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**TESTIMONY PRESENTED BY
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AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
TO PENNSYLVANIA HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE
SEPTEMBER 18, 2007
STATE CAPITOL, HARRISBURG**

Chairman Caltagirone and members of the House Judiciary Committee, thank you for providing the ACLU of PA the opportunity to submit written testimony for today's hearing on House Bills 1053, 1543, and 1569 and House Resolution 255 regarding the expungement of criminal records.

The ACLU of Pennsylvania believes that easing ex-offender reentry to our communities is a constructive strategy for addressing public safety, particularly as it relates to the recidivism rates of those who have been incarcerated. After incarceration, ex-offenders are most likely to reintegrate into society when they have opportunities in employment, housing, and other life necessities. When ex-offenders have the opportunity to lead a stable life, they are more likely to lead a law-abiding lifestyle and not repeat their past mistakes.

A conversation I recently had with a Harrisburg man who spent time incarcerated illustrates this point. After extolling his construction skills, he said in frustration, "I can build a house, but Home Depot won't let me sell a hammer." After offenders have paid their debt to society, they should not face further hurdles to moving on with their lives.

We are pleased that the House Judiciary Committee is considering legislation that would make it easier to have some criminal convictions expunged.

This is an idea that is gaining considerable momentum around the country. States have been updating their expungement statutes, and some states have gone so far as to pass legislation that allows a person to deny having been convicted so that the expunged conviction

does not become a basis for denying employment. Ex-convicts can lawfully advise prospective employers that they do not have criminal convictions in states as diverse as Massachusetts, Nevada, New Jersey, Ohio, and Oregon.

In Nevada, for example, the statute authorizes the sealing of criminal records. It also provides that “all proceedings recounted in the record are deemed never to have occurred, and the person to whom [the order] pertains may properly answer accordingly to any inquiry concerning the arrest.” Nevada courts interpreting the language have found that the statute: “was enacted to remove ex-convicts’ criminal records from public scrutiny and to allow convicted persons to lawfully advise prospective employers that they have had no criminal arrests and convictions with respect to the sealed events.” State Department of Motor Vehicles and Public Safety v. Frangul, 110 Nev. 46, 867 P.2d 397 (1994).

The ACLU of Pennsylvania urges this Committee to add to the bills under consideration similar language as that found in the Nevada statute so that it in Pennsylvania an expungement will indeed become as helpful as possible in assisting an ex-offender’s efforts at securing gainful employment.

Many state legislatures are now looking at legislation aimed at improving their expungement statutes. Bills on this subject have been introduced this year in Arizona, Indiana, Kentucky, Minnesota, Mississippi, New Mexico, North Carolina, Rhode Island and Tennessee.

Congress, meanwhile, is catching up with the states. Congress is now considering the Second Chance for Ex-Offenders Act. This legislation would permit certain people who have been convicted on a non-violent offense to seek the expungement of the record of that conviction. If an order for expunging the criminal record is granted, the person would be

restored to the legal status he had before committing the offense, would not be required to reveal the offense, and would not be disqualified for any profession because of that offense.

To speak to the specific bills you are considering, the ACLU of PA supports House Bill 1053. Expunging the records of those who have been exonerated by the justice system meets a minimal standard of decency and is only one of several steps needed to correct such a miscarriage of justice.

Incredibly, the criminal records of exonerees are not automatically expunged, and numerous Pennsylvanians who have been exonerated have found that their record continues to be a burden for them as they attempt to piece their lives back together. Exonerees face numerous obstacles, including mental health issues, a lack of access to healthcare, minimal financial resources, and roadblocks to employment. The least the Commonwealth can do is ease their transition by expunging their criminal records. For these reasons, the ACLU of PA supports HB 1053.

