

Alaska Criminal Justice Commission  
WORKGROUP ON BARRIERS TO REENTRY

**Meeting Summary**  
**February 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, Joel Bolger, Dean Williams

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.