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**TESTIMONY PRESENTED BY
LARRY FRANKEL, LEGISLATIVE DIRECTOR
AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
TO PENNSYLVANIA SENATE JUDICIARY COMMITTEE
MAY 21, 2007
STATE CAPITOL, HARRISBURG**

Good afternoon Chairman Greenleaf and other members of the Pennsylvania Senate Judiciary Committee. My name is Larry Frankel and I am the Legislative Director for the American Civil Liberties Union of Pennsylvania. I want to thank you for inviting me to testify today on the issue of expungement of criminal records.

The ACLU views today's hearing as a logical follow up to the hearings this Committee held last fall on the issue of urban violence. I had the privilege of testifying at the hearing that was held here in Harrisburg on September 25, 2006. At that time I suggested that among the strategies for combating urban violence should be more coordinated efforts aimed at easing ex-offender reentry. To us, focusing on removing the barriers to employment for those coming out of our prisons is a sound approach to reducing recidivism.

At that same hearing, I recommended that the Pennsylvania General Assembly "refrain from enacting new laws that make it even harder for ex-offenders to obtain employment. Common sense tells us that ex-offenders who have difficulties getting a job (and the means for earning the money necessary to access decent housing and medical care) are more likely to re-offend."

Therefore, we are pleased that the Senate Judiciary Committee is now considering legislation that would make it easier to have some criminal convictions expunged as well as legislation that will limit the ability of employers to use old criminal convictions as a basis for denying employment. We think that passing legislation that would accomplish these ends

would assist ex-offenders who are looking for work and trying to become productive members of our society. The legislation also could assist many employers who are having trouble finding people to employ in a range of occupations.

There is a growing awareness all around the country that we need to make these kinds of changes proposed by these bills if we are to help ex-offenders successfully reenter society and if we are to truly promote public safety through reduced recidivism. 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.

But Congress is merely catching up with what has been happening in the states. Many states have updated their expungement statutes. Several 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. States as varied as Massachusetts, Nevada, New Jersey, Ohio, and Oregon have laws that permit ex-convicts to lawfully advise prospective employers that they do not have criminal convictions.

For example, the Nevada 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 SB 232 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.

In most states, these procedures are available only to first time offenders or those who have committed minor offenses. A few states, however, have expungement and sealing statutes that are applicable to those with adult felony convictions. Where such procedures are available, there is evidence that they are widely utilized as they provide the most effective form of relief.

A few states have also taken steps to more effectively prohibit employers from refusing to hire an ex-offender. Such laws generally bar an employer from refusing to hire a person “solely” because of a criminal record. Unfortunately, administration of these laws is inadequate and ex-offenders continue to have problems securing employment.

In conducting research to prepare for today’s hearing I found a useful resource on the website of The Sentencing Project (www.sentencingproject.org) That resource is a report entitled “Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide.” That report is a comprehensive survey of the laws of all fifty states with respect to obtaining relief from the collateral consequences of a criminal conviction. I have attached to my testimony the executive summary of that report which contains useful and interesting findings regarding how states provide relief to ex-offenders with criminal records.

I have also attached to my testimony the profiles for the states of Illinois and New York that are part of that survey. Those states have mechanisms for providing an ex-offender with a “Certificate of Relief from Disabilities” or a “Certificate of Good Conduct.” In New York, the

Certificate of Relief from Disabilities is available to ex-offenders with no more than one felony conviction and any number of misdemeanor convictions. The Certificate of Good Conduct is available to people with more than one felony conviction and is issued by the Board of Parole.

These certificates remove significant barriers to employment and create a presumption of rehabilitation. According to the New York Division of Criminal Justice services, 3200 certificates of both kinds are granted annually.

Many state legislatures are now looking at legislation aimed at liberalizing 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.

Finally, I would like to draw your attention to the fact that Michael Nutter, the Democratic candidate for Mayor of Philadelphia, also recognizes the importance of prisoner reentry. In his position paper on crime, Nutter said:

I will invest in a real prisoner reentry program that builds meaningful attachments between former prisoners and employers.

We also need to support the adults who re-enter the community after prison. Recent research by the National Academy of Science demonstrates that employment is the strongest predictor of whether an ex-prisoner will return to prison. Yet, finding and keeping a job can be a nearly impossible challenge for many ex-prisoners.

Nutter went on to propose creating job opportunities for former prisoners, reviewing City personnel practices with regard to ex-offenders, and creating a tax credit for those who hire and retain ex-offenders. While candidate Nutter did not specifically address the issues of expungement and limits on use of criminal records, the legislation you are considering would be consistent with what he has proposed.

I hope that this overview of the growing movement all around the country to review expungement laws and consider how to make it easier for ex-offenders to secure gainful employment will assist this Committee in its own consideration of legislation in this area. 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.