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August 16, 2016

Attorney Mike Queensland
Committee on Reducing Recidivism & Removing Impediments to Ex-Offender Employment
1 E. Main St.
Madison, WI 53708

Dear Attorney Queensland,

Thank you for the opportunity to participate on the Legislative Council Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment. I appreciate the discussion at the committee's first meeting.

I am writing as follow up to a few of the ideas that were suggested as topics for the committee to consider and to provide additional information that may be helpful as you put together information for the committee's consideration.

As several committee members noted, providing incentives for good behavior, for participation in treatment or educational programming while incarcerated, and for compliance with rules of Department of Corrections (DOC) supervision would be a way to reduce recidivism going forward. As Representatives Goyke and Nygren mentioned, using 2015 Assembly Bills 992, 998, and 999 as a starting point for discussion might allow the committee to address this issue without starting a drafting process from the beginning.

In addition, 2015 Assembly Bill 1002 is a proposal that would treat technical rules violations of probation, parole, or extended supervision differently than a revocation based on new criminal activity. Assembly Bill 1002 would also expand on the legislation Representative Nygren offered, which became 2013 Wisconsin Act 196.

As Chair of the State Criminal Justice Coordinating Council's Committee on Problem Solving Courts, I have looked at the impact of lack of access to identifying documents and the impact it has on reintegration and specifically access to employment and housing. The committee may want to look at ways to ensure that, before release, offenders have valid and current driver's license or identification cards and copies of their birth certificate. This initiative may not be a drastic or costly policy change but it would have a significant impact on removing barriers to employment. I am including a recent article from *The Atlantic* highlighting this issue.

Along the same lines, the committee heard testimony from DOC regarding the provision of medication and access to medication following release from a prison. This medication often helps the individuals to cope with mental health issues that contribute to recidivism. On a related note, we often see the decompensation cycle that takes place when individuals are moved from one jail to another or from jail to prison. The same medications in the same doses are not consistently available in all detention facilities. Not only does this lack of continuity create a security risk to jailors, but it results in decreased

efficiency of courts. Having a standardized formulary between all detention facilities and consistent access to medication would improve security and better ensure that inmates are prepared for eventual reintegration into the community.

Several committee members raised the topic of collateral consequences. Collateral consequences of conviction are one of the most significant barriers to employment for ex-offenders. First, to understand the scope of the impact, please visit <http://abacollateralconsequences.org/map/> and click on Wisconsin. This website was established by the American Bar Association and much of the information related to Wisconsin was provided by the State Public Defender's office. The site lists and cross-referenced which types of criminal convictions result in which types of statutory or administrative rule prohibitions on issues such as becoming professionally licensed or obtaining employment regardless of licensure. The site also includes consequences based on federal law. In order to look into this issue further, Department of Safety and Professional Services (DSPS) would be interesting to hear from regarding the license restrictions that exist.

A recent federal district court sentencing decision in *United States of America against Chevelle Nesbeth* (15-CR-18) was the first decision to fully consider the impact of collateral consequences in sentencing a defendant. The decision details a process by which both federal and circuit courts can factor collateral consequences into consideration and how the collateral consequences should be considered part of the punitive aspect of a sentence.

Another suggestion for the committee to consider would be to look at a system to provide relief from the collateral consequences related to employment on a case-by-case basis. Representative Dean Knudson introduced a bill, 2015 Assembly Bill 614, to allow for certificates of qualification for employment.

I also mentioned a topic on the impact of fines, fees, and forfeitures. The Director of State Court's Office has presented information in the past as to the impact of fees and forfeitures added on top of monetary fines. The impact of these obligations can have consequences far beyond the life of the sentence. The amounts can result in the inability to pay restitution to victims and a lack of money available to obtain housing or transportation. These effects limit the ability to seek, obtain, and maintain employment after incarceration, and individuals can face additional incarceration due only to non-payment of these financial obligations. The result is a revolving cycle of leveraged fines and inability to pay them because of the inability to maintain employment. There have been instances of probation being extended only for non-payment and even arrest and incarceration for failure to pay, a practice sometimes called "Debtor's Prison." Getting more information on this issue from the Director of State Courts may be useful to the committee.

