, Deputy Administrative Director of the Court System, noted that we will need to explore the costs of putting any such process into place, and determine how far it will go in terms of giving relief, e.g., expungement. Geddes noted that defendants could be charged for certain costs, like the cost of running criminal records checks, and that they wouldn't need appointed counsel. Barb Armstrong noted that the examples and options are many with respect to sealing and expungement statutes.

Armstrong also noted that there has been a highly favorable cost-benefit analysis of record expungement that has been done by Stanford with respect to its use in Santa Clara County, California, through something called the Records Clearance Project.[2]

Brenda said that she thought there might be interest in giving relief through class clemency. She perceives that the idea of giving relief to classes of people might have a lot of appeal. She is thinking that relief to people with SIS-set asides who had no subsequent convictions and MISC simple possessions, might be worth proposing.

The talking points on this proposal would have to include research on the great disabilities resulting from convictions, research on other states' experience and Model Penal Code. **Deb Periman will write up this proposal.**

We talked about a possible meeting on Thursday, May 26, from 9-11, subject to further confirmation.

Public comment was sought; no additional comment was given.

[2] The report's main finding from the Records Clearance Project (RCP) is: through expunging the records of RCP's average number of clients per year, there is an estimated overall gain of $303,552 in net benefits in a year and an estimated gain for the government of $34,308 in net benefits across three years. These cumulative net benefits would increase across time.
file:///S:/Mary%20Geddes/ACJC/ACJC%20Workgroups/Barriers%20to%20Reentry%20Workgroup/Cost-Benefit%20Analysis%20of%20Expungement%20Stanford.pdf.

OPTIONS FOR DISCUSSION 4/22

EXECUTIVE CLEMENCY POWER

- Improve the effect of executive clemency power.
    - Recommend statute which allows the expungement of a conviction record when governor has granted a pardon. See Washington State RCWA 9.94A.030(11)(b). Recommend accompanying court rule to do the same.
    - Recommend statute allowing the governor to terminate past statutory revocations of license revocation.
- Give oft-promised legal effect to that class of defendants who had SIS conviction set asides.
    - Recommend that governor grant amnesty/pardon/expungement to that class of individuals who received an SIS set-aside, and who have no subsequent conviction (of any type? Felony only?)
- Give retroactive relief to that class of defendants convicted of class C felony or misdemeanor marijuana possession if specific conduct has since been de-criminalized, as long as if they have not reoffended.
    - Oregon laws require 4 year wait from date of conviction; no subsequent additional convictions; and not all offenses qualify, e.g. not any MJ grow within 1000 feet of a school or selling to a minor. Burden placed on individual to show conduct is now non-criminal.

COURTS' POWER TO VACATE OR SET-ASIDE CONVICTION

- Washington: person may apply to sentencing court WRC 9.94A.640
    - Person convicted of a misdemeanor may petition to court who has completed all terms of the sentence to vacate conviction and the record as long as
        - Five years since finishing all requirements
        - No prior granted petition to vacate
        - No pending charges
        - No convictions since
        - Not a violent offense
        - Not a DUI
        - No sex offense
        - No prior conviction for DV
    - Person convicted of some felonies
        - Ten years since finishing all aspects of sentence
        - No violent felony

        - No crimes against a person
        - No pending charges
        - No conviction since

- Oregon: person may apply to sentencing court ORS 137.225 (hearing at which victim shall be permitted to speak)
    - Any misdemeanor
    - Lower level felonies after
        - three years if you are off probation and if you had one charge only
        - ten years if you had two or more
    - Higher level felonies only if they were non-person and more than 20 years old
        - No subsequent arrests or convictions except for traffic
    - Not if DUI or traffic offense
    - Not if sex crime or crime against a child
        - Except for carve-out for Romeo and Juliet
    - Some offenses get automatic relief unless court makes finding of clear and convicing evidence that motion would not be in the interests of justice

4/22/2016 MG summary of Board of Parole spreadsheet of Active/current applications for some form of executive clemency – *NB: spread sheet has lots of incomplete entries*

250 active applications- looking at Parole Board entries only, not applications
Most are seeking pardons, not commutations of sentence

Case type

- 56 misdemeanor cases including assault 4s
- 78 cases (fel and misd) that have no violent convictions (incl. DUIs)
- 22 cases of DUI that do not have a dissimilar 2nd offense along with it
  - 13 of these are identified as felony
- 18 cases involving some level of MISC

Relief sought

- 2 seek food stamps – MISC 2
- 2 mention housing – theft; DV asslt and mal dest.;
- 6 specifically mention drivers' license
- 3 seek to avoid sex registry– unkn; SAM 2
- 24 seek pardon to restore gun rights;
  - of these at least 4 are misd assaults
  - of these at least 4 have felony DUIs
  - at least two of these has MISC 4
- 8 seek to enter Canada
  - Convicted for: Misdo DUI (3) , MISC 4, MISC6, unspecified level of assault
- 2 seek remission of fine and forfeiture only; +1 asks pardon because of fines

116 entries include "pardon detail" of "employment"

- Ed./Job/Licensing issues
  - Unable to use degree – MISC 2
  - Social worker – assault 4; robbery and asslt 3; unk
  - CDL license – theft 3
  - Military – theft 2; asslt 4
  - Law enforcement – arson 2; theft 3; vehicle theft 1; ukn; forgery 2
  - Medical field- unk; manslaughter; asslt 3 and CM3; unk; DV asslt, DUI, SL; asslt 4 DV; Asslt 4 and MISC 6; DUI; unk; prostitution and misd theft
  - Nursing degree – asslt 3; felony DUI; unkn
  - North Slope – felony and misd. theft
  - Biz admin – fel assault
  - Human service provider – asslt 4
  - Engineering degrees and license: MISC 3
  - Teaching – asslt 4
  - Real estate – asslt 3 kk
  - Immigration – MISC 2
  - Insurance sales agent – theft 2
  - Education programs – asslt 3 and DUI; unk.
  - Bonding for biz- theft

ACJC Workgroup on Barriers to Reentry

Staff Notes and Member Assignments from April 5, 2016

at the Brady Building, 5th floor conference room

Commissioners attending:	Brenda Stanfill, Jeff Jessee
Commissioners absent:	Dean Williams
Participating:	Deb Periman (UAA), Morgen Jaco (for DOC Comr. Dean Williams) Alysa Wooden (DHSS), Cathleen McLaughlin (partners for Progress), Barbara Armstrong (UAA Justice Center)
Staff present:	Mary Geddes, Susie Dosik

Next meeting is: **April 22, 2016, 1:00-3:00 PM, Brady Building 5th floor**

Materials distributed before meeting:
- Memo on DHSS Proposed Regulatory Changes (Dosik)
- Brief Overview 3 State Expungement Statutes (Armstrong)
- Snapshot Offender Employment (Periman)

DHSS proposals for regulatory changes. DHSS has proposed changes to barrier crimes and other related regulations at https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=180130. At staff's request the comment period on the proposed regulations had been extended by another 45 days to April 25. Susie Dosik prepared an analysis of the proposed changes, identifying six changes, for the workgroup. (Attached)

1. Currently the requirements for a criminal history check and bars to employment in 7AAC 10.900-.990, as written, applies only to "barrier crimes." The proposed DHSS regulations as crafted appear to significantly expand barriers to employment by including "civil conditions" and "findings" registered in some specified but other unidentified civil databases as among those events which can presumptively bar individuals from employment. Staff Susie Dosik said that the proposed language seems both broad and vague, allowing checks for conduct without respect to time limits and in contexts where much less due process has been afforded. Participants thought the vague language ("any court or agency finding that the person was "involved in a matter that the department determines would be inconsistent with the standards for protection of the health, safety, and welfare of recipients of care" (Proposed 7 AAC 10.905 (3)) allows DHSS too much discretion.

2. With respect to the proposed change that individuals would be permitted to apply directly for a waiver, instead of relying on an employer to undergo the process, 7 AAC 10.902 and throughout, was thought to be a helpful change.

3-4. Proposed additional permanent barrier crimes seemed merely to bring state law into alignment with federal requirements. There was also an addition of several new 5-year barrier crimes. Susie did not think adding new barrier crimes was particularly significant assuming that there is always a nexus to the employment sought.

5-6. A proposed regulation, 7 AAC 10.905(f), eliminating 1-year barrier crimes from the matrix, seems positive. Also, under 7 AAC 10.910 - .990, time frames for the waiver process are clarified and made transparent, another very positive change.

Comr. Stanfill agreed with Susie's summary of the proposed changes and asked whether the workgroup should propose that the Commission formally comment. Comr. Jessee recommended doing so. There was consensus that Susie should write-up a proposal for a Commission Recommendation reflecting both concerns with #1, but also its positive reactions to #2 and #6.

