



TESTIMONY OF THE LEGAL ACTION CENTER

In Support of Resolution 1521:

Legislation to Enact the Second Chance Program

Before

The New York City Council

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Presented by

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My name is Anita Marton. I am Senior Attorney at the Legal Action Center, a public interest law firm that specializes in legal and policy issues relating to the criminal justice system, alcoholism and substance abuse, and HIV/AIDS. Through direct assistance to clients, policy work and technical assistance, the Legal Action Center works to combat the stigma and prejudice that keep individuals with criminal records out of the mainstream, identify the most effective ways to address the underlying problems, including alcoholism and substance abuse, that so many offenders face, and advocate for the expanded use of intermediate sanctions, when appropriate. Some of the assistance the Legal Action Center has provided to the thousands of individuals with arrest and criminal histories who have contacted us is to assist them in obtaining Certificates of Relief from Disabilities and Certificates of Good Conduct, cleaning up their rap sheets, and advising them of their rights to employment, housing and public benefits.

I would like to thank the Committee on Fire and Criminal Justice Services for the opportunity to testify today in support of Resolution 1521. I would also like to commend the City Council for addressing this important issue. Resolution 1521 calls upon the New York State Legislature to enact legislation pending before the New York State Senate that establishes the

Second Chance Program. In so doing, the City Council is calling attention to the stigma and embarrassment that can result from having a past criminal record – stigma and embarrassment that can lead directly to discrimination in the areas of employment, housing, education, public assistance, and other spheres of society for people with convictions.

As the City Council resolution notes, huge numbers of individuals are incarcerated or on probation or parole. According to the Department of Justice, approximately 500,000 individuals leave state and federal prisons every year. U.S. Dep't of Justice Office of Justice Programs, Reentry Courts: Managing the Transition from Prison to Community (September 1999). At the year end 1998, 4,122,577 adult men and women were being supervised in the community through probation or parole. U.S. Dep't of Justice Office of Justice Program, Probation and Parole in the United States, 1998 (August 1999). In New York state, 27,991 inmates were released from Department of Corrections facilities during 1998. 30,469 inmates were released during 1997. State of New York Dep't of Correctional Services, Admissions and Releases, 1998. As the City Council Resolution notes, a significant number of those incarcerated, on probation or parole have committed a nonviolent drug offense.

African-Americans represent a disproportionate number of individuals convicted of drug offenses. A Harvard Law Review article notes that according to the U.S. Public Health Service, in 1992 76% of illicit drug users were white, 14% were black, and 8% were Hispanic. These figures approximate the racial and ethnic composition of the United States. Yet, African-Americans account for 35% of all drug arrests, 55% of all drug convictions, and 74% of all drug sentences.

The Limitations of Current Employment Discriminations Laws in New York

While New York State has laws that attempt to mitigate the discrimination that can arise from having a criminal record, these laws are inadequate. Article 23-A of the Correction Law (§§ 750-755) and New York State Human Rights Law (Exec. L. § 296(15),(16)) are intended to protect persons with criminal records from discrimination by employers and occupational licensing agencies. These laws were designed to protect ex-offenders from being unfairly denied jobs or occupational licenses because of their convictions. The laws make it illegal for employers to have a policy of not hiring any person with a criminal history. Employers must individually consider each person who applies for a job and make a decision about hiring

that individual based on his or her qualifications and other factors, including his or her conviction history. These laws make it illegal to deny any ex-offender a job or license because of his or her past conviction(s) unless that person's conviction(s) are "directly related" to the job in question, or hiring or licensing that person would create an "unreasonable risk" to the safety of people or property.

Unfortunately, while these laws were designed to protect ex-offenders from being unfairly denied jobs or occupational licenses