

**SUGGESTED  
RECOMMENDATIONS FOR  
STUDY COMMITTEE REVIEW  
FROM COMMITTEE MEMBERS**



STATE REPRESENTATIVE  
18th ASSEMBLY DISTRICT



November 16, 2016

Senator Alberta Darling  
317 East – State Capitol

Representative Rob Hutton  
220 North – State Capitol

Dear Chairs Darling and Hutton,

Thank you for your patience over the last few months in giving me the audience to talk about expungement. I am grateful for your and your staff's time to listen and learn about this important issue.

I write to ask that we discuss and vote on a reform to expungement law as a study committee. I ask for several reasons:

First, several committee members have discussed expungement, as well as invited guests. It is a major issue in our state and one that is squarely within the scope of our committee's work. There is no bigger barrier to ex-offender employment than the criminal record.

Second, the impact of a reform to expungement is massive. We have focused much of our efforts on the men and women within Department of Corrections institutions and the transition from incarceration to the workforce. While this population certainly warrants our attention, the majority of offenders (ten's of thousands each year) don't go to prison. Expungement reform can help remove a barrier to employment for the thousands of would-be eligible individuals convicted of less serious, non-prison worthy crimes.

Third, the politics are there. I have continued to advocate for expungement reform and have met with many left and right leaning groups. I have met with dozens of groups and have more in sight. There is broad support. For example, both the Metropolitan Milwaukee Association of Commerce and the City of Milwaukee support expungement reform. I believe a committee bill will receive the support of both parties and, as it has been in other states, can pass on a heavily bi-partisan vote.

Fourth, I promise, personally, to work the bill as hard as I possibly can. I believe in this reform deeply. I know the law and have seen its limitations in the courtroom as a lawyer and in my community as a Representative. If you allow our committee the discussion and chance to vote - and if it is voted successfully out of our committee - I promise to see it move as far as it possibly can. I hope you will give me the chance. I would appreciate the opportunity to present this issue for 10-15 minutes at our next committee hearing on November 30<sup>th</sup>.

At the end of this - all I am left with is to simply ask, personally, please. Please give our committee the chance to discuss and vote on an expungement reform bill. Please.

Sincerely,

State Representative Evan Goyke  
18<sup>th</sup> Assembly District



# Wisconsin State Public Defender

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**Michael Tobin**  
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October 18, 2016

Legislative Council Committee on Removing Impediments to Ex-Offender Employment  
1 E. Main St.  
Madison, WI 53703

Dear Committee Members,

Unfortunately, I am unable to join the committee for the October 19 meeting. I would like to summarize for the committee the work that the State Public Defender's office has undertaken since the last committee meeting and offer some suggestions for topics that address the scope of the committee's charge. While there are endless suggestions on this topic, some of which are summarized below, in the interests of the scope and timeframe related to the committee's work, we offer the following suggestions.

### **Provision of Medication on Release**

The committee has heard from the Department of Corrections (DOC) on some of the details related to providing medication at release. Our general understanding is that the current process involves DOC providing up to two weeks of medication, a prescription for a refill, and a list of medical providers to people upon release. DOC has demonstrated a dedication and willingness to expand this process further.

DOC has sought and had its Central Pharmacy recognized as a Medicaid dispensary. To fill four weeks of a prescription for availability on the day of release, DOC would require a waiver from the state Department of Health Services (DHS) or from the federal Department of Health and Human Services.

We have contacted DHS, and the Department is in the process of reviewing what the next steps may be to move this decision forward.

This policy may not in the end require a legislative solution, but this committee may wish to offer its support for this policy in the form of an written communication with DOC and DHS.

### **Enrollment Upon Release**

Another medication-related issue is conducting an eligibility test for BadgerCare before release. This process would be beneficial because if eligibility was determined before release, enrollment would occur more quickly post-release, which would help to address the continuity-of-medication issue.

In 2010, the Opening Avenues to Reentry Success (OARS) program began enrolling participants in this joint DOC and DHS program. One of the goals of the program is to provide individualized case management, including facilitating eligibility testing pre-release. Currently, OARS provides support in 37 counties. The DOC 2017-2019 agency budget request includes an expansion to 5 additional counties.