Clemency/Expungement. Deb Periman and Barbara Armstrong had prepared two documents: one which outlined employment barriers faced by individuals with a criminal record, and the other explaining a few other states' statutes which provide clemency and expungement. We listed the different types of issues under this topic:

- the currently inactive executive clemency process (power reserved for the Governor)
    - Const. Art. 3, § 21;
    - AS 33.20.070,
    - 33.20.080(a))
- current records rules and laws concerning case information and whether those laws need further reform
    - §22.35.030 (new);
    - 47.12.300;
    - Rule 37.5. Access to Court Records;
    - Rule 37.6. Prohibiting Access to Public Case Records;
    - Rule 37.7. Obtaining Access to Non-Public Court Records;
    - Rule 37.8. Electronic Case Information
- the sealing of criminal justice information "that, beyond a reasonable doubt, resulted from mistaken identity or false accusation."
    - § 12.62.180
- the availability of DPS records (electronically stored in APSIN) for use in background reports reflecting both arrests and convictions, available to any person for a fee
    - 13 AAC 68.310

We discussed the difference in those mechanisms that achieve a legal effect (i.e. such that individual can lawfully state they have no criminal record) versus those that achieve a public effect (records are unavailable through the State). We acknowledged the difficulties in this digital info age of being able to 'retrieve' any conviction information which is already 'out there.' Barbara noted that because of this, expungement while valuable is not 100% successful in removing barriers. Nevertheless there was interest in a statutory approach that could 'pair' both effects.

At this point in the discussion, Comr. Jessee had to disconnect because of another matter. Comr. Stanfill noted that 'pardons' are very politically unpopular and maybe the Washington state model is a better approach. The 'lookbacks' for subsequent criminal acts seem to make sense in terms of recidivism statistics. (see excerpt below)

- Vacating record of conviction for certain felony and misdemeanor convictions: Per Washington's Sentencing Reform Act of 1981, amended in 2012. "Every offender who has been [discharged from sentence] may apply to the sentencing court for a vacation [emphasis added] of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.
- Effect of vacatur: The fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. A conviction that has been vacated under Wash. Rev. Code § 9.94A.640 may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.
- Ineligibility to have a record of conviction "cleared": An offender is ineligible to have the record of conviction "cleared" if he has been convicted of a new crime, if there are any charges pending against him, *or if the offense was a violent offense or crime against a person (including domestic violence and misdemeanors)*. Class A felonies (violent offenses and crimes against the person) are ineligible for vacatur, as are certain Class C felony repeat juvenile DUI offenses. Convictions for misdemeanors deemed violent or sex offenses are not eligible to be "cleared."
- Waiting period to apply: Felony B and C offenders must wait 10 years after the date of discharge, with no new crimes intervening. Misdemeanor offenders must wait 3 – 5 years following discharge.
- Impact on federal immigration consequences: Vacatur of a conviction does not relieve the federal immigration consequences of a conviction.

Comr. Stanfill noted that any new scheme would have to consider the list of – and possibly defer to - federal barrier crimes.

Deb and others remembered that Doug Wooliver may have earlier legislators' proposals for an expungement statute. [I have contacted Doug who will look for such info].

Anchorage Reentry Coalition: Morgen Jaco, Cathleen McLaughlin and Alyssa Wooden are participating in the Reentry coalition and workgroups and will mine them for ideas to forward to the Commission. Cathleen said that the Housing Workgroup has had some recent discussion about existing AHFC policies.

Ban the Box: Mary Geddes reported that she is still awaiting a response from DOA Commissioner Sheldon Fisher on the Ban the Box proposals which she and Susie Dosik discussed in February with the Deputy Commissioner Leslie Ridle. By way of background, the proposed regulations would impact state employee hiring except when there are statutory or regulatory restrictions on eligibility for hiring, e.g. corrections, law enforcement. The proposed statute would have broader reach, extending Ban the Box provisions to quasi-governmental entities and state contractors.

M E M O R A N D U M

TO: Barriers to Reentry Workgroup

FROM: Susie Mason Dosik

DATE: March 2, 2016

RE: **Proposed Regulatory Changes to 7 AAC 10 relating to Title 47 Barrier Crimes**

The Department of Health and Social Services has proposed changes to 7 AAC 10 which governs Title 47 Barrier Crimes. Staff reviewed the "Proposed Changes to Regulations" published December 28, 2015 and attended a public hearing on February 12, 2016. Staff reviewed the proposed regulations. The most relevant ones to this workgroup are described below:

1) **The regulations would amend the applicability of 7 AAC 10.900 - .990 to allow civil "conditions" to trigger Title 47 barriers.**

   7 AAC 10.015 and throughout. These provisions would broaden the scope of the regulations so that the Title 47 barriers would be triggered by "civil findings," such as licensing decisions, placement on a registry, or any court or agency finding that the person was "involved in a matter that the department determines would be inconsistent with the standards for protection of the health, safety, and welfare of recipients of care." (Proposed 7 AAC 10.905 (3).

2) **Individuals would be permitted to apply directly for a waiver, instead of relying on an employer to undergo the process.**

   7 AAC 10.902 and throughout. If adopted, these regulatory changes would explicitly allow individuals to preemptively obtain a waiver for certain positions. For example, it would allow a person who wished to apply to Providence Hospital as a medical assistant to obtain a waiver prior to his/her employment application to the hospital. Current regulations do not permit this.

3) Adds new permanent barrier crimes

7 AAC 10.905(b)(10). Sex trafficking 1, 2, and 3 (replaces Promoting Prostitution 1, 2, and 3).

7 AAC 10.905(b) (13)-(15). New permanent barriers would include: any criminal offense or civil finding for which federal laws prohibit approval, or restrict payments (including adoption and foster care assistance, and Medicare and state health care assistance); placement on a registry or database for a reason that is inconsistent with the standards for the protection of public health, safety, and welfare; offenses in 47.05.310(c)(1), including neglect, abuse, or exploitation of a child or vulnerable adult; and medical assistance fraud under AS 47.05.210.

7AAC 10.930(i) and (j) would be repealed and (k) amended, however, thus permitting a waiver for any permanent barrier crime with additional review.

4) Adds new 5-year barrier crimes

7 AAC 10.905(d) (5). New five-year barrier crimes would include Harassment 1, Misconduct Involving a Corpse, Cruelty to Animals, Promoting an Exhibition of Fighting Animals, Misconduct Involving Weapons 3, Criminal Possession of Explosives, and Unlawful Furnishing of Explosives.

5) Eliminates 1-year barrier crimes

7 AAC 10.905(f). One-year barrier crimes currently include Criminal Mischief 5 (if DV-related), Unlawful contact 1 and 2, and Harassment (if DV-related). These would be eliminated from the matrix.

6) Time frames for the waiver process are clarified and made transparent.

7 AAC 10.910 - .990. If adopted, the proposed regulations, many of them repealed and readopted, would formalize the department's current practices regarding the Title 47 waiver process and time guidelines. Some provisions include: 7 AAC 927 Request for Redetermination; 7 AAC 10.930(a)(4) (permitting a statement and proof from the individual describing actions the individual has taken to reduce the risk of reoffending); 7 AAC 10.930(b)(1) (department's review of waiver application for completeness within 30 days and opportunity to cure within 30 days); 7 AAC 10.935 (Review of a request for a variance to include review committee, review by the commissioner, time frames, etc.); 7 AAC 10.950 (Request for reconsideration of a variance request decision).

Brief Overview of Selected State Expungement & Sealing Statutes

Information excerpted and condensed from National Association of Criminal Defense Lawyers (NACDL) Restoration of Rights Resource Project website https://www.nacdl.org/rightsrestoration/

Texas - information on NACDL website updated January 2, 2015

More restrictive system: A pardon is required before a conviction can be considered for expungement. Deferred adjudication may result in sealing for most offenses, with a five-year waiting period for felonies; "expunction" for Class C misdemeanors. "Expunction" also available for non-conviction records.

- **Expungement of pardoned offenses and nonconviction records:** "[E]xpunction" of all arrest records may be ordered in cases where an arrest does not result in a conviction, or where the conviction has been subsequently pardoned. Individuals are entitled to expungement of acquittals, dismissals, and arrests not leading to conviction, unless another offense for which the person was convicted or remains to be prosecuted, or if the person has been convicted of another crime within the previous five years.
- **Effect of expungement**: "[T]he release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited," and "the person arrested may deny the occurrence of the arrest and the existence of the expunction order." …"When questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, [the person] may state only that the matter in question has been expunged." Expungement applies to pardons restoring civil rights, as well as pardons predicated upon a finding of innocence.
- **Waiting period:** Except in the case of pardon and acquittal, or where the statute of limitations for prosecuting has tolled, a waiting period applies: 180 days for a class C misdemeanor charge (if no felony charge from same incident); one year for class B or A misdemeanor (if no felony charge from same incident); three years for felony. The waiting period may be waived by the prosecuting attorney.
- **Impact of community service:** Except for Class C misdemeanors, offenders are not entitled to expunction where a period of community supervision has been ordered, even if the charges are later dismissed pursuant to a deferred adjudication plan.
- **Deferred adjudication nondisclosure:** A person discharged after completion of community supervision may petition the court for an "order of nondisclosure."
- **Exceptions under deferred adjudication nondisclosure:** Exceptions specified include offenses requiring sex offender registration, and specified violent offenses. Most offenses are eligible for deferred adjudication, except for DUI, repeat drug trafficking near a school, a range of repeat felony sex crimes, and convictions for child sex crimes and murder.
- **Attorney General opinion re meaning of nondisclosure:** An order of nondisclosure prohibits criminal justice agencies from disclosing to the public criminal history record information related to an offense, and criminal history record information subject to an order of nondisclosure is excepted from required disclosure under the Public Information Act. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes; one of the specified licensing and employment agencies; or the person who is the subject of the order. (The agencies specified include schools, hospitals, various public licensing boards and agencies.) If a law enforcement agency receives a request for information subject to a section 411.081(d) nondisclosure order from a person who is not authorized to receive the information, the agency may inform the person that it has "no record."