It seems that many well-intentioned costs and surcharges have been added over the years, not only in Wisconsin, but nationwide. This trend is understandable given budgetary constraints and the need to fund courts and other government programs without raising tax rates. However, this trend has arguably reached a tipping point by imposing unrealistic financial burdens on a population that has, for the most part, very limited ability to pay.

Expungement is another topic that seemed to draw widespread interest from committee members. As I suggested at the meeting, an easy first step to expand access to expungement would be to remove "at the time of sentencing" from s. 973.015(1m)(a)1. This change would allow a court to expunge a record after successful completion of a sentence, considering the individual's post-sentencing rather than requiring judges to make an educated guess as to whether the individual will meet the subjective criteria. The possibility of expungement would provide additional incentive for positive behavior while incarcerated

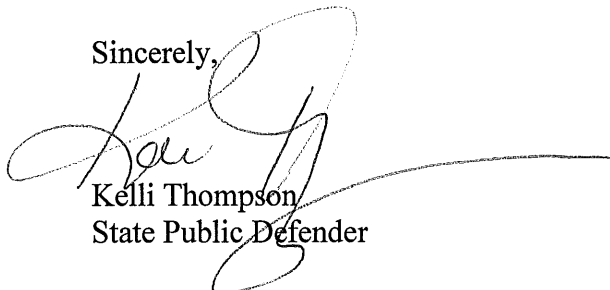
and while placed on supervision in the community. The committee is likely aware that there are limits to the effect of expunging a record. I am including an article from *The Marshall Project* which summarizes the practical limits of expungement.

In a related issue, public access to view past convictions and charges can be as impactful as a conviction. While there is much debate about the balancing test between access to public records and the negative impact on individuals from having that information available, one area that the committee might consider working on is somehow limiting access especially when charges have been dismissed or the individual is found not guilty. Consideration could also be given to prohibiting the use of websites which publish arrest and conviction records and charge individuals a fee to remove the record. In the last couple of years, several states including California, Colorado, Connecticut, Georgia, Missouri, New Jersey, Oregon, South Carolina, Texas, Utah, and Virginia have enacted legislation to limit or provide remedy for the practice of using the information inappropriately.

Finally, members of the committee expressed interest in hearing about the real life impact on employment from ex-offenders. We have former clients that have spoken about the obstacles they have endured while trying to obtain employment following a conviction and would be happy to speak before the committee. In addition, the Wisconsin Grassroots Empowerment Project works with ex-offenders and others with mental health issues on a variety of topics, including reintegration into the community. As they work statewide and on a wide variety of issues, having a speaker from their group may give some of the real life perspective for which the committee is looking. I'm happy to work with you to schedule time for them to appear at a future meeting.

Thank you again for the ability to participate on this committee. I look forward to working with you and the committee members as we address these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kelli Thompson', with a long horizontal flourish extending to the right.

Kelli Thompson
State Public Defender

Cc: Atty. Melissa Schmidt
Deej Lundgren
RJ Lambert

Five Things You Didn't Know About Clearing Your Record

A primer on the complicated road to expungement.

By Christie Thompson. Posted on Thursday, September 17, 2015 at 5:50 p.m.

A Nashville lawyer hopes to wipe clean some arrest records for 128,000 Tennesseans. The lawyer, Daniel Horwitz, who has worked on multiple cases regarding incarceration and re-entry, has filed a class-action motion in county court to have the case files destroyed for hundreds of thousands of arrests and charges that never resulted in a conviction.

Many of those who could benefit from the process, called expungement, do not even know it. "A lot of the people who are affected by this already believe they've had their records expunged," Horwitz told the Tennessean. That's the thing about expungement: many who are eligible for it don't know they are, advocates say, and many who know they are don't know how to get it.

Expungements are a legal process that can clear arrests, charges and minor convictions from someone's record (the Tennessee motion does not apply to convictions). Though "expunge" and "seal" are often used interchangeably, expungement means to erase such documents while "sealing" simply means they are no longer public record. The law on who is eligible for either varies state by state, and there is no encompassing federal law on expunging adult crimes.

Here are some additional things to know about expungements and sealed records:

In the Internet age, expungement only goes so far.

