

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.