Washington – excerpted from NACDL website updated July 7, 2014

Mid-range system: All but the most serious offenses may be "vacated" after 5–10 year waiting period; most misdemeanors eligible after 3–5 year waiting period. Pardon automatically vacates conviction.

- **Vacating record of conviction for certain felony and misdemeanor convictions:** Per Washington's Sentencing Reform Act of 1981, amended in 2012. "Every offender who has been [discharged from sentence] may apply to the sentencing court for a *vacation* [emphasis added] of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.
- **Effect of vacatur:** The fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution. A conviction that has been vacated under Wash. Rev. Code § 9.94A.640 may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.
- **Ineligibility to have a record of conviction "cleared"**: An offender is ineligible to have the record of conviction "cleared" if he has been convicted of a new crime, if there are any charges pending against him, or if the offense was a violent offense or crime against a person (including domestic violence). Class A felonies (violent offenses and crimes against the person) are ineligible for vacatur, as are certain Class C felony repeat juvenile DUI offenses. Convictions for misdemeanors deemed violent or sex offenses are not eligible to be "cleared."
- **Waiting period to apply:** Felony B and C offenders must wait 10 years after the date of discharge, with no new crimes intervening. Misdemeanor offenders must wait 3 – 5 years following discharge.
- **Impact on federal immigration consequences:** Vacatur of a conviction does not relieve the federal immigration consequences of a conviction.

Rhode Island – information on NACDL website updated April 2015

More liberal system: Expungement for non-violent first offenders 5–10 years after completion of sentence. Sealing following deferred adjudication and successful completion of five-year probationary period.

- **Definition of expungement**: "the sealing and retention of all records of a conviction and/or probation and the removal from active files of all records and information relating to conviction and/or probation."
- **Expungement exception:** Expungement is not available to persons convicted of specified serious violent offenses.
- **Disclosure of conviction:** Person whose conviction has been expunged "may state that he or she has never been convicted of the crime" in any application for employment, license, or other civil right or privilege, or any appearance as a witness.
- **Requirement to disclose conviction**: Conviction must be disclosed in connection with application for certain jobs, such as teaching, early childhood education, law enforcement, a coaching certificate, and the practice of law, and for purposes of certain specified licensing decisions.
- **Waiting period for first offender expungement: Felony** first offenders may apply for expungement of record 10 years after completion of sentence. **Misdemeanor** first offenders may apply for expungement of record 5 years after completion of sentence.
- **Nonconviction records:** "Any person who is acquitted or otherwise exonerated of all counts in a criminal case, including, but not limited to, dismissal or filing of a no true bill or no information, may file a motion for the sealing of his or her court records in the case, provided, that no person who has been convicted of a felony shall have his or her court records sealed pursuant to this section."
- **Deferred sentencing**: A record of deferred sentence may be sealed after a five-year probation period.
- **Filings:** A post-plea disposition pursuant to R.I. Gen. Laws § 12-10-12 ("Filing of Complaints") results in the automatic destruction of the complaint after one year of good behavior (no arrests during this year and compliance with all imposed conditions of the "filing").
- **Drug Court:** Post-plea cases sent to drug court are dismissed and expunged after successful completion of the program.
- **Nolo plea followed by probation:** A person who pleads nolo contendere and is placed on probation will be deemed to have no conviction if probation is successfully completed**.** Evidence of the nolo plea may not be introduced in any court proceeding, except that it may be provided to a court in a subsequent criminal proceeding. Where the offense constitutes a crime of violence, the plea shall be regarded as a conviction for purposes of purchasing a firearm. Sealing available on same basis as any other nonconviction record.

NOTE: Oregon

Oregon passed a statute in June 2015 which allows for expungement of certain marijuana offenses committed prior to the state's legalization of the drug.

Snapshot: The Public Costs of Barriers to Employment Resulting from a Criminal Record

- In 2015 there were over 35,000 admissions of Alaskans to correctional facilities, with an average of 5,023 Alaskans in some type of correctional facility each day (Alaska Dept. of Corrections 2015 Offender Profile);
- More than 81% of Alaska Offenders held in institutions in 2015 were released within 36 months of admission (Alaska Dept. of Corrections 2015 Offender Profile), resulting in thousands of individuals moving from a correctional facility back into Alaska communities each year
- A Sentencing Project study estimated that as of 2011 there were approximately 1,520 Alaska parents in prison; the majority of Alaskans released from prison each year are of parenting age
- The American Bar Association's National Inventory of the Collateral Consequences of Conviction cataloged over 1,500 state and federal statutes and regulations that limit the employment prospects of Alaskans with a criminal record
- Of more than 200 clemency petitions currently pending in Alaska, more than 50% are from applicants who have been fully released from the correctional system but are experiencing employment difficulties due to their criminal records
- Loss of employment resulting from a criminal record adversely impacts Alaska's economy in significant ways:
    - The lost labor output of former offenders reduces the overall economic productivity of the state – researchers studying the national labor market in 2008 estimated that the inability of former offenders to find employment lowered the total male employment rate by 1.5 to 1.7 percentage points. "In GDP terms, these reductions cost the U.S. Economy between $57 and $65 billion in lost output." (Alaska Prisoner Reentry Task Force Five-Year Prisoner Reentry Strategic Plan, 2011-2016).
    - Public funds are diverted from other projects to support the nutritional, housing, medical, and other needs of the children and other family members of former offenders who are unable to find work, as well as of the former offenders themselves
    - Lack of meaningful employment is a key factor driving up recidivism rates: increased recidivism diverts public funds from other projects to cover resulting increases in policing and correctional costs
    - Lack of meaningful employment is a key factor in relapse or increased levels of substance abuse, resulting in diversion of public funds from other projects to cover increased emergency services, hospital admissions, and other medical, mental health, and social welfare needs of former offenders related to substance abuse and treatment
- Loss of employment resulting from a criminal record reduces public safety in significant ways:
    - Criminal behavior is statistically far more likely to be repeated when a former offender lacks meaningful employment
    - Joblessness is associated with increases in psychological and physical aggression
    - Unemployment or underemployment is a key predictor of domestic violence, one of the most significant public health and law enforcement challenges in the state
    - Family economic stress contributes to myriad physical and mental disorders including anxiety, sleep problems, digestive ailments, headaches, and increased drug and alcohol use

ACJC Workgroup on Barriers to Reentry

Staff Notes and Member Assignments from February 12, 2016

at the Brady Building, 5th floor conference room

Commissioners attending:	Brenda Stanfill, Dean Williams
Commissioners absent:	Jeff Jessee
Staff present:	Mary Geddes, Susie Dosik
Participating:	Doreen Schenkenberger

Next meeting is: March 11, 2016, 1:00-3:00 PM

Anchorage Reentry Coalition: Mary has contacted the Anchorage Reentry Coalition in order to better out outreach and avoid duplication of effort. The Anchorage Coalition has formed the following committees: Employment/Education, Housing, and Behavioral Health.

Ban the Box: Mary Geddes and Susie Dosik reported on their contact with DOA Deputy Commissioner Leslie Ridle, who had invited Director of Labor Relations and Personnel Kate Sheehan in for the teleconference. Prior to the meeting, Leslie had been copied with Susie's written proposals for (1) a statute and (2) changes to the DOA's hiring regulations. [After the meeting Mary sent along additional information on Ban the Box measures enacted by other states and local governments.] Because of the press of business, Ms. Ridle had not yet had a chance to review the documents. Following our brief presentation, Ms. Ridle indicated she would review and contact both the Governor's office and confer with the Commissioner of Administration Sheldon Fisher to determine their interest in Ban the Box measures. By way of background, the proposed regulations would impact state employee hiring except when there are statutory or regulatory restrictions on eligibility for hiring, e.g. corrections, law enforcement. The proposed statute would have broader reach, extending Ban the Box provisions to quasi governmental entities and state contractors. Staff will follow through with Leslie Ridle.

DHSS proposals for statutory and regulatory changes. DHSS, through the Governor, has submitted changes to the laws concerning criminal history checks and the criminal and civil registry of persons who may be precluded from state licensing and certification. The statutory proposal is in SB 151. The agency has also proposed changes to barrier crimes and other related regulations; this set of changes can be found at https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=180130. At staff's request the comment period on the proposed regulations was extended by another 45 days to April 25. This extended comment period should be sufficient for commenting on the proposed changes. Susie Dosik, who attended a public hearing on the changes will coordinate.

Clemency/Expungement. Staff noted the longstanding public interest in expungement and clemency type measures for individuals with old convictions and SIS dispositions. Individuals have mentioned clemency (generally speaking) as a way to ameliorate the disabilities arising from even minor offenses such as Minor Consuming. The Executive Clemency program has been in limbo for years. This may be the time however to re-visit expungement, especially with respect to discrete classes of offenses and time frames. Deb Periman and Barbara Armstrong will asked to attend next meeting because of their work on the topic.