If your record is approved for expungement, the court agrees to toss out its records. But what about Google? News archives? Mugshots.com? "It's impossible to expunge information in this cyber-age," said James Jacobs, a law professor at New York University and author of "The Eternal Criminal Record." "You can have an official expungement, but to actually erase the events from history, I don't think so."

But Horwitz says that doesn't mean expungements are not still an important step. "I don't think anybody believes this is going to be a silver bullet, but any bit you can pare down someone's record helps them gain access to employment or housing. It's vital."

An expunged record can still hurt your chances of landing a job.

Beyond doing a simple Internet search for your name, employers often turn to private information providers to run background checks on job candidates. “[Companies] have downloaded the databases of the courts periodically, and they have them stored on their own databases,” Jacobs said. “Then it’s in the hands of the private people. Could you tell them not to ever tell anybody that they found an expunged record?”

An expunged record in many states does legally allow you to leave the box blank when a job application asks if you have ever been convicted of a crime. But some applications — like many for law school or the legal bar — will ask about former run-ins with the law, *even* if they are sealed or tossed out.

Congress is considering whether to make even more people eligible for expungement.

The highly publicized REDEEM Act introduced by Senators Cory Booker, Democrat of New Jersey, and Rand Paul, Republican of Kentucky, actually stands for “Record Expungement Designed to Enhance Employment.” Under the proposal, those convicted of nonviolent federal crimes could apply to have them sealed, and nonviolent juvenile offenses would automatically be expunged or sealed, depending on age.

“The biggest impediment to civil rights and employment in our country is a criminal record,” Sen. Paul said in a 2014 statement. “Many of these young people could escape this trap if criminal justice were reformed, if records were expunged after time served, and if nonviolent crimes did not become a permanent blot preventing employment.”

If you aren’t a citizen, even an expunged crime can still make you deportable.

Under immigration law passed in 1996, a “conviction” for the purposes of deportation includes any instance in which a person pleads guilty to a crime or some kind of punishment is imposed, such as some mandatory diversion programs. Even if the record was sealed or expunged, it could still be used as a reason to remove someone from the country.

If you’re trying to clear your record — there’s an app for that.

In Chicago, Maryland, and Louisiana, advocates and developers have built apps to help people understand whether or not they are eligible for expungement, and how to get in touch with a lawyer. (While a lawyer is not required, legal expertise can help navigate a complicated process.)

Previously, if someone tried to search for expungement help online, “the top results in Maryland was a 20-page pdf from the judiciary that walked you through every nuance of the statute,” said Jason Tashea, founder of Justice Codes and creator of expungemaryland.org. “For the average person, that is irrelevant.” The website asks users basic questions about their crime, and then connects them with a free or low-cost attorney to help with the application.

Cathy Deng of expunge.io in Chicago found the same thing — a 25-page document full of legalese when people searched for information on juvenile expungement. Her goal, along with the youth nonprofit Mikva Challenge, was to try and close the information gap on eligibility. “The vast majority of arrest records for kids in Chicago can be expunged, but very few people apply because it’s confusing,” she said. Both websites are open-sourced on github.

The Marshall Project

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The Atlantic

The Elusiveness of an Official ID After Prison

A bureaucratic maze within the federal government leaves scores of former inmates without the key to a fresh start.



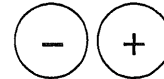
Attorney General Loretta Lynch testifies on Capitol Hill, urging the nation's governors to make it easier for convicted felons to obtain state-issued ID.

Andrew Harnik / AP

JULEYKA LANTIGUA-WILLIAMS

AUG 11, 2016 | POLITICS

TEXT SIZE



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SIGN UP

A flat piece of plastic can mean so much to a former inmate. It can mean stable housing, a better job, access to social services, educational opportunities, and more. But this singular piece of plastic proves elusive—impossible, really—for

scores of citizens across the United States. An official government-issued identification card, equal in value to and as universally accepted as a driver's license or passport, can be the key to a post-incarceration life filled with possibilities instead of roadblocks.



Crime and punishment in the age of mass incarceration
[Read more](#)

About 600,000 people return home from federal and state prisons each year. The federal government alone releases some 41,000 inmates annually. But it and many states do not provide returning citizens with this invaluable instrument.

