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## MEMORANDUM

**TO:** The Pennsylvania House of Representatives

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** March 28, 2018

### **RE: SUPPORT FOR HOUSE BILL 1419 (DELOZIER)**

Of the nearly [three million Pennsylvanians](#)<sup>1</sup> with a criminal record, all face unnecessary barriers to employment and access to housing, education, occupational licenses, and other fundamental services. Many have only minor offenses while others simply have arrests without conviction. Unfortunately, even a minor criminal record can impose barriers to successful re-entry and participation in society, often with devastating effects on families. [House Bill 1419](#) would remove these obstacles by offering people the chance for a “clean slate.”

**On behalf of the 59,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote ‘yes’ on [House Bill 1419](#) for the following reasons:**

#### **Removes barriers to employment and other critical services**

Background checks have become an increasingly common way to screen people for employment and access to fundamental services: 87 percent of [employers](#)<sup>2</sup> conduct background checks on some or all job candidates, 80 percent of [landlords](#)<sup>3</sup> and two-thirds of [colleges](#)<sup>4</sup> run background checks, and criminal court involvement can also disqualify an applicant from accessing [public benefits](#).<sup>5</sup> Even a minor criminal record can present a major obstacle to success following a conviction. Offenses sealed under HB 1419 need not be reported to employers, landlords, colleges, or others, nor may they be used to deny state occupational licenses.

#### **Creates a uniquely streamlined process**

Under current law, Pennsylvanians with convictions must file a motion with a court to have an eligible offense expunged or sealed – the process is not automatic. HB 1419 streamlines that process by making the sealing of the record automatic and at no cost without having to file a petition or court order. Charges not resulting in convictions after 60 days and misdemeanor convictions (except for violent and sex offenses) would be automatically sealed after 10 years, as long there have been no subsequent convictions. Sealed records would still be accessible to law enforcement but *not to the public*. HB 1419 would be the first of its kind in the nation to utilize technology to implement an automatic process for sealing records from public view.

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<sup>1</sup> Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2012 (U.S. Department of Justice, 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/249799.pdf>.

<sup>2</sup> Society for Human Resource Management, “Background Checking—The Use of Criminal Background Checks in Hiring Decisions” (2012), available at <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>

<sup>3</sup> David Thacher, “The Rise of Criminal Background Screening in Rental Housing,” 33 Law & Social Inquiry, 5-30 (2008), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1747-4469.2008.00092.x/abstract>.

<sup>4</sup> Center for Community Alternatives, The Use of Criminal History Records in College Admissions Reconsidered (Nov. 29, 2010), available at <https://csgjusticecenter.org/nrrc/publications/the-use-of-criminalhistory-records-in-college-admissions-reconsidered-2/>.

<sup>5</sup> Nan Feyler, Impact of Criminal Record on Public Benefits in Pennsylvania (revised by Community Legal Services, Inc., Mar. 2016), available at [https://clsphila.org/sites/default/files/issues/criminal%20background%20chart%20March%202016\\_0.pdf](https://clsphila.org/sites/default/files/issues/criminal%20background%20chart%20March%202016_0.pdf).

### **Reduces recidivism and increases public safety**

Clean Slate’s automatic record sealing is only available to those who have remained free of any subsequent convictions, creating a strong incentive to avoid new or repeat offenses. Studies have shown that the opportunity for stable employment actually *lowers* crime recidivism rates, thereby [increasing public safety](#).<sup>6</sup> People with nonviolent convictions who do not commit another crime within 4-7 years are [no more likely to commit a crime](#)<sup>7</sup> in the future than those without convictions. Imposing irrational restrictions on economic opportunities for those with a criminal record undermines efforts to promote public safety and only serves to add unnecessary expense to the already bloated criminal justice system.

### **Stems the tide of skyrocketing costs at the state and national levels**

A criminal record serves as both a direct cause and consequence of poverty. It is estimated that the [U.S. poverty rate would have dropped by 20 percent](#) between 1980 and 2004 if not for mass incarceration and the subsequent criminal records that haunt people for years after paying their debt to society.<sup>8</sup> And employment losses due to a criminal record alone are to blame for a staggering [\\$65 billion loss in gross domestic product](#).<sup>9</sup> By removing needless barriers to employment and other vital services, HB 1419 will contribute to reduced criminal justice supervision costs, decreased public benefits support needed by people unable to get jobs because of their criminal records, and increased tax revenues when people are able to work.

### **Alleviates administrative burden on the courts**

Courts handle thousands of petitions a year but cannot begin to process all the cases eligible for expungement or sealing. HB 1419’s automatic provision would reduce the backlog of petitions pending before the court, allowing them to focus on other, more pressing cases.

### **Aligns with reforms enacted by most other states, reforms supported by a wide majority of Pennsylvanians**

Clean Slate provisions are one in a wave of similar reforms around the country. Since [2013, forty-two states and the District of Columbia](#),<sup>10</sup> have enacted or expanded legislation that mitigates the effects of a criminal record. Of those, [thirty-two](#)<sup>11</sup> have done so by expanding their expungement and sealing authorities. And, according to a 2017 poll, [81 percent of Pennsylvanians](#)<sup>12</sup> would support reforms that seal minor criminal records after a crime-free period.

**For these reasons, we urge you to vote “yes” on House Bill 1419.**

<sup>6</sup> Rodriguez, Michelle and Emsellem, Maurice. *65 Million “Need Not Apply”* Nat’l Employment L. Project 3 n. 6 (2011), available at [http://www.nelp.org/content/uploads/2015/03/65\\_Million\\_Need\\_Not\\_Apply1.pdf](http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply1.pdf).

<sup>7</sup> Blumstein, Alfred and Kiminori Nakamura, “Redemption in the Presence of Widespread Criminal Background Checks,” *Criminology* 47 (2) (2009): 331, available at <https://www.ncjrs.gov/pdffiles1/nij/226872.pdf>.

<sup>8</sup> DeFina, Robert H. and Hannon, Lance, *The Impact of Mass Incarceration on Poverty* (February 23, 2009). *Crime and Delinquency*, February 12, 2009, available at SSRN: <https://ssrn.com/abstract=1348049>.

<sup>9</sup> Schmitt, John and Warner Kris, “Ex-offenders and the Labor Market” (Washington: Center for Economic and Policy Research, 2010), available at <http://cepr.net/publications/reports/ex-offenders-and-the-labor-market>.

<sup>10</sup> *Four Years of Second Chance Reforms, 2013-2016* (2017), available at <http://ccresourcecenter.org/wp-content/uploads/2017/02/4-YEARS-OF-SECOND-CHANCE-REFORMS-CCRC.pdf>

<sup>11</sup> Subramanian, R., and Moreno, R. (2014, December). *Relief in Sight? States Rethink the Collateral Consequences of Criminal Conviction, 2009-2014*, available at <https://www.vera.org/publications/relief-in-sight-states-rethink-the-collateral-consequences-of-criminal-conviction-2009-2014>.

<sup>12</sup> U.S. Justice Action Network. (2017). *PA Statewide Polling Results*. Public Opinion Strategies [Distributor]. Retrieved from: <http://www.justiceactionnetwork.org/wp-content/uploads/2017/03/PA-Full-Polling-Memo.pdf>.