Barriers to Reentry Workgroup
Alaska Criminal Justice Commission
Staff Notes and Meeting Summary July 8, 2015, 1:30 PM to 3:00 PM
At the Atwood Conference Center, 550 W. 7th Avenue, 1st floor conference rooms, Anchorage

Commissioners present:	Ron Taylor, Brenda Stanfill, Alex Bryner
Commissioners absent:	Jeff Jessee, Greg Razo
Participants present:[1]	Steve Williams (t), Barbara Armstrong, Kaci Schroeder (DOL)(t), Matt Widmer (PD), Phil Cole, Al Wall (t), Doreen Schenkenberger, Jordan Shilling, Leslie Hiebert, Pat Balardi, Kaci Schroeder (t), Nancy Meade, Fred Dyson
Pew/JRI Staff present:	Terry Schuster, Zoe Townes
AJC Staff Present:	Susanne DiPietro, Mary Geddes, Giulia Kaufman, Susie Dosik, Brian Brossmer (new AJC staff member)

Future Meetings: **Title 28 Subgroup Friday, August 7, 12:00 -1:30 PM**
Attorney General's Conference Rooms in Anchorage, Juneau, Fairbanks

Barriers Workgroup Friday, August 21, 2:00-4:00 PM
Attorney General's Conference Rooms in Anchorage, Juneau, Fairbanks

Materials Provided: See Mary Geddes's emails (with prior Employment Subgroup meeting summary and Ban the Box memo).

Discussion of Barriers Workgroup priorities:

The larger Barriers Workgroup has not met since March in Juneau. At that time, the identified areas of interest were: employment, housing and Title 28 issues. Expungement has been recently added to the list of issues within this group's bailiwick.

Housing: While the group agrees that housing should be a priority no one has yet taken the lead on that issue. Commissioner Taylor indicated that DOC is involved with a housing coalition that has been working on these issues for 4 years, and is successful. The question then is whether the ACJC needs to take on this issue. Ron will provide Mary with more information about this group and the scope of its work.

Title 28: The ACJC is charged with the review of Title 28. Within the vehicle of SB 91, Sen. Coghill's staff has been actively looking at some specific areas under Title 28: the efficacy of dual administrative and judicial license revocations, shortening lifetime revocations, and creating more opportunities for limited licenses. Among those indicating a willingness to work on Title 28 issues are: Matt Widmer from the PD, Kaci Schroeder from Law, Doreen Schenckenberger from Partners for Progress; Commissioner Bryner. Susanne DiPietro can also assist. Among the specific questions raised by Senator Coghill are : How many

[1] Unfortunately, this and other ACJC meetings on July 8 were plagued by technical difficulties with video and audio conferencing. Our apologies to remote attendees who were unable to hear or participate.

of the DWLS (convictions) stem from reasons other than a DUI? What are all of the offenses/convictions and other reasons that can cause you to lose your license? The Title 28 Sub- workgroup will have its first meeting on Friday, August 7 at 12:00 PM. Mary will send out a meeting announcement.

Expungement: Commissioner Bryner drew the group's attention to two recent documents circulated by staff prior to this meeting: the UAA Justice Center article on expungement (linked here) (by Barbara Armstrong and Deb Periman) and a Leg Legal memo from 2013. He said both suggested that expungement enactments by the legislature might be a violation of executive (clemency) power. Everyone agreed to look at these documents in advance of the next meeting. Mary will also send along a recent federal district court opinion in which the court granted expungement (linked here) to an individual who had been denied jobs due to a 13 year old criminal conviction.

Senator Dyson said expungement is an important issue because there seems to be no remedy for ex-offenders even though we know most people 'age out' of criminality. Why can't they use firearms to hunt? Why can't they be foster parents? How much time has to go by before their rights are fully restored? If bankruptcy allows debts to disappear why aren't there processes which put an end to a criminal record?

Barbara Armstrong talked about the special challenge posed by the digital age, in which records live on forever.

Commissioner Bryner suggested that the group could look to Rule 11 to see if people are adequately advised before they plead guilty of the collateral consequences they face. Susie Dosik said that there were models for expanded advisements if that's the direction we wanted to go in.

Commissioner Taylor noted that he has an appointment with the governor later this week to discuss the use of his clemency and pardon powers. There are 240 applications pending at present, but Ron said any expression of interest by the governor in this process could open the floodgates.

A Remand from the Commission: Vet Ban the Box Proposal

Mary provided the background: the Employment Subgroup proposed a Ban the Box enactment but the Commission declined to act on the proposal without it being first vetted by the larger Barriers Workgroup. Commissioners indicated that they wanted the Workgroup to obtain input from HR professionals and employers and other states that have implemented such measures. In advance of this meeting, Mary circulated a memo expanding the background for the proposal and has made contacts both with the Department of Labor and the Department of Administration.

It was further suggested that staff contact the Alaska State Management Council and the National Federation of Businesses. Barbara Armstrong volunteered to contact Anne Sakamoto, an UAA HR Director who serves on the Board of the Anchorage Society for Human Resource management.

Senator Dyson suggested that the group consider a proposal for public employers first. Susanne suggested that incentives for private employers be publicized and expanded. Commissioner Bryner

suggested that we look at the incentives offered by other states. Senator Coghill's office noted its interest in a statute providing immunity from negligent hire lawsuits. Matt Widmer noted that the point of Ban the Box is to get ex-offenders out of the low paying jobs. Commissioner Stanfill asked at what point would the inquiry be made, e.g. after the initial interview?

Mary noted that it seemed that the Commission wanted a few more specifics as to state agency practices, professional HR and business community input, and the experiences of other states. The plan will be to report back on these contacts by the next Workgroup meeting, and hopefully obtain consensus on how to proceed.

Employment Subgroup Report on Title 47

Brenda and Mary provided some background about DHSS barriers created by regulation. These regs specify a presumptive exclusion from DHSS employment based on certain convictions for varying time periods. Accordingly there are requirements for entities that receive DHSS funds to conduct background checks to screen for such convictions. The requirements can be onerous with respect to the breadth of the checks required (as to which employees or subcontractors have to be screened). While barriers to hiring can be overcome, a waiver process is required.

Stacie Kraly of the AG's office recently participated at the group's invitation to give the group background information on why the Title 47 statutes on barrier crimes and criminal background checks were enacted, how the Department of Health and Social Services regulation on barrier crimes and background check process developed, and to provide information about federal law that guides the barrier crimes. See Subgroup Meeting Summary for more specifics.

ACJC Workgroup on Barriers to Reentry
Staff Notes and Member Assignments, March 31, 2015
Atwood Conference Center,
Anchorage, Alaska

Commissioners attending: Jeff Jessee, Greg Razo, Ron Taylor
Staff present: Mary Geddes, Susie Dosik
Participating: Deb Periman, Kaci Schroeder, Steve Williams, Dennis Schranz, Phil Cole

Future meetings: None scheduled

The group agreed that the Workgroup should expand its current focus to legally created barriers to housing and public assistance. DOC will continue to implement its policies with respect to reintegration of the offender back into the community but many of the restrictions are law-related and therefore not within the purview of its own work.

Susie Dosik mentioned two individuals – Cathy Stone and Mark Rommick at AHFC – who have indicated interest in reentry; they seem very open to considering state law related reforms. Its important to learn about their variance and waiver process. It was also suggested that the Workgroup contact Rural CAP and Cook Inlet Housing Authority to learn of their efforts thus far.

Dennis Schranz suggested an individual with possible expertise in removing barriers to housing: Heather Garretson, a professor at Thomas M. Cooley Law School. Ms.. Garretson has expertise with certificates of rehabilitation as a helpful legal mechanism.

A question was raised as to whether the JRI would get into the specifics of Alaska's barriers to reentry. Susie Dosik suggested that we could use their considerable resources to become better informed about other states' efforts and 'best practices' for policy makers. She also noted that JRI has done a 'deep dive' on collateral consequences elsewhere; perhaps they could do the same here, too.

As the Commission had indicated they were not ready to recommend Ban the Box legislation and needed more information, the Workgroup members decided they could follow up on the directions to contact human resource professionals at CIRI and elsewhere. The group could also look at the experience of those states like Georgia whose governments have enacted this type of legislation. Given that Target and Walmart have adopted Ban the Box as a company policy, perhaps those retailers could share their experiences. The group took note of Greg Razo's comment that federal law compels very restrictive hiring practices which may be at odds with this type of legislation. That observation begged the question of what is happening with ban the Box strategies at the federal level? Staff should investigate. Phil Cole suggested that it may be hard to measure the success of more liberal hiring processes, but his experience had taught him that longevity means something. He suggested more employer to employer education on the issue.

It was noted that former Commissioner Blumer was a proponent of the DOL bonding program (Fidelity Bonding) insuring the employers of returning citizens against any loss resulting from that employment. Blumer had said that it was a greatly underused resource and that getting bonded was not a difficult process.

The Workgroup resolved to continue working on the following issues, by circulating emails and drafts, not reconvening immediately. On its list of important issues are: Ban the Box; addressing housing barriers in partnership with AHFC; promoting Fidelity Bonding; supporting Deb and Barbara's work on expungement research; and activating a sub0-group on Title 28 issues.

ACJC Workgroup on Barriers to Reentry
Staff Notes and Member Assignments, January 8,
Denali Commission, 510 L St., Anchorage

Commissioners attending: Jeff Jessee, Ron Taylor (joined 10:35 AM)
Staff present: Mary Geddes, Susie Dosik
Participating: Kaci Schroeder (DOL delegate), Steve Williams (AMHTA), Natasha Pineda (AMHTA), Deborah Periman (UAA), Barbara Armstrong (UAA), Nancy Meade (ACS)

Future meetings:	**Friday, January 23**	**3:00 -4:30 PM**	**Juneau location TBD**
	Tuesday, February 24	10:30 AM – 12:00 PM	Juneau location TBD
	Tuesday, March 31	3:00-4:30 PM	Location TBD

INFORMATION

Deb Periman delivered a handout including North Dakota legislation regarding limits to occupational barriers due to misdemeanor offenses, and Vermont legislation regarding the interpretation of ambiguity in administrative regulations. See attachments.