For its part, the federal government does acknowledge the need for an official ID. Earlier this year, Attorney General Loretta Lynch asked all state governors to provide state-issued IDs for newly released federal inmates. This is a significant but only symbolic step: The Department of Justice cannot legally compel states to do anything in this regard. It can only ask politely and say please. “I am asking each state to work with us to allow citizens returning from federal prisons to exchange their federal BOP [Bureau of Prisons] inmate ID card—and their authenticated release documentation—for a state-issued ID,” she said at a reentry event in Philadelphia in April. “This basic step would have a powerful impact. As a practical matter, it would standardize the current patchwork of state policies around providing returning citizens with identification, and it would eliminate one of the most common—and most harmful—barriers to reentry across the United States.”

But, before asking states to do their part, why wouldn't the Federal Bureau of Prisons take the task on themselves? They are talking about federal inmates, after all. So I made a handful of phone calls to multiple federal agencies and exchanged some emails with Justin Long, a spokesperson at the bureau. I gained a better understanding of the intricacies involved, but mostly, I still have a lot of questions.

First, Long said that “preliminary discussions have occurred or contacts received” from Alaska, Arkansas, Colorado, the District of Columbia, Hawaii, Illinois, Michigan, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio,

Oregon, Pennsylvania, Puerto Rico, Rhode Island, and Virginia. That doesn't explain why the feds don't take the project on themselves, but 17 states and DC does seem promising. "Initial conversations have involved setting up appropriate points of contact and sending relevant BOP policies or procedures to interested states to become familiarized with our internal identification process," Long wrote. "In general discussions, the states contacted have expressed a sincere willingness to find a solution to this issue." But he was clear that the level of commitment may vary among states because some changes could require legislative amendments. On their end, the BOP set up the National Reentry Affairs Branch to coordinate with the DOJ and state representatives, like directors of departments of motor vehicles or secretaries of state.

"Most people don't focus on it, but it's a huge barrier for the formerly incarcerated, a huge barrier for caring for their families and themselves," said Paul Samuels, president of Legal Action Center, an advocacy organization in New York City whose clients include former inmates. "It also leads to high rates of recidivism. People return to criminal activity when they run out of legitimate ways to normalize their situation," he said.

Lynch agrees: In her letter to governors, the attorney general reminded them that securing employment and housing plays an important role in preventing individuals from returning to "patterns" that resulted in their incarceration. Okay, problem identified. So is the National Reentry Affairs Branch having an impact? Are states being heard? I wondered, would the BOP agree to make modifications to its prison identification, as Lynch said it would consider doing, if specific adjustments were requested by states? Long said that some states did suggest various "identity metrics," which are under review since they have to first comply with the Real ID Act, created to establish national guidelines for official IDs. Additionally, states were concerned about their ability to "protect their citizens from identity theft," Long said. So now the Federal Bureau of Prisons is assessing all of these, suggestions, requests, and concerns.

But what if the states weren't asked for input? Or at least, not on the question of federal-inmate IDs. Presumably, the Federal Bureau of Prisons verified the identity of every prisoner in its care prior to trying, sentencing, and incarcerating them. It even has a software application to create inmate ID cards. These cards are used during custody to identify inmates to staff, as well as to facilitate prison purchases and services. Upon being released to halfway houses, group homes, or residential reentry centers, inmates keep the cards to use as picture IDs. To prepare for someone's release, BOP staff often also work with inmates to obtain a birth certificate so they can get a state-issued ID instead, where that's an option. Which makes sense: The stigma associated with having a criminal record makes it difficult to imagine that providing prison-issued IDs would have broad appeal—especially among former inmates.

“Who will accept that in the community? Employers and other agencies do not recognize those IDs as legitimate,” said Samuels. He explained that DMV rules in New York state allow the state-prison ID to actually help people get a driver's license or state-issued nondriver ID, an ID that does not include driving privileges but which is on par with a license in terms of validity. Samuels, however, warned that for many returning citizens, the financial cost can be an additional barrier. “That's why we suggest a waiver for people who are indigent. When people come out of jail they have very little money to get on their feet, so it's important for the fees to be waived to help them get started,” he said.

At this point, reporting this story started feeling like a mean version of “hot potato.”

