

ACJC Workgroup on Barriers to Reentry  
Employment Sub-Group  
Staff Notes and Member Assignments, June 30  
AG's Office, First floor Conference Room, 1031 Fourth Avenue, Anchorage, Alaska

Commissioners attending: Brenda Stanfill  
Staff present: Mary Geddes (note-taker), Susie Dosik  
Participating: Deb Periman, Doreen Schenkenberger, Gail Sorenson, Kaci Shroeder (DOL, Criminal Division), Stacie Kraly (AG's Office)

**Future meetings:**

Department of Health and Social Services Barrier Crimes

Stacie Kraly 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 was 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.

The statute was enacted primarily to streamline and consolidate licensing and background check processes within the department. Prior to enactment, the department operated with a framework of nineteen different entities, each having its own process. At the same time, there was a federal initiative that provided grants to states to develop a criminal background check process for long term personal care givers for the elderly. The statute was drafted initially to manage the grant. The statute passed in 2005 and was codified at AS 47.05.400 - .300. It affects service providers and licensing in many areas including foster care, child care, and Medicaid reimbursement. A companion statute provides for a civil registry of actions taken against professional licenses, Medicaid fraud, and complaints of child abuse or neglect through OCS or complaints of adult abuse or neglect.

After passage, the department began work crafting regulations to operationalize the licensing and background check processes envisioned by the statute. Groups of department stakeholders from affected divisions met, along with a representative from the Department of Law (Annie Carpeneti) to identify offenses that were inconsistent with licensure or reimbursement by the department, and to set barrier lengths. After many day-long meetings, they arrived at [current Barrier Crimes Matrix for the Barrier Crimes Listed in 7 AAC 10.905](#) . The regulations were promulgated and went into effect in 2007. They are found at [7AAC 10.900 - .990](#).

The system was designed for efficiency and did not provide for much discretion in their application. After initial adoption, the need for more discretion became apparent and the department amended the regulations to allow for variances. The variance process was described,<sup>1</sup> is efficient and Ms. Kraly reports it works well. The background check system was so efficient and functional that it began to be used in applications for which it was not necessarily intended. The department has interpreted it not to apply for service providers who are otherwise professionally licensed (e.g. physicians, nurses).

Ms. Kraly provided a list of hyperlinks to federal law that affects the barrier crimes, including laws regarding foster care, the Adam Walsh Act, and Medicaid long-term care provisions. These are all incorporated

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<sup>1</sup> The subgroup has copious materials on the variance process that can be made available to those who are interested.

into the matrix. The OCS manual also contains many of the federal regulations and policies. Provisions in the Affordable Care Act have not yet been incorporated into the regulations but the department has begun that process; draft regulations are currently out for public comment.

Susie Dosik asked how open the department would be to reviewing the barriers. Ms. Kraly replied that the current commissioner and deputy commissioner would be open to discussion and are very interested in some areas including effects of the SIS statute or expungement mechanisms.

Next steps:            Discuss the scope of a possible review with Deputy Commissioner John Sherwood.

ACJC Workgroup on Barriers to Reentry  
Employment Sub-Group  
Staff Notes and Member Assignments, April 13, 2015  
AG's Office, Room 502, 1031 Fourth Avenue, Anchorage, Alaska

Commissioners attending: Brenda Stanfill  
Staff present: Mary Geddes (note-taker), Susie Dosik  
Participating: Deb Periman, Barbara Armstrong, Doreen Schenkenberger, Janet McCabe

**Future meetings: May 4, 3:00 -4:30 PM Attorney General's Office, Room 502, Anchorage**

Ban the Box

Since Brenda Stanfill had missed the Commission meeting and Barriers Workgroup meetings on March 31, there was continued discussion about the reaction to the workgroup's Ban the Box proposal. She was told about the various concerns expressed by Commissioners and the AG, as well as the interest expressed by some Commissioners that the proposal and perhaps others like it be first 'vetted' by the larger Barriers Workgroup.

Deb Periman suggested that contact should be made with the states who have enacted the measure and have experience with its implementation. She stated that New Mexico has 12 years of experience with the measure (applied to state employment). Dosik reported that one Commissioner asked for any research indicating outcomes as a result of enacting Ban the Box; thus far Dosik is only aware of an Hawaii study. Dosik also noted that both Greg Razo and Craig Richards asked if HR professionals could be consulted. Another Commissioner asked about enforceability. Doreen Schenkenberger indicated that Native corporations should be very interested in any efforts to ease federal restrictions. Stanfill asked who will do the research suggested by the Commission. Susie Dosik said she expected staff would do it.