We have asked DHS if there are other ideas to consider beyond the expansion of the OARS program. We anticipate additional feedback from DHS that this committee could consider. While an expansion of an

existing program such as OARS may be a fiscal consideration beyond the scope of a legislative council committee, there may be some support this committee could offer in terms of utilizing an already existing program with a proven track record of success.

### **Provision of Identification on Release**

DOC assists individuals pending release with obtaining either a state-issued identification card or a driver's license. If a social security card is not available, DOC will provide access to forms to obtain a birth certificate from the Vital Records Office at DHS. There is a \$20 fee, which places obtaining this vital form of identification beyond the means of many inmates. This \$20 fee becomes a major impediment to having a document that is critical to obtaining employment, housing, education, and transportation.

While providing a free copy to the approximately 1200 people per year who need a birth certificate carries obvious fiscal implications for DHS, perhaps other options such as a reduced fee or allowing the fee to be paid at a future date could be options for this committee to consider.

We have presented this topic to DHS and asked for feedback on other possible options for the committee.

### **Collateral Consequences for Occupational Licenses**

We reviewed individual license application restrictions based on conviction and found that it may be too difficult to make changes to individual licenses outside the scope of the regulatory councils housed at the Department of Safety and Professional Services (DSPS).

One concept that the committee could consider is inserting a time frame after a conviction at which point a person with a felony conviction would be allowed to apply for a license. Chapter 111 of the statutes deals with employment relations. Specifically, s. 111.335 limits the ability to be licensed based on certain arrest and conviction records.

This section has a general rule that permits employers and licensing authorities to consider whether the circumstances of a prior conviction are "substantially related" to the employment or occupation in question. However, there are also several subsections that make any felony (even without any factual connection to the employment or occupation in question) a permanent disqualifier.

For some of these permanent disqualifiers, the committee could add a time frame after conviction at which a person could apply for a license. One example could be as follows:

111.335(1)(cx) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensure, any individual who has been convicted of any offense under s. 38.50 (13) (c) within 5 years of the date of the application.

The list of restricted occupations based on a felony conviction includes:

- Wis. Stat. 440.26 Licenses (not allowed to have with felony conviction)
  - Private Detective

- Private Security Personnel (any private police, guard, or any person who stands watch for security purposes)
- Private Investigator
- Special Investigator
- Wis. Stat. 440.26 Permits (not allowed to have with felony conviction)
  - Private Security Permit
  - Temporary Private Security Permit
- Installer of Burglar Alarms
- Ch. 125 Licenses/Permits (not allowed to have with felony conviction or as a habitual offender)
  - Class A license for the sale of fermented malt beverages (consumption off premises)
  - Class B license for the sale of fermented malt beverages (consumption on or off premises)
  - Class B permits for the sale of fermented malt beverages (consumption on premises) in country clubs if the club is not open to the general public
  - Industrial fermented malt beverage permits
  - Wholesalers' permits
  - Brewers' Permit
  - Brewpub Permit
  - Out-of-state shippers' permits (authorize the permittee to ship fermented malt beverages only to holder of a wholesaler's permit)
  - Manager's Licenses

If the committee is interested in pursuing any of these options, it should invite more information and expertise from the Department of Safety and Professional Services.

### **Expanded Apprenticeship Options**

We have had several conversations with individuals related to employment workforce needs and availability of a trained workforce. Although there has been good progress in the last couple of years, it seems that this is an area that has a lot of room for growth and additional cross-agency coordination.

Feedback and testimony from the employers to the committee indicates a need for "soft skills" that are necessary for all vocations (this need may be greater than the need for technical skills). The Windows to Work program operated by DOC has laid the groundwork for offering this training both pre- and post-release. It currently is only available to 450 inmates, a small percentage of those who would benefit from the training. An expansion of this program would be one easy and obvious way to increase capacity for soft-skill training.

In terms of inter-agency collaboration, DWD and the various Workforce Investment Boards have been working collaboratively with DOC to expand formal apprenticeship training both pre-release and post-release. One potential focus would be on how a person transitions from pre-release Workforce Investment Board services to services in a different region post-release. This focus would require more input from DWD and others involved in the operation of workforce investment boards, but a smooth transition from one region to another would better ensure that services continue post-release.

One idea that we have mentioned to DOC, DWD, and employers representatives is a more complete apprenticeship opportunity pre-release. Currently, DOC and DWD have collaborated on providing the educational component of an apprenticeship pre-release. The practical work requirement of an apprenticeship must be completed post-release but there is little in terms of coordinated, systematic effort to match people with employers post-release to gain the work experience of the apprenticeship.

