Re: DCACDL Comments on Bill 19-889

Dear Committee on the Judiciary,

Thank you for the opportunity to testify on Bill 19-889, the Re-Entry Facilitation Amendment Act of 2012. We support this bill and the Council’s efforts to reduce the barriers to employment for ex-offenders.

Since the closing of Lorton Correctional Complex, ex-offenders in DC face unique challenges to community reintegration. Many are relocated to serve their sentences hundreds or thousands of miles from home. Familial relationships are strained as a result of separation. All ties to local churches, doctors, counselors, teachers, and support groups are severed for the duration of their absence. The people of the District would benefit greatly from meaningful efforts to aid ex-offenders looking for gainful employment and support services, as it would dramatically reduce criminal recidivism. Many defendants cite unemployment as a factor in their decision to reoffend, particularly in drug- and theft-related cases.

The Re-Entry Facilitation Amendment Act will enable many returning citizens to compete for jobs that might otherwise be unavailable to them.

Limiting Liability
This bill laudably encourages employers to engage in fair hiring practices, by limiting civil liability for those who act in good faith. It also gives employers guidance by listing logical considerations when hiring someone with a criminal record. This is good policy because it discourages the practice of excluding ex-offenders as a class.
Criminal Record Sealing
The best safeguard against discrimination in hiring in the Information Age is to simplify and expand the provisions permitting sealing and expungement of criminal records. Even if employers prohibited from asking applicants to disclose their own criminal history, it is now very easy to search and access court records in person and online.

Domestic Violence Convictions
One purpose of this bill is to “exclude interpersonal violence as an ineligible misdemeanor” under Title 16. We concur that domestic violence convictions should be treated like any other conviction for purposes of record sealing. The classification of an offense as “intra-family” is subjective. For example, if a female defendant and a female complainant each claim a child was fathered by the same man, that case may or may not be filed in the Domestic Violence Branch. Because the nature of the relationship between the parties is not an element of the offense, that defendant is not guaranteed due process – notice and a hearing – on the issue of which branch has jurisdiction. Yet, a conviction in the domestic violence branch carries collateral consequences with respect to record sealing and firearm registration. This invites a constitutional challenge.

Non-Convictions
We also support automatically sealing records of non-convictions, as proposed by GW Law student attorney Emily Theriault. Although law enforcement may find it helpful to keep information about all criminal accusations, records of cases that are disposed by nolle prosequi, dismissal, or acquittal are of virtually no value to courts or litigants. These cases should be set aside, removed from publicly accessible CourtView and Court Cases Online, and made available to the court for sentencing purposes only. It should be noted that a “set aside” as defined in the Youth Rehabilitation Act differs from sealing and differs from expungement.

Felony Convictions
Under the current statute, most felons are ineligible to seal or expunge any part of their records. We urge the Council to consider eliminating a distinction that, in practice, proves to be quite insignificant. A crime is considered a felony if its maximum penalty exceeds one year. This means that it encompasses behavior that the legislature deemed relatively serious. However, it may also include behavior that is comparatively minor. For example, one person may be convicted of a nonviolent drug-related felony and deemed suitable for a sentence of probation, while another person may be convicted of several misdemeanors and sentenced to years of incarceration. Under the current scheme, the felon cannot ever clear her name, but the misdemeanant can eventually petition the court for expungement. The statute ignores variables such as whether it is a crime of violence or dishonesty and disenfranchises those who are most in need of legitimate work.

Simplifying Title 16
The current record-sealing law could be simplified to ensure speedier administration of justice. Title 16 presently requires petitioners to distinguish between two bases for filing: actual innocence under 16-802 or the interests of justice under 16-803. The amount of time a person can or should wait before filing depends on the grounds of the petition, the offense charged, and the disposition. The burden of proof fluctuates over time. If a petition is denied under 802, that
person may re-file under 803. This scheme is confusing, especially to those who do not have the assistance of counsel. Notably, indigent criminal defendants are not appointed counsel to aid and advise them with these quasi-civil matters. Instead, Title 16 should allow anyone to file a petition for sealing at any time and require the applicant to address all factors, including the charge, actual innocence, disposition, the amount of time that has elapsed, and the factors in 16-803(h). Petitions to expunge criminal records on the other hand, could be treated separately under the title, with a required waiting period.

Other Approaches
In addition to the strategies employed in this bill, we note that other jurisdictions have taken various legislative approaches to encourage hiring of ex-offenders. For example, in Wisconsin, it is unlawful to discriminate in employment against qualified individuals based on arrest record or conviction record. Wisconsin Statutes 111.31-111.395. The DC Human Rights Act could similarly be amended to include criminal history as an unlawful basis of discrimination. Additionally, public and private employers and landlords have been prohibited from inquiring about criminal history on applications, under “Ban the Box” legislation. At minimum, these inquiries should be limited to convictions that are recent and substantially related to the job’s requirements. Finally, existing tax credits, subsidies, and bonding programs could be strengthened and publicly promoted.

We regard this bill as a step in the direction of equalizing opportunity and reducing crime. Thank you for addressing an issue that is of great concern to our clients and to the community as a whole. And, thank you for considering these comments.

Respectfully,

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Legislative Committee, DCACDL