Stanfill asked whether it was worthwhile to continue working on the issue or if this should be handed off to the larger Barriers Workgroup. Periman suggested trying out the proposal with a focus group and contacting local representatives from target and Walmart to see if they would report a positive experience.

Anti-discrimination Statutes

The group also discussed the occupational restrictions against returning citizens in existing statutes and how best to achieve reform. The Workgroup had expected to hear in this meeting from AAG Stacy Kralee but she did not attend. Janet McCabe said that it was important to push on as the background check issue continue to be an impossible burden on potential employers. Susie Dosik said that the group had not yet addressed how any on-discrimination provision would impact the Title 47 processes, and that is why Stacy's participation would be helpful.

Periman agreed to work on the occupational licensing piece (Title 8), by drafting some broad antidiscrimination language based upon language enacted in other states.

The group agreed, at its next meeting, to discuss Title 47 restrictions and general anti-discrimination provisions for occupational licensing.

ACJC Sub-Workgroup on Employment Barriers, Workgroup on Barriers to Reentry  
Staff Notes and Member Assignments, March 16, 2015  
Foraker Conference Room, Denali Commission  
501 L St., Suite 401  
Anchorage, Alaska

Commissioners attending: Brenda Stanfill

Staff present: Susie Dosik

Participating: Steve Williams (AMHTA), Deborah Periman (UAA), Barbara Armstrong (UAA)

**Future meetings: April 13, 2015, 3:00 p.m.**

## **INFORMATION**

Ban the Box draft legislation (Deb Periman)

## **DISCUSSION**

### **Title 47**

Ms. Stanfill had attempted to acquire more information from the Department of Health and Social Services but her efforts had not yet been fruitful. It was agreed to focus efforts on making contact with Stacie Kraly from the Department of Law.

### **Ban the Box**

Commissioner Stanfill and participants discussed the draft legislation put forward by Deborah Periman based on several states' models. Participants suggested to provide two options for the Barriers Workgroup or Commission regarding the timing of asking about prior convictions. The two options are (1) during or after an employment interview; and (2) at the time a conditional offer is made. Other options were discussed but the group believed that the soonest point should be the time of the interview because an interview is a critical point when an applicant can have personal contact with a potential employer.

### **Anti-Discrimination**

Participants agreed to not include any recommendations with the Ban the Box legislation but to work on a package separately. This will be the subject of the next meeting. Prof. Periman and Ms. Dosik will propose language before the next meeting.

**Other areas of interest**

The group agreed to investigate sealing of records and expungment issues after its work with anti-discrimination and Title 47 was completed.

**Assignments:**

Deb Periman and Susie Dosik will draft a proposal for an anti-discrimination statute.  
Comm. Stanfill will contact Stacie Kraly

ACJC Barriers to Reentry Workgroup

**Employment Sub-Group**

Staff Notes and members Assignments from Meeting on February 23, 2015  
@Attorney General's conference room, #102, 1031 W. 4<sup>th</sup> Ave.

Present by video: Commissioner Brenda Stanfill

Present on phone: Kimberly Martus, Gail Sorenson, Deb Perriman

Present in Anchorage: Staff, Susie Dosik, Teri Carns (notetaker).

**Next meeting                    March 16 from 3:00 to 4:30 PM.        Denali Commission, 510 L Street, 4<sup>th</sup> floor**  
**Or by Teleconference: Dial 1-800-768-2983, then enter access code 5136755**

***Title 47 Waivers***

Ms. Stanfill asked if new offenses had been added to the list of those considered under Title 47 waivers. Ms. Dosik said that sex trafficking and others are now included.

Ms. Dosik said that an enabling statute permits DHSS to pass regulations. To change the regulations, the governor and the department must agree. The legislature has no authority to change regulations; its only power is to repeal the statute that allows the department to make the regulations. The legislature cannot alter any part of the regulations; it can only remove the power to make those particular regulations. Ms. Stanfill read the enabling statute, AS 47.05.300 -.310. Ms. Dosik said that repealing it would probably be difficult, because of the structures and practices built up around it. Also, the legislature would have to propose its own structure and process for regulating licensing.