DISCUSSION

Lifetime Exclusion for TANF/SNAP for drug felonies

Mary Geddes discussed a White Paper on this topic that was prepared for a former group that was researching issues of collateral consequences. (see attachment). Alaska has not "opted out" of federal legislation that prevents drug felons from applying for and receiving TANF and SNAP benefits. The ability to "opt out" of the federal legislation is a tool that is consistently identified as helpful to reentry by groups concerned with collateral consequences of felony convictions. The White Paper focuses on SNAP because it is almost entirely federally funded and would not require additional funding from the state. Ms. Geddes noted that in 2014, Rep. Tarr sponsored legislation that proposed a modified op–out, in which benefits would be made available if the applicant could demonstrate rehabilitation. The legislation did not advance.

Meeting attendees discussed the relative merits of recommending a pure "opt out" or a modified "opt out" that would impose conditions, as some states have done. Meeting attendees also discussed the consequences of the ban, specifically noting that the ban has a negative impact on families because any benefits a family received needed to be stretched to cover the ineligible family member, and because the ineligible family member's income is included in eligibility and amount allocations. Meeting attendees agreed that a complete removal of the ban would promote and facilitate re-entry better and with less administrative burden on the state, especially when many

conditions that are imposed by other states are currently monitored by other agencies (e.g. probation and parole). It was noted that Commissioner of Health and Social Services Valerie Davidson, and Director Division of Behavioral Health Al Wall would be present at the January 23 meeting to discuss potential impacts on the department. Commissioner Jessee stated that he would forward the recommendation to opt out of the ban to other Commissioners assigned to the workgroup for their input before deciding whether to forward it to the full Commission.

Collateral Consequences of Misdemeanors

Deborah Periman and Steve Williams reported on the progress of the subgroup working on these issues. The group concurred that it needed more information from Department of Health and Social Services (DHHS) and Department of Labor and Workforce Development (DLWD) about a workable process for those agencies. The group also needed more information about the work that Teri Carns and Susie Dosik have done on this issue. The group is researching a possible time limit on occupational disqualifications for misdemeanors and has identified legislation from other states that impose such limits. Legislation from North Dakota (three-year limit) and New Mexico (five- year limit) was discussed, which is not limited to misdemeanors. The Uniform Collateral Consequences Act, which has been adopted by Vermont, was also discussed. The group's next steps are to schedule informational meetings with representatives of DLWD and DHSS, and with Teri Carns and Susie Dosik.

Commissioner Jessee noted that the Recidivism Reduction Plan (in draft status) addresses collateral consequences but it focuses on policy and does not recommend specifics of implementation.

Access to Court records and related issues

The workgroup discussed the legislation (SB 108) that was passed but vetoed in the 2014 session. Senator Dyson noted that the bill will be pre-filed for the upcoming session by a different legislator. Ms. Meade discussed court rule changes in Rule 40 regarding access to records on Courtview that the court made in response to some of the concerns raised during the hearings on SB 108 in 2014. The rule directs the court to remove cases involving dismissed charges and ex parte petitions for protective orders from public view on Courtview but does not make the files confidential. The rule has retroactive application. Ms. Meade noted that the court took administrative action only. A policy change to public records, such as what was proposed by SB 108, is seen as a legislative function. She explained that records designated as "confidential" are available for viewing only by the parties, their attorneys, the judge, and court staff for processing. The court has not received negative feedback regarding the rule change.

Ms. Geddes noted that the Alaska Association of Criminal Defense Attorneys had sent in a proposal to the commission regarding the issue of expungement. She noted that Barbara Armstrong was researching and writing an article on expungement. She queried whether the commissioners were interested in forming a subgroup on the topic. Meeting attendees agreed that legislation regarding access to court records could resolve many of the issues relating to expungement, and that expungement is not a simple issue because records exist in many places that are easily accessible.

Title 28

Ms. Geddes stated that she has begun work on informational papers including an overview of Title 28, Ignition Interlock Devices, and Limited Licenses. She has not yet scheduled any webinars, although she has identified two topics: Ignition Interlock Devices, and Vehicle Sanctions (such as are imposed in Minnesota). Ms. Geddes noted that she has been told that there will be legislation in the 2015 session regarding limited licenses but she had not yet seen a draft.

Other Topics

The workgroup discussed various ways the commission might respond to legislation that arose during the session. One way would be to act as a resource to the legislature. Another would be to work towards the commission's own goals without responding to specific legislation. It was noted that many commission members already provide testimony regarding bills in their other professional capacities. It was also noted that the full commission will likely wish to discuss how to approach this issue.

ASSIGNMENTS

Commissioners:

Review any forthcoming papers.

Commissioner Stanfill will work with staff to arrange meetings as noted with representatives from DHHS and DLWD.

Commissioner Jessee stated that he would circulate among other Commissioners on the Workgroup the proposal for an opt out of the SNAP ban, and they would decide what to recommend before finalizing any recommendation to the full Commission.

Staff:

Ms. Geddes will continue work on the Title 28 informational papers and webinars.

Susie Dosik will arrange with Teri Carns to discuss their prior work with the Misdemeanor subgroup.

Susie Dosik

TO: Barriers to Entry Workgroup
FROM Mary Geddes
DATE: January 12, 2015

Members of the Barriers to Reentry Workgroup may recommend that Alaska enact a legislative 'opt-out' from a federal law requiring a lifetime exclusion on eligibility only for persons convicted of drug felonies. Alaska is at present one of only ten states which have maintained the lifetime ban. Food Stamps are a food assistance benefit funded entirely by the federal government.

Q: What's wrong with Alaska maintaining a lifetime ban on food stamp eligibility for persons convicted of felony drug crimes?

A: There are multiple reasons why the ban on otherwise-eligible people is counter-productive.

- Its a double and permanent punishment, persisting long, long after a sentence is completed.
- Its unfair, providing a special punishment for persons convicted for drug felonies. Persons with crimes of violence before 2013 are still eligible. Persons who are convicted for any other kind of non-violent crime are always eligible.
- Ex-offenders are often completely impoverished when they get out of jail. They almost always need forms of temporary assistance to help them reintegrate back into the community, seek work and search for permanent housing. Convicted felons face great obstacles in obtaining stable, long-time employment and may need Food Stamps for the short periods of time (usually 3 months) permitted.
- Their families are punished for re-uniting with them! A person convicted of a drug felony cannot receive food stamps, even when the remainder of their household is eligible. Even though the ex-offender may not be "counted" as a member of an otherwise eligible household, any income he earns will nevertheless be "counted" as a family asset. The practical result is a decreased food assistance benefit for more people.

Q: What's the cost to Alaska?

A: Food Stamps are a fully funded federal benefit. The feds will split 50-50 the relatively minor administrative costs. The US Department of Agriculture estimates the State will realize an economic benefit of $1.79 for every dollar of federal food assistance received by an Alaskan.

Q: Why were drug felons targeted in the first place?

A: During the War on Drugs, there were concerns that food stamps were being traded by addicts for drugs, hence the penalty. "Food stamps" now comes in the form of a electronic debit card carrying a photo ID which has made the benefit hard if not nearly impossible to traffic.

Q: Why shouldn't Alaska impose a modified ban rather than 'opt-out' of all restrictions on Food Stamps?

A. Modified bans create additional administrative burdens on the state and ex-offender and accomplish little. The predicates or conditions imposed by some states such as 'the satisfactory completion of probation' or 'participate in treatment,' are often entirely redundant of conditions and 'proof' already imposed and monitored by a state court or agency; and counter-productive when the state's rules deny food assistance while the person is still in treatment. Many states with modified bans allow Food Stamps eligibility for persons convicted of possession but not distribution. While drug distribution is a more serious offense than drug possession, it is less serious than many other crimes which are not punished by the withholding of the Food Stamp benefit.

ALASKA'S LIFETIME BAN ON FOOD STAMPS
FOR PERSONS CONVICTED OF DRUG FELONIES:
SHOULD IT BE MAINTAINED?[1]

The specific question presented in this paper is whether the State should exercise an 'opt out'[2] of the federal law[3] which otherwise imposes a permanent, lifetime ban on federal food assistance benefits to persons convicted of drug felonies.

Alaska is one of Alaska is one of only eleven States that maintain the lifetime ban. Since the provision's enactment in 1996, all other States have acted to either completely eliminate or modify the exclusion. If a State chooses to opt out - thereby allowing convicted drug felons to receive food assistance -- there are no negative consequences for the State.

Indeed, allowing the benefit to a larger number of food-insecure Alaskans would seem a plus, not a minus, for the Alaskan economy. The USDA says that every federal dollar spent on food assistance creates a $1.79 boost in economic activity, in mostly local markets.

Since food assistance (known as Food Stamps in Alaska) is fully (100%) federally funded, a state legislative 'opt-out' increases federal funding to the State because the pool of eligible recipients is thereby increased. Any additional administrative cost experienced by the State in this expansion is shared 50-50 with the federal government.

A specific enactment would be required to either opt out and/or modify the ban on SNAP benefits for this class of Alaskans.

Most States have opted out of the blanket lifetime federal exclusion of drug felons from eligibility for SNAP.

<u>The Existing Ban on Federal Food Assistance for Drug Felons and the State Opt-Out</u>

Food assistance for eligible, low-income persons and households is fully (100%) funded through the federal Supplemental Nutrition Assistance Program (SNAP). All States participate in SNAP. The States do administer the benefit, but the federal government covers 50% of the State's administrative costs.

