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March 3, 2010

Homer C. Floyd, Executive Director
Pennsylvania Human Relations Commission
301 Chestnut Street, Suite 300
Harrisburg, PA 17101-1702

Dear Mr. Floyd,

Thank you for the opportunity to submit comments on the Pennsylvania Human Relations Commission's proposed policy guidance, "The Disparate Impact Discrimination Implications of a Denial of Employment Based on a Criminal Record." I'm writing on behalf of the 16,000 members of the American Civil Liberties Union of Pennsylvania to express our support for the policy guidance.

Two relatively recent phenomena have collided to increase barriers to employment for persons who have committed past offenses. First, technology has evolved to a point in which an incredible amount of information is available with just a few keystrokes. Second, sentencing enhancements for certain criminal offenses, particularly drug offenses, have led to vast increases in the inmate populations in Pennsylvania's state prisons and county jails. The commonwealth's state prison system currently houses 51,000 inmates, and the Department of Corrections is building four new prisons between now and 2013.

Information about crime has always been public, and some employers have been asking applicants if they've been convicted of a crime for years. But in the internet age, that information is much easier to access. As a result, persons who have been released from prison often have a difficult time finding employment, and when they can find work, it is often in industries that do not offer a living wage. We have even heard stories of former offenders who have been out of prison and working for several decades but who are today having difficulties with access to employment.

The ACLU of PA concurs with the PHRC's insight into the disproportionate impact of race in denying employment to persons who have been convicted of crimes. In 2007, the Justice Policy Institute released a study showing that African-Americans are more likely to be sentenced to serve time in state prisons than Caucasians, despite data showing that drug use is nearly the same across races.¹ York County had the 12th-highest rate of state prison incarceration of African-Americans in the country at 617 per 100,000 and a black-to-white state prison ratio of 24-to-1. Dauphin County sent blacks to state prison for drug offenses at a rate of 500 per 100,000 and a black-to-white ratio of 21-to-1.

¹ Beatty, P. et al. (2007) *The Vortex: The concentrated racial impact of drug imprisonment and the characteristics of punitive counties*. Available at <http://www.justicepolicy.org/content-hmID=1811&smID=1581&ssmID=69.htm>.

The PHRC's policy proposal properly balances the business community's interests with fair practices toward persons who were convicted of past crimes. The policy guidance requires businesses to prove that an applicant poses an unacceptable level of risk due to his/her past criminal conviction(s). This proposal allows employers to deny employment in situations where the person is truly a risk and stops the denial of employment to persons who are not a risk and who have the ability, enthusiasm, and skills to be productive employees.

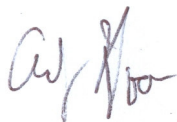
Barriers to employment for persons who have committed past crimes can also be lowered by ending the practice of using criminal background checks as a way to pre-screen applicants. The PHRC's proposal favors hiring practices that do not inquire into criminal backgrounds until after a conditional offer of employment has been made. This gives persons who are former offenders the opportunity to experience the hiring process and prove why an employer should hire him/her.

The only concern we have is that the PHRC has overemphasized the fact that this policy does not have the full force of law. In communicating the new policy, the ACLU of PA encourages the PHRC instead to emphasize that the commission considers this policy a part of its duty in enforcing the Pennsylvania Human Relations Act, putting businesses on notice that the business necessity defense in the guidance will be the standard that the PHRC will apply in its adjudications.

Persons coming out of prison face many obstacles, including adjusting to life on the outside, finding employment and housing, and paying financial debt. The PHRC's policy guidance is a fair initiative for former offenders and is one piece in addressing the ongoing efforts toward successful reentry for Pennsylvanians who have been incarcerated and toward lowering recidivism rates.

The ACLU of PA supports your efforts.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Andy Hoover', is positioned above the typed name.

Andy Hoover
Legislative Director