Ms. Dosik suggested that it might be more effective to work with the department to revise provisions that act as barriers unnecessarily. Ms. Martus agreed that working with the agency could be helpful. Ms. Stanfill said that it appeared that the department had done a careful job of identifying things that should be barriers.

Ms. Dosik suggested that it might be possible to consider reducing the lengths of time for which convictions remained barriers. At this time, some periods are set for three years, five years, ten years, or more. She thought that Stacie Kraly in the Department of Law had done a substantial amount of work with DHSS to establish the regulations and waiver procedures might be helpful. Ms. Perriman said that the departments had worked extensively on the process in recent years. She added that one important consideration in licensing people with barrier crime convictions is to assure that any ban on employment show a direct connection between the conviction and the nature of the work from which the offender is barred.

Ms. Perriman said that she had shared New Mexico legislation to "Ban the Box." Ms. Stanfill said that "Ban the Box" doesn't fix the barriers, just postpones them until later in the process. She

wanted to know what provisions could help eliminate the barriers from the beginning. Ms. Dosik said that other countries give offenders returning to the community a card. Ms. Carns said that some of Alaska's institutions offer "ready to work" skills training and give offenders who complete that a certificate. Ms. Dosik said that one step that DHSS might take would be to issue a pre-clearance certificate for an individual that would apply to any DHSS jobs for which they applied. Right now the process requires a separate review for each job that an offender applies for.

The groups discussed the DHSS process further, and needed clarification about the number of people who used it each year. Ms. Carns said that it was still a difficult process, because people have to provide documents about their income, residences, criminal histories and other aspects of life that may be time-consuming or hard to get. Ms. Perriman suggested that many people might not be willing to go through the process because it was emotionally difficult.

Ms. Martus said that most jobs in rural areas are affected by federal funding and federal restrictions. She said that private employers often were more willing to hire re-entering people than were government agencies. Finding jobs in villages can be difficult, and sometimes offenders aren't allowed to return to villages until they have completed treatment. They find seasonal or short-term work in hub communities, if that's available.

The group discussed reasons for longer-term bans on employment. Ms. Carns said that the likelihood of recidivism drops off sharply after the first year back in a community and continues to decline after that.

### ***Ban the Box proposal***

The group considered "Ban the Box" legislation. Ms. Dosik said that she had sent out models for the group to consider, including laws in New Mexico, Hawaii, and California, as well as model legislation available on the National Reentry Resources web site. The group agreed that they should recommend "Ban the Box" legislation to the Reentry Committee of the ACJC. Ms. Perriman, Ms. Dosik, and Ms. Martus agreed to share information and work on a draft.

ACJC Workgroup on Barriers to Reentry  
Employment Barriers Subgroup  
**Staff Notes and Member Assignments, February 9, 2015**  
Denali Commission, 510 L St., Anchorage

Commissioners attending: Brenda Stanfill  
Staff present: Teri Carns, Susie Dosik, Mary Geddes (notetaker)  
Participating: Deborah Periman (UAA), Janet McCabe (Partners), Kimberly Martus ([kmartus@bbna.com](mailto:kmartus@bbna.com), Dillingham), Gail Sorensen ([gsorensen@bbna.com](mailto:gsorensen@bbna.com))

**Future subgroup meetings: Monday, February 23, 3:00 -4:30 PM**  
**Teleconference 1-800-768-2983, then #5136755**  
@Attorney General, 1031 W. 4<sup>th</sup> Avenue, ANCH  
@Attorney General, 124 4<sup>th</sup> Street, 4<sup>th</sup> floor, Juneau  
@Attorney General, 100 Cushman St., Suite 400

Future Barriers to Reentry (full workgroup)  
Tuesday, March 31, 3:00 – 4:30 PM @ Atwood Conference

## INFORMATION

**Please read:** Susie Dosik had prepared two memos for the subgroup, appended the Uniform Collateral Consequences Act and a DHSS PP showing the variance process for DHSS.