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[1] Mary Gedddes wrote this paper more than a year ago, and later updated it in reference to then HB 347, which died in committee last year.

[2] Section 842a(d) of title 21, United States Code, specifies the means by which legislators can either opt out or modify the ban. "A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals somiciiled in the State from the application of subsection (a) of this section…[or] may limit the period for which subsection (a) of this section shall apply to any or all individuals domiciled in the State."

[3] 21 USC Section 862a(a)(2).

SNAP Overview and Its Importance for Alaskans

SNAP is the nation's most important anti-hunger program.[4] After unemployment insurance, SNAP is the most responsive federal program providing additional assistance during economic downturns. In December 2012, it helped 47.8 million low-income Americans to afford a nutritionally adequate diet in a typical month.[5]

The program provides necessary nutritional support in particular to low-wage working families with children, to low-income seniors, and to people with disabilities who have fixed income. Nearly 76% of SNAP households included a child, an elderly person, or a disabled person.[6] These vulnerable households receive 83% of all SNAP benefits. Notably, unemployed childless adults are limited to three months of SNAP benefits every three years, though this time limit has been temporarily waived in some states because of high unemployment.

SNAP eligibility is limited in any event to households with gross income of no more than 130% of the federal poverty guideline, but the majority of households have income well below the maximum. [7] 61% of SNAP households have gross income at or below 75% of the poverty guideline.

The amount an eligible household receives each month depends on the household's location, countable assets, countable income and the number of people in the household. Eligible households use electronic debit cards to buy approved food products from authorized stores statewide. SNAP benefits cannot pay for non-food items, nor can recipients use the benefit to pay for restaurant food or ready-to-eat hot foods.

To receive SNAP benefits, most able-bodied people between 16 and 59 years old must register for work, participate in the Employment & Training Program if offered, accept offers of employment, and cannot quit a job.[8]

SNAP is also Alaska's most important anti-hunger program. In Alaska, SNAP is known as the Food Stamp Program. In 2012, the State determined that 11.9% of all Alaska households received some amount of Food Stamps benefits from the federal government. The average monthly SNAP benefit is about $414 per household.[9]

Background Regarding the Original Federal Exclusion and the States' Opt-Out Provision

In 1996, Congress enacted the Personal Responsibility and Work Opportunity

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[4] SNAP is funded through the Farm Bill. The new Farm Bill was signed into law in February 2014. It reauthorized the Food and Nutrition Act of 2008 (7 U.S.C. 2015) with amendments. The States' ability to opt out of the ban on the eligibility of drug felons was unaffected by the new bill.

[5] See Program Information Report, Summary FY2012-2013, Food and Nutrition Service, U.S. Department of Agriculture. Updated 3/28/13. http://www.fns.usda.gov/sites/default/files/datastatistics/Keydata%20December%202012%20%283-8-2013%29_0.pdf. See also Center of Budget and Policy Priorities, Policy Basics: Introduction to the Supplemental Nutrition Assistance Program (SNAP) , updated 3/28/2013. http://www.cbpp.org/cms/index.cfm?fa=view&id=2226,

[6] http://feedingamerica.org/how-we-fight-hunger/programs-and-services/public-assistance- programs/supplemental-nutrition-assistance-program/snap-myths-realities.aspx#_edn1, citing U.S. Department of Agriculture, Food and Nutrition Service. Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2011. Table A.14. November 2012. http://www.fns.usda.gov/ora/menu/Published/snap/SNAPPartHH.htm.

[7] U.S. Department of Agriculture, Food and Nutrition Service. Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2011. Table 3.1. November 2012. http://www.fns.usda.gov/sites/default/files/2011Characteristics.pdf

[8] For more information,see A Quick Guide to SNAP Eligibility and Benefit Rules, http://www.cbpp.org/cms/index.cfm?fa=view&id=1269

[9] DPA Office Profile SFY 2012, http://dpaweb.hss.state.ak.us/files/reports/Statewide200xProfile.pdf .

Reconciliation Act (PRWORA). While the focus of PRWORA was to fundamentally restructure cash public assistance to make it short term and work-conditioned, it also included provisions intended to prevent the use of public benefits for drug use. Section 115 of PRWORA permanently barred convicted drug felons from eligibility for SNAP benefits.[10]

A drug felon, for this purpose, is defined as a person committing a crime after August 22, 1996, for either a federal or a state felony conviction for possession, use or distribution of a controlled substance.

As previously stated, States are permitted to opt out of this lifetime ban and extend benefits to this class of felons.

Alaska is one of only ten States that maintain the lifetime ban.[11]

Since the provision's enactment in 1996, all other States have acted to either completely eliminate or modify the exclusion. Twenty-one States and the District of Columbia have eliminated the ban entirely. [12]Nineteen States have approved a modified ban, sometimes permitting an individual to regain eligibility in time or by completing drug treatment.[13]

Why States Opt-Out of the Drug Felon Ban

The assumption in 1996 that drug addicts were more likely than others to abuse public assistance, e.g. trading what were food stamp coupons for drugs, is on the wane. That perception is now increasingly viewed as an insufficient justification for a presumptive lifetime exclusion of all convicted drug felons from food assistance. Indeed, since 1996, most States have concluded that the drug felon exclusion from SNAP benefits is counter-productive in several significant ways.

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[10] 9 Until February 2014, only two classes of persons were permanently excluded from the receipt of SNAP benefits: convicted drug felons and some of the persons who obtained or tried to obtain SNAP benefits unlawfully. See 7 USC 2015(b)(1)B)(iii). The new Farm Bill extends the ban to also include violent felons if they were convicted after its enactment.

[11] As of 2012, the following states maintained the lifetime ban: Alabama, Alaska, Arizona, Arkansas, Georgia, Mississippi, Missouri North Dakota, South Carolina, Texas and West Virginia. USDA Supplemental Nutrition Program State Options Report, Tenth Edition, August 2012. Missouri got dropped from this list in 2014.

[12] The following states have opted out and provide benefits to otherwise eligible convicted drug felons: Delaware, DC, Illinois, Iowa, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington and Wyoming. Source: USDA Supplemental Nutrition Assistance Program, State Options Report, Tenth Edition, August 2012.

[13] The following states have opted out, modifying the federal exclusion as follows: California (as long as compliance with probation and parole); Colorado (ban if SNAP benefits involved in drug felony); Connecticut (no details); Florida (ban only for drug trafficking); Hawaii (eligible if completed or complying with drug treatment); Idaho (eligible if complying with conditions of probation or parole); Indiana (individuals in approved correction programs are eligible for benefits for up to 1 year); Kentucky (eligible if completed or complying with drug treatment); Louisiana (ban limited to 1 year); Maryland (drug testing required for receipt of benefits; custodial parents convicted of manufacturing or selling drugs are ineligible for one year); Michigan (lifetime ban only after 2nd conviction); Missouri (some classes of drug felons allowed eligibility after completion of drug program); Minnesota (drug testing required for receipt of benefits; lifetime ban if drug test failed more than once); Montana (regain eligibility if complying with conditions of probation or parole), Nebraska (lifetime ban upon 3 convictions for possession or use or any convictions or other drug related charge), Nevada (regain eligibility if completed or complying with drug treatment, demonstrates good character or is pregnant), North Carolina (ineligible for 6 months; must comply with drug treatment if referred), Tennessee (regain eligibility if completed or complying with drug treatment), Virginia (no lifetime ban for possession for personal use convictions) and Wisconsin (drug testing required for 5 years; ineligible for 1 year for each time drug test is failed). Source: USDA Supplemental Nutrition Assistance Program, State Options Report, Tenth Edition, August 2012.

First, the lifetime exclusion of all drug felons from food assistance benefits appears unduly punitive. The lifetime exclusion applies no matter how old the offense, how short the sentence, or how well rehabilitated the ex-offender.

Second, the disqualification works a double penalty as it persists even after an offender has served his or her sentence and completed any probation and/or parole requirements.

Third, the lifetime exclusion of all drug felons – as opposed to other felons - appears unwarranted. The use of electronic debit cards (showing the recipient's photo) have significantly reduced any risk that food benefits might be bartered for the purchase of drugs. And persons who still manage to engage in food-drug trafficking are still subject to a lifetime exclusion from benefits under a separate provision of federal law.

Fourth, ex-offenders who have completed their sentences usually require some form of public assistance in the short term as they reintegrate back into community life, reunite with their families, look for legitimate work, and seek to establish economic stability. Convicted felons have difficulty getting jobs in even good economic times, so public assistance and food stamps may be critical during this transition.

Fifth, the specific exclusion of convicted drug offenders from food assistance upon their release from prison creates a problem, rather than solves one. Many felons exit prison facilities with chronic conditions. The circumstances of convicted drug offenders, having been denied food assistance, are particularly perilous. This population has a high prevalence of HIV and AIDS, due to a history of intravenous drug use. Individuals with such conditions need adequate nutrition to adhere to complex drug regimens and to combat opportunistic infections such as tuberculosis and the development of drug resistant strains of HIV. Furthermore, some former felons may engage in dangerous and sexually risky behaviors such as prostitution simply in order to obtain food.[14] Thus denying food stamps to former drug felons this undermines the general public health.