Conceptually, a program might be given further study that would allow for work release to complete the work component while in minimum security status. In general terms, an inmate would receive and complete the education component of an apprenticeship. While in minimum security, an employer could offer a regular paid apprenticeship position to both meet the employer's workforce need as well as ensure the individual completes the work component of the apprenticeship, possibly even pre-release.

Not only could the income earned be used to partially offset any costs of providing transportation to and from the correctional facility, but it could be used to both provide some amount of available money post-release and to pay any restitution or supervision fees owed as a result of conviction.

Aside from the additional logistics and coordination of creating this coordinated program, additional changes would be needed in the process of reviewing and approving community custody status for minimum security inmates.

**Other topics for the committee to consider suggesting for further study**

Given the vast number of potential solutions to the issues this committee has heard, we recommend that the committee create a report that details and recommends additional concepts for consideration by the 2017-2018 Wisconsin Legislature. Here are a few of the potential ideas to include in the report:

- Remove "at the time of sentencing" from expunction statute
- Change to revocation for technical rules violations
- Earned good time and credit for time on community supervision
- Other mechanisms for removing impediments based on conviction such as Certificate of Qualification for Employment
- "Surcharge fatigue" - the impact on recidivism and victim compensation of excessive fines, fees, forfeitures and surcharges
- Statutory limitation on websites that extort a fee to remove arrest and conviction records

My staff and I are happy to continue to work on any of these issues at the committee's direction. Thank you for the ability to provide this written summary.

Sincerely,

Kelli Thompson  
State Public Defender

Judge Borowski and I attended the Annual Judicial Conference this week and, as a result, could not meet the November 15 deadline to provide you with suggested topic options for possible consideration at the November 30, 2016 meeting of the subject committee. Please excuse our delay. If possible, please add the following to the agenda for committee consideration at our upcoming meeting:

1. Proposed legislation to expand expungement of felony and misdemeanor criminal records. This would include retroactive application of the expungement statute for those who have had no new criminal convictions for ten years, removing the age limitation for those eligible for expungement under our current statute, and permitting the judge to determine eligibility for expungement within a set time after a sentence is completed, rather than at the time of sentencing. Representative Goyke provided some proposed draft legislation on these topics which we could use as models or templates for our discussion and ultimate recommendation.
2. A recommendation that the legislature pursue action by DHS to permit a suspension rather than termination of social security and medical assistance benefits for incarcerated individuals. This will assist those leaving the prison in timely accessing needed health care and medication, rather than requiring a reapplication and significant delay in accessing needed healthcare, particularly medication. In addition, we suggest the committee consider recommending the legislature increase funding to the DOC so it can increase to four weeks from two weeks the amount of medication provided to those leaving the prison system.
3. We suggest the committee review the list of licenses that are revoked, or for which individuals are no longer eligible if convicted of a crime, and recommend modified legislation removing those the committee does not feel appropriate. Examples would include barber and cosmetology licenses, bar tending licenses, etc.

Thank you for your consideration. We look forward to seeing you on November 30.

Lisa Stark  
David Borowski

Suggested Recommendations for Study Committee Review by Mary Prosser, Clinical Associate Professor,  
University of Wisconsin Law School

The Joint Legislative Council Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment recommends that the Legislature and the Department of Corrections (DOC) review current laws and DOC policies to: (1) explore the impact of not having a state of Wisconsin driver's license on an offender's reentry into the community; (2) screen each inmate at the time of entry into the prison system to determine whether the person has a Wisconsin driver's license and whether the inmate needs to complete a Driver Safety Plan; (3) identify barriers to obtaining a driver's license for each person determined to not have one at the time of entry into the prison system; and (4) explore pathways to obtaining a driver's license and for completion of a driver safety plan prior to release from prison.

The Joint Legislative Council Study Committee on Reducing Recidivism and Removing Impediments to Ex-Offender Employment recommends that the Legislature and the Department of Corrections (DOC) review current laws and DOC policies and programs in order to assess whether the DOC can conduct evidence-based Driver Safety Plan assessments and provide treatment recommended by the assessment for inmates prior to their reentry into the community, regardless of the county of conviction.