## PRESENTATION

Certificates of relief (presentation). In 2013, Susie and Teri Carns investigated certificates of relief or rehabilitation. 6 states have utilized certificates of relief measures to remove automatic bars and restore rights, e.g. to housing, use of firearms. There are three types: automatic relief after time has lapsed (e.g. AZ for first felonies); restoration by application (temporary and permanent); as a prerequisite or first step in pardon process (CA, Nevada). The uses include: creating a presumption of good character, eliminating presumptions of bad character, limiting automatic bars or barriers. They have been intended for occupational licensing, public employment, private employment contexts.

Teri noted that she and Susie, as directed by the Criminal Justice Working Group, had principally focussed on temporary certificates, because permanent certificates depend on unconditional discharge from probation. Six states have them: NJ, NY, CA, NV, AZ and Illinois. Vermont has adopted the entire Uniform Collateral Consequences Act which apparently includes such certificates among the ameliorative measures. In their investigation, Teri and Susie looked at NY, NJ and CA. In NY and CA temporary certificates may be given out at sentencing, where offenders have participated in workplace readiness or other kinds of programming. Where such certificates were provided through parole boards, data was available but the states that utilized courts to issue certificates had poor data because of county structures, etc. NJ issues the certificates through its parole board. In the last 10 years, they issued only 15. In NY, it is possible to walk out of a courtroom with a temporary certificate of relief from disabilities.



They have issued hundreds, which seems like a small number. Websites so instruct how to obtain it. The certificates end automatic bars and waive statutory bars to benefit programs.

Susie stated that certificates of relief measures are often paired with 'fair chance hiring,' which limits the tort liability of employers concerning the negligent hire of those employees that have certificates of relief. Teri noted that Sen. Coghill had started drafting such a temporary certificate of relief measure. Susie stated that a temporary certificate serves the purpose of telling an agency that the person has fulfilled their debt to society or that the person is supervised. But there may be other ways to override state bars. Certainly, certificates are among the range of options.

Jordan noted that Sen. Coghill was still very interested in employment issues, and was not necessarily wedded to the certificates approach. Teri said she responded to Doug Gardner's somewhat critical memo on the subject.

## **DISCUSSION**

Regarding AK barrier statutes, Teri reported that they had looked at state Department of Labor information and asked how many people are denied licenses or lose existing licenses. Teri said it appeared only a handful of people had been effected, but she noted that she did not have any information from the Nursing Board. She also noted that agencies often have discretion to waive barriers. A bigger problem may exist among the trades and paraprofessional occupations. Teri noted that many people who are re-entering the workforce may be more impacted by CDL restrictions (300-400 CDL's are revoked every year) or those jobs requiring a valid DL. Everyone also agreed to look at occupational licenses related to the fishing industry: on tenders, as buyers, etc.

Brenda asked whether the offense conduct had to have a relationship to the job to be performed and for which there is a restriction. Both Teri and Susie agreed that barriers should be justified and waivers given.

Deb Perman said that there are many models for legislative reform out there. The interest is not strong regarding certificates of relief: she thinks that they may not be worthwhile. However, there is a great deal of support for a Ban the Box bill, which was also recommended in the Recidivism Reduction Plan. There are also global statutes that restrict or limit consideration of convictions. Susie referred everyone to the memos she had prepared for the group.

## **FUTURE PLANNING**

The group discussed its agenda for the next meeting and a workplan for the subgroup. Brenda asked that the subgroup first look at those restrictions in Title 47, keeping in mind the potential 'global' option, of proposing to sunset those restrictions which are not obviously reasonable and related to the jobs involved. After our discussion at the next meeting, we will determine the next step in our review. The issues which will be taken up for discussion are

- The DHSS restrictions
- Ban the Box
- Any statutory proposals drafted by Susie or Deb.

Employment Barriers Sub-Workgroup  
Barriers to Reentry Workgroup  
Alaska Criminal Justice Commission  
Staff Notes and Member Assignments, February 2, 2015  
Foraker Room, Denali Commission, 510 L Street  
Anchorage, Alaska

Commissioners attending: Brenda Stanfill (chairing)  
Staff present: Susie Dosik, Teri Carns, Mary Geddes (Note taker)  
Participating: Janet McCabe (Partners), Deb Periman (tel.) Steve Williams (tel.)  
**Future meeting:** Monday, February 9, 2015 3:30- 4:45 PM Denali Commission

## **INFORMATION**

Participant Janet McCabe urged the sub-workgroup to give input to the Legislature (through Jordan Shilling) concerning anticipated bills on background checks and limited licenses for therapeutic court participants. Commissioner Stanfill clarified that limited licenses are not within the purview of this subgroup and would not be discussed at today's meeting but may be addressed by the larger Barriers workgroup.