Sixth, the lifetime ban may hurt victims of domestic violence. There is a growing recognition and evidence of a connection between drugs, sexual assault and domestic violence. Individuals are often forced into criminal activities by their abusers. Victims of domestic violence and sexual abuse often develop addictions to deal with their pain. Denying public assistance benefits to former drug felons may make it more likely that these individuals may return to situations of sexual exploitation and domestic violence out of financial necessity.

Seventh, the lifetime ban disproportionately affects women and children who are by far the largest proportion of food-assistance recipients. Although the children of felons remain eligible to receive food stamps, the addition of a convicted drug felon to a household operates to decrease the amount of food assistance received by his or her family. The felon will not be "counted" as a member of the household, but his or her income and any assets must be considered. Section 862a(b)(2) of Title 21, United States Code. Thus, the ban undercuts the family, not supports it. Parents denied benefits may be unable to sufficiently feed and house their children on a reduced budge and may lose them to the foster care system, resulting in a increased cost to the State and an immeasurable cost to the children.

Last but certainly not least, financially strapped States have realized there is a direct economic benefit to the opt-out. Food Stamps are fully federally funded, and any additional administrative cost incurred with expanded eligibility is not significant. Moreover, the infusion of more federal dollars into a State provides local vendors and generally a State's economy with an economic boost. The USDA says that every dollar spent on food stamps results in $1.79 in economic activity.

[14] See Yale News, March 25, 2013, reporting on "A Pilot Study Examining Food Insecurity and HIV Risk Behaviors Among Individuals Recently Released From Prison," published in journal AIDS Education and Prevention.

Why An Opt-Out Makes More Sense than a Modified Ban

States enacting modified bans have taken different tacks. Some have limited the length of the ban. Some have limited the ban to drug sellers, rather than drug possessors. Some have conditioned food assistance benefits on drug testing requirements. Some have conditioned benefits on compliance with probation and parole conditions.

Most States have simply opted out of the lifetime federal exclusion rather than imposing pre-conditions. Administratively and financially, this is the easiest route. The simple opt-out avoids new programming requirements and any increase in administrative costs.

The modifications which have been imposed by some States are often duplicative and costly. The vast majority of convicted drug offenders will be released on parole and probation conditions after completing incarceration, and most of their sentences will require treatment and drug monitoring as conditions of probation. Ex drug felons will have to comply with those conditions or go back to jail.

Most crucially, denying benefits to persons who are presently participating in drug treatment and/or drug testing programs may be counter-productive. As stated above, many States have determined that the specific exclusion of convicted drug offenders from food assistance upon their release from prison creates a problem, rather than solves one.

Proposed Statutory Language

Here is language for a simple opt out:

> A person who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 USC sections 2011-2036 may not be denied assistance because the person has been convicted of a drug-related felony as described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, section 115, 110 Stat. 2105.[15]

However, if this legislature chooses to impose a modified ban, then it could consider the following:

> A person who is otherwise eligible to receive food assistance under the federal Food Stamp Act of 1977, 7 USC sections 2011-2036 may not be denied assistance because the person has been convicted of a drug-related felony as described in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, section 115, 110 Stat. 2105, as long as such person has completed a sentence imposed by a court. A person shall also be eligible for said benefits if such person is satisfactorily serving a period of probation or is in the process of completing or serving or has completed mandatory participation in a drug or alcohol treatment program, or if the person has taken action toward rehabilitation, such as, but not limited to, participation in a drug or alcohol treatment program.[16]

This kind of language would allow for the various, alternative ways a drug felon might provide evidence of rehabilitation or sufficient progress in rehabilitation: the completion of a sentence, including probation; ongoing participation in drug treatment and/or drug screening; completion of drug treatment or drug screening requirements; or, maintaining a satisfactory performance while on probation.

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[15] This language was used by the Maine State Legislature. Maine Revised Statutes, Annotated, Title 22, section 3104 (14).

[16] Sources: Connecticut General Statutes Annotated, section 17b-112d. and Colorado Revised Statutes Annotated section 26-2-706(3)

NM bill (2010)

West's New Mexico Statutes Annotated Currentness
Chapter 28. Human Rights
➡ Article 2. Criminal Offender Employment Act (Refs & Annos)

➡ § 28-2-1. Short title

Sections 1 through 6 of this act may be cited as the "Criminal Offender Employment Act".

➡ § 28-2-2. Purpose of act

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

➡ § 28-2-3. Employment eligibility determination

A. Subject to the provisions of Subsection B of this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration a conviction, but the conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession. A board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

(1) records of arrest not followed by a valid conviction; and

(2) misdemeanor convictions not involving moral turpitude.

➡ § 28-2-4. Power to refuse, renew, suspend or revoke public employment or license

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

(1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession;

(2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or

(3) where the applicant, employee or licensee has been convicted of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (3) of Subsection A of this section. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.

➡ § 28-2-5. Nonapplicability to law enforcement agencies

The Criminal Offender Employment Act is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

➡ § 28-2-6. Applicability

The provisions of the Criminal Offender Employment Act relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

END OF DOCUMENT

Automatic v Discretionary disqual
ND creates presumption of 5 yr rehab
NM creates 3 yr rehab

relates to all crimes felony + misd.

§ 12.1-33-02.1. Prior conviction of a crime not bar to state licensures--Exceptions

1. A person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.

2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:

   a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.

   b. Information pertaining to the degree of rehabilitation of the convicted person.

   c. The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.

3. If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.

4. A person desiring to appeal from a final decision by any state agency, board, commission, or department shall follow the procedure provided by the chapter of this code regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter, an appeal may be taken in accordance with chapter 28-32, except for attorneys disbarred or suspended under chapter 27-14.

ACJC Workgroup on Barriers to Reentry

Staff Notes and Member Assignments from December 8, 2014

at the Snowden Conference Center

Commissioners attending:	Jeff Jessee, Brenda Stanfill, Kaci Schroeder (DOL delegate), Ron Taylor
Staff present:	Mary Geddes, Susie Dosik.,
Participating:	Janet McCabe (Partners), Deborah Periman (UAA), Barbara Armstrong (UAA), Nancy Meade (ACS)

Next meeting is: **January 8, 2015, 10:00 AM-12:00 PM, Foraker Room**
Denali Commission, 510 L Street, Anchorage

INFORMATION

A handout was distributed that included the provisions relating to Title 28 in SB 64, and an outline of work necessary and possible topics for a Title 28 symposium.

DISCUSSION

Access to Court records of non-conviction: Senator Dyson and Chuck Kopp were unable to attend the meeting so this topic was tabled and will be discussed at the next meeting.

Title 28

Timeframe

The report on Title 28 is due to the legislature no later than July 1, 2017. It was agreed that this is a maximum date and a report can be presented earlier. September 2016 was identified as a good target date to issue a report. It was recommended that the commission work backward from that date to establish mid-stream goals and targets. It was also noted that the legislature is working on these issues currently and the group discussed and commissioners will need to discuss how to respond to proposed or filed legislation, if at all.

Symposium

The workgroup discussed a proposed symposium on Title 28 issues. The purpose of a symposium would be to inform and educate CJC commissioners and other stakeholders, as well as to share information and concerns about various processes (e.g. revocations, monitoring technologies, etc.) and obtain feedback from stakeholders not represented on the commission. The intended participants would include CJC commissioners, interested legislators, various agency personnel (e.g. DMV and DPS), vendors, and other stakeholders such as Partners for Progress, and MAAD or other victim representatives. The format and timing was also discussed. Alternatives to a full-day conference were proposed such as webinars or teleconferencing, to alleviate the need for travel and other large expenses associated with an in-person conference. It was agreed that putting on programming of this nature would require substantial planning and staff time, and having it at the originally discussed February date was not feasible. Staff will explore either a full-day webinar format or a series or webinar type programs with the assistance of Barbara Armstrong. It was agreed that the CJC would need to hire an event planning consultant to implement this goal.

Work Plan

Ways to approach the Title 28 review were discussed and considered. A possible symposium was just one approach. Another was to present a series of working papers on the various issues surrounding Title 28. It was agreed that this approach would also be useful because of the ability to refer back to written documents. In general, commissioners would like the following information:

An overview on the current law;
An overview of how the law is implemented;
The strengths and weaknesses of the current system;
Evidence-based alternatives have been tried by other jurisdictions.

Staff agreed to provide the information.

Collateral Consequences of Misdemeanors

The subgroup was scheduled to meet immediately after the full workgroup to discuss how to approach this work.

Other Topics

The workgroup raised other possible issues for consideration including barriers to housing, public assistance (food stamps, TANF), and other government benefits (e.g., student loans) due to collateral consequences of conviction.

RESOLUTIONS AND ASSIGNMENTS

Staff:

1. Explore potential formats and identify consultants to plan a series of webinars or a day-long webinar or other distance learning on Title 28 issues to inform and share information and concerns with CJC commissioners and other stakeholders.
2. Prepare working papers on Title 28 issues. Possible topics include current legal structure and implementation issues and alternatives, revocation processes, monitoring technologies, and vehicle sanctions. Staff will begin with an overview of the legal framework.
3. Circulate for discussion an existing paper on the state's food stamp lifetime exclusion for drug felons.

Commissioners:

1. Review working papers when circulated.
2. Plan to discuss access to court records of non-conviction at next workgroup meeting.