Before addressing the additional bills under consideration, I'd like to note that your colleagues in the Senate are considering Senate Bill 232. SB 232 is similar to House Bill 1543 with a key difference. SB 232 allows expungement of an ex-offender's record in a broader number of circumstances. Because a court renders the final decision of whether or not to grant the expungement, we believe that the circumstances in which expungement can be ordered by a court should be broader than that which is allowed under House Bills 1543 and 1569. The court will retain the authority to deny expungement if the individual petitioner is not deserving.

The ACLU of PA supports Senate Bill 232, and in fact, we believe that the Commonwealth should enact SB 232 at a minimum. SB 232 is the floor for what we can

achieve on this issue, not the ceiling. Thus, we believe that House Bills 1543 and 1569 can be improved by amending them to reflect the language in SB 232.

It is noteworthy that others in the House of Representatives and elsewhere in the Commonwealth are offering proposals to tear down the barriers in employment faced by people who have been incarcerated. Rep. Parker and 27 co-sponsors, including members of this committee, have introduced House Bill 1114, which addresses tax credits for employers who hire ex-offenders. HB 1114 is currently in the House Finance Committee. In addition, Philadelphia City Councilman Wilson Goode, Jr., at the urging of mayoral candidate Michael Nutter, has introduced legislation that would offer a \$10,000 tax credit to employers who hire ex-offenders. Goode's bill would also provide support services and career training for ex-offenders. An article about Goode's proposal from the September 12 edition of the Philadelphia Daily News is attached to this testimony.

The ACLU believes that now is the time to move forward with this kind of legislation so that more ex-offenders can gain meaningful employment and successfully reenter our society. We think that all of us will be well served by statutory and policy changes that promote work rather than recidivism.

Goode pushes bill pushed by Nutter

By CATHERINE LUCEY
Philadelphia Daily News
September 12, 2007

He left City Council more than a year ago, but Democratic mayoral candidate Michael Nutter is still getting legislation introduced.

By proxy, of course.

When Council returns next week, Councilman Wilson Goode Jr. plans to introduce a prison re-entry bill authored by Nutter. The legislation awards \$10,000 in tax credits to employers who hire ex-offenders, and provides support services and career training to ex-prisoners.

Nutter put forth the idea for the program - named the Philadelphia Re-Entry Employment Program or "PREP" - during the primary election campaign in May. Shortly after he won, he asked Goode if he would consider introducing the bill.

"This issue is so important that it should not have to wait for an election or someone to get elected," Nutter said.

Nutter said his re-entry program was a key part of his anti-violence strategy, because a job may stop an ex-con from returning to a life of crime.

"We have to establish a longer relationship with these people," he said. "The point of this bill is to try to [help] somebody from where they are today, incarcerated with no job prospects and very little prospect of getting a job."

This bill follows an existing tax-credit program created by Goode that offers \$5,000 credits against the business-privilege tax for each new job created for an ex-offender.

Nutter's legislation offers a \$10,000 credit for each new job for three years - so up to \$30,000 credit per ex-offender. The program also aims to work closely with offenders to help them succeed.

Six months before release, all city residents in the Philadelphia Prisons System will be asked if they wish to join the program. If they do, they'll get help finding a job and housing upon release.

Under the rules of the tax credit, employers will have to provide up to \$2,000 towards a general equivalency degree, Community College courses or vocational training.

In exchange, the ex-offenders must pay the city 5 percent of the wages earned during the three-year period.

The bill also states that any businesses with a city contract must identify job opportunities for ex-offenders.

"I think what Michael Nutter has proposed is a much more comprehensive approach that deals with the issue of education and training for ex-offenders," Goode said.

He said he has circulated the bill among his Council colleagues, and expects it to pass easily.

Zack Stalberg, chief executive of the watchdog group Committee of Seventy, praised Nutter's initiative on this issue.

"To me it appears to be a positive thing in that it's moving some of these ideas forward as quickly as possible," he said.

If Nutter is elected mayor, Goode said he expects more collaboration.

"Without a doubt," Goode said. "I look forward to it."

Find this article at:

http://www.philly.com/dailynews/local/20070912_Goode_pushes_bill_pushed_by_Nutter.html