Staff Teri Carns said that the Criminal Justice Working Group and Senator Coghill had in the past expressed a great deal of interest in the idea of creating "certificates of rehabilitation" for some ex offenders. She was presently working on a memo concerning the topic. Susie Dosik stated that Senator Coghill's office had recently expressed a concern that passing legislation concerning only certificates was perhaps not a broad enough approach, and perhaps idea would be shelved for the time being .

## **PRESENTATION**

Commission Stanfill asked to hear from AJC staff on the topic of the relationship between criminal convictions and the consequent barriers to occupational licensing.

Susie Dosik reported that about eighteen months ago she and Teri Carns had investigated some of the occupational licensing barriers identified in the ABA Collateral Consequences Inventory and found in Title 8 (Occupational licensing). They sent out letters to state agencies asking how many licenses had been revoked due to a conviction and how many initial license applications had been denied due to criminal convictions. From the agencies that cooperated (Nursing did not), it seemed that there had been only a handful of denials/revocations of licenses due to 200-odd barriers. Thus the level of effort required for revisiting and rewriting these barriers might not be worth the effort, especially given the likely pushback from these professional boards, how independently they function, and the great amount of discretion usually entrusted to their decision-making. More details: Among doctors and attorneys, there were only 1-2 a year. The small number of teachers impacted did not apparently appeal or seek waivers, believing that it had been a signal that it was time to move on. With respect to paraprofessional jobs and the trades, however, it might be another story.

Dosik discussed the DHSS barrier crimes found in Title 47, and negotiated by agencies seeking to hire. She noted that, even though there are many barrier crimes, DHSS has made efforts to provide greater transparency and efficiencies in its waiver process. (The employer must initiate the waiver process). DHSS consolidated its background check, and established tiers (1 year, 5 year and 10 years) provided for some graduated bars to employment in some occupations. While the barriers are broad, the waiver or variance process is used by a lot of people. The average wait time now is 38 days, compared with 100 days in the past. Notably 67% of the variance applications get granted.

## **DISCUSSION**

In response, Janet McCabe noted that Partners' Reentry Center had been informed by DHSS that her agency needed fingerprint and background checks done on everyone and this would involve \$3000-4000 for the fingerprints and crippling delays. She suggested an alternative to the time-consuming DHSS (and Occupational Licensing?) process: that employers could instead self-certify – like they do for no discrimination policies. This would save money and time.

Deb Periman (attending by phone) stated that a couple of states have used an elegant global statute to apply to all occupational licenses. Dosik suggested that our next step could be look at other states' efforts and model guidelines that address what licensing boards can consider when taking action. Periman said that New Mexico's approach is to state that a license can't be denied on the basis of a conviction along, although the fact of conviction can be considered under other criteria.

Dosik stated that by next meeting she could provide information in a memo as to (1) other states' enacted laws intended to lessen unfair discrimination in hiring and also (2) models that are used by governments for crafting legislation.

Commissioner Stanfill referenced a suggestion from Justice Bryner at the last Barriers meeting as to a different type of global approach, i.e. that all occupational restrictions could be sunsetted, with exceptions made for the no-brainers, thus putting the burden of the agencies to justify the restrictions.

Dosik expressed some concern with this approach, noting that DHSS had made substantial efforts recently (2005-2006) to lessen harms by consolidating its variance process and providing a tiered, graduated approach. Their attorney Stacy Cralee (sp? ), with the Background Check unit of DHSS, could give the sub-workgroup information about that process, who was involved, criteria for their decision, etc.

As it was the close of the meeting, Commissioner Stanfill asked Mary Geddes to ask clarification from Justice Bryner concerning his suggestion: was it directed at Title 8 or Title 47? She also asked Geddes to contact Jeff Jessee to seek his input in determining the sub-group's direction/response to Bryner's suggestion. Commissioner Stanfill indicated interest in inviting input/feedback from DHSS in a future meeting.

The next meeting's agenda will include the review of Dosik's memo and other states' legislative solutions, discussion of Bryner's proposal, and any follow on certificates of rehabilitation/relief.