Some states are already way ahead of the federal government in this regard. Arizona, California, Illinois, Montana, Ohio, Utah, and Wisconsin allow released state inmates to exchange their corrections-department documentation for a state-issued ID or for prison documents to meet primary identification requirements for other state-issued forms of ID, according to Lynch's letter. And a handful of other states—Florida, Maryland, Minnesota, Mississippi, Missouri, Nevada, New Jersey,

and Wyoming—already have systems in place for providing a valid state-issued ID upon release. This got me thinking: If the states are sending released prisoners off with state IDs, could the Federal Bureau of Prisons send them off with federal IDs? Why doesn't the federal government just issue passports to former inmates? It is one of the most powerful and widely recognized forms of identification on the planet.

I called the Department of State, which issues passports, to ask. After some mention of the difficulty in obtaining birth certificates, which are required for U.S.-born Americans (as opposed to naturalized ones or permanent residents) to be issued passports, they referred me back to DOJ and BOP. "Yes, this concept was considered during the early planning stages of this project," Long said. "It was determined that current requirements to obtain a passport would inhibit wide-scale application for BOP's population." I took that to mean that birth certificates would complicate this, since most inmates don't have easy access to them. In a colossal twist, however, most local governments ask for state-issued IDs to process a birth-certificate reissue request.

"In many cases, our inmate population may not have access to this document and would require an alternative identification document to meet this requirement," Long explained. An alternative document like... a state ID! Of course if they had the state ID, they wouldn't need the passport to show to potential employers or landlords. "The BOP is working with each state to identify the most relevant information we can provide to suitably substitute for the absence of a birth certificate," he said. But other obstacles may stand in the way. "Some states have expressed concern with maintaining or gaining compliance with the Real ID Act from the Department of Homeland Security," Long wrote.

At this point, reporting this story started feeling like a mean version of "hot potato." But I was genuinely interested in getting to the bottom of why those with the power to provide official IDs could not figure out how to do it.

Then I learned that certain classes of crime prevent a person from having a passport application approved. So even if birth certificates grew on trees, being

convicted as a drug trafficker who crossed an international border to commit a crime eliminates any chance of getting a passport. The same applies to people currently subject to federal arrest or a felony-related subpoena. People convicted of sex tourism will also be unable to travel internationally, either by having their previously issued passport taken away or by having their passport application denied.

What's more, a judge has the discretion to decide whether or not a person who was formally declared legally incompetent during trial can get a passport. The same is also true for people who owe more than \$5,000 in child support. If someone already had a passport but obtained it via fraudulent means or altered it in some way, it can be revoked at any time. If someone served time in a prison outside the United States and needed financial assistance from the U.S. government to be released from prison and be sent back to the United States, he may be prevented from obtaining a passport until he repays all those fees. These restrictions make sense—and many seem to be exceptions to the rule—but I still was left wondering why issuing a piece of plastic with some words and a picture on it presented the federal government with such a herculean feat despite all indications of basic ID-issuing competence and multiple layers of seemingly earnest commitment.

In April, during an event to mark the first-ever National Reentry Week, Lynch made an impassioned case on behalf of returning citizens. “It’s every mother who wants to come back equipped to help provide for her family,” she said. “It’s every father who wants to return as a role model for his kids. It is every friend and neighbor who went down the wrong path but is determined to give back to their neighborhood, to contribute to their community, and to be more than their worst mistake.

“I believe that we owe every individual that chance,” Lynch said.

I agree. A lot of states do, too. In fact, in some states, Lynch may just be preaching to the choir. State officials nationwide might think proper IDs are crucial and yet just can't untangle the bureaucratic knots to make it happen. Which is why Lynch should take her own advice: The federal government, in the form of the BOP and DOJ, should lead by example. Not automatically issuing official identification to the

inmates the federal government releases from custody is an unnecessary extension of their punishment. It is also illogical not to issue IDs while simultaneously beseeching state prison systems to do so. Finally, given the fact that the federal government has already verified the identities of its inmate population, it seems absurd that they can't also laminate those identities and hand them out to released men and women on their way home.

This article is part of our Next America: Criminal Justice project, which is supported by a grant from the John D. and Catherine T. MacArthur Foundation.

ABOUT THE AUTHOR



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