ACJC Workgroup on Barriers to Reentry
Staff Notes and Member Assignments from November 18, 2014
at the Snowden Conference Center

Commissioners attending: Fred Dyson, Jeff Jessee, Brenda Stanfill, Greg Razo (tel.)
Staff present: Mary Geddes, Susie Dosik, Giulia Kaufman.
Participating: Janet McCabe, Chuck Kopp, Deborah Periman, Chuck Kopp

Next meeting is: December 8, 10:00 AM-12:00 PM, Foraker Room
Denali Commission, 510 L Street, Anchorage

INFORMATION

- Greg Razo, Jeff Jessee and Fred Dyson have been named to Walker-Mallott Administration transition teams.
- 'The ACJC "Resources" webpage now lists several documents released only this fall from the Restoration of Rights Project, which is headed by Margaret Colgate Love. There are several helpful charts providing state-by-state comparisons of laws concerning Expungement, Firearm Privileges, Pardon Authorities, Employment and Licensing barriers.
    - Sen. Dyson noted that one of the charts contained an error, as it assumed that SB 108 had been signed into law.
- Report on DOC Reentry conference: from Janet McCabe and Mary Geddes.
- Senator Dyson: some kind of Courtview or expungement bill will be coming up this session.
- Janet reported on her and MG's investigation of new technology now utilized by the EM unit of DOC Probation that might make re-entry easier:
    - The SoberLink2, a handheld PBT unit at the cost of $6.40/day that checks the person's ETOH 2-3 times a day by buzzing them to take the test and taking a photo image of them at the time of using the test. The technology uses photo recognition technology.
    - 24/7 program offers testing 2x a day at the cost of $3.00 a test.

DISCUSSION OF WORKGROUP PRIORITIES

- Consideration of ABA's Collateral Consequences Inventory of Alaska's barrier crimes is daunting. Workgroup needs to figure out some way of going through this. Ultimately any proposal must address the public safety concerns which motivated it in the first place. Maybe workgroup can begin by identifying a specific number, such as top 50 barrier crimes, for study.
- Chuck Kopp said that Title 28 reform may be forthcoming this legislative session. There may be a bill to unify criminal and administrative revocations, and to allow a drivers' license after a one-year suspension. Sen. Dyson noted that it would be invaluable for Barriers workgroup to consider and weigh in on any such bill.
- Janet McCabe noted that any efforts should emphasize a multiprong approach that includes increasing public safety, reducing costs, and bolstering reentry success.

- Jeff Jessee suggested digging into this specific issue, i.e. the limitations placed on drivers' licenses, given that the loss of a DL is one of the greatest impediments to a successful reentry. Explore the policy aspects of it. Keep in mind the pre-file dates of December 5 and January 7-9.
- Mary Geddes noted that SB 64 requires the Commission to review and comment on Title 28. That report is due the last day of the commission. She and Giuila Kaufman have already done a work gathering information on other jurisdiction's sanctions and ameliorative processes.
- Dyson: We could least say this is a very important issue, without specifically endorsing a bill, if we are not yet there. Keller's office may be taking the lead on a reform this session.
- Brenda Stanfill: The way to avoid future pushback is by engaging all stakeholders early on. Let's engage MADD or whomever early on in any consideration of reforms of Title 28.
- Janet McCabe: life will pass ACJC by unless it comes up with specific suggestions for law reform.
- Jeff Jessee noted that the ACJC process must begin by identifying the principles on which we proceed and the criteria by which reforms will be judged. One principle has to be that any change will increase and not decrease public safety. The process needs to stick with evidence-based best practices.
- Senator Dyson informed the committee that a bill would be pre-filed with the legislature dealing with public access to information on CourtView.
- Brenda said she was aware, from her work, that a lot of women are convicted of misdemeanor assaults and experience disabilities from those convictions. She noted that the barriers start at arrest and can exclude them from jobs as nurse's assistants, bus drivers, child care workers, and from housing. The question is how appropriate are barrier crime restrictions for misdemeanors and for how long.

RESOLUTIONS AND ASSIGNMENTS

- Identify potential problems/changes in Title 28 as worthy/appropriate/timely for a symposium in Juneau for January or February
    - Make "a plan to come up with a plan" by next workgroup meeting, and present it to the Commission for its approval on December 18
    - Plan is to engage DMV and MADD in the process
    - MG will do some preliminary planning on this and the workgroup will discuss at its next meeting

- Plan to discuss SB 108 at next workgroup meeting.

- The workgroup should look at barriers arising from misdemeanor convictions. Those volunteering to explore this area were Brenda, Janet and Deb, and Susie. Jeff Jesse offered the assistance of Steve Williams, as well.

ACJC WORKGROUP ON BARRIERS TO REENTRY

Staff Notes and Member Assignments

from October 29 Meeting, 1:30 -3:30 pm @ Denali Commission

Commissioners Attending:	Brenda Stanfill (tel.), Greg Razo, Fred Dyson, Jeff Jessee (tel.)
Staff Attending:	Mary Geddes (MG), Susie Dosik
Also Participating:	Ron Taylor, Carmen Gutierrez, Deb Periman, Chuck Kopp, Steve Williams

The next workgroup meeting is: **Tuesday, November 18, 8:00 – 10:00 AM**
Snowden Conference Center, 820 W. 4th Avenue,
Anchorage, AK 99501

INFORMATION:

Mary Geddes presented information concerning the local groups currently working on 'prisoner re-entry' issues. Generally speaking, those groups are seeking to better integrate, direct and expedite existing services. They are not working on statutory reform.

QUESTIONS:

- Strong interest was expressed in the mechanism of expungement and the range of ameliorative actions that can be taken after a person's conviction. Have we criminalized too much conduct such that codes become barriers to employment? Minor Consuming Alcohol convictions have impeded security clearances for military.
- Concerned that the lack of a provisional driver's license can undermine employability.
- Are there laws that unfairly link the privilege to drive with unrelated matters?
- Should Alaska consider a "ban the box" statute or other measures which may ease the difficulties in the employment and housing of persons with a criminal record?
- Should the criminality of fish and wildlife offense be revisited?
- How does Alaska criminal law impact the right to use firearms?
- How do criminal defendants learn about the consequences of a conviction?

INFORMATION/BACKGROUND

- Jeff Jessee of the Mental Health Trust spoke on the joint effort, currently underway, by various state agencies to reduce recidivism. The Legislature had charged DOC, the Mental Health Trust, the Department of Labor, the Department of Health and Human Services, and Alaska Housing Finance to work together to come up with a plan which is to be presented in February. Strategy must be evidence based (what has worked elsewhere), must explain how existing efforts can be better coordinated and evaluated for cost-effectiveness, and propose a timeframe for implementing the recommendations. Expectation is that the Recidivism Reduction Plan will inform the Commission's work.
- Ron Taylor, the Deputy Commissioner of DOC, emphasized the ongoing efforts of DOC to get its institutional staff and its probation staff all on the same page as to the DOC mission to better

integrate ex-offenders back to the community. On November 14 and 15, DOC and others involved in reentry will jointly assess its efforts thus far. DOC is working to generate pipeline data , i.e. identify who is coming back to the community and what his or her needs will be.

- Carmen Gutierrez noted the work of the ABA in its Inventory of Collateral Consequences. This is a state-by-state specific compilation of laws identifying statutory barriers to reentry of offenders. The Alaska inventory was expedited at the request of state lawmakers. The Inventory is found at an interactive website: http://www.abacollateralconsequences.org/ (on ACJC website)
- Chuck Kopp noted that, last year, an informal group (including Mary Geddes, Carmen Gutierrez, Chuck Kopp, Deb Periman) had considered two issues for state legislative reform: (1) the lifetime exclusion from food stamps of persons convicted of drug felonies from food stamps and (2) Courtview reform. Even though the issues seemed like relatively 'low-hanging fruit,' only the second issue moved through the legislature (approved as SB 108) and was vetoed by the governor.

RESOLUTIONS

- The workgroup would like a forum on expungement, pro and con. Workgroup wants to understand the current law in Alaska along these lines, and in particular pertaining to a SIS (suspended imposition of sentence) and how it works.
- The workgroup would like to understand the impact of convictions on the use of firearms.
- The workgroup would like to have a general presentation on the types of responses made by states following the identification of consequences.

HOMEWORK:

Commissioners to review the following materials collected by staff which concern the subjects under discussion.

- "The Hidden Impact of a Criminal Conviction: A Brief Overview of Collateral Consequences in Alaska" Deborah Periman (2007)
  http://www.ajc.state.ak.us/acjc/collateral/periman07.pdf (on ACJC website)

- Other States' Expungement Laws, Alaska Research Services Report February 2012
  http://www.ajc.state.ak.us/acjc/collateral/expunge.pdf (on ACJC website)_

- Alaska Narrative [5 pages] , NACDL Restoration of Rights Project September 2013,
  https://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/state_narr_ak.pdf

- State Law Relief From Federal Firearms Disabilities [chart, including Alaska], Margaret Colgate Love, NACDL Restoration of Rights Project, August 2014
  https://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/State_Law_Relief_from_Federal_Firearms_A

- Judicial Expungement, Sealing and Set Aide [chart, including Alaska], Margaret Colgate Love, NACDL Restoration of Rights Project http://www.nacdl.org/uploadedFiles/files/resource_center/2012_restoration_project/Judicial_Expungement_Sealing_and_Set-Aside.pdf

- "Collateral Consequences and Reentry in Alaska: An Update," Deborah Periman, UAA Justice Forum (Fall 2013/Winter 2014) http://justice.uaa.alaska.edu/forum/30/3-4fall2013winter2014/303-4.fall2013winter2014.pdf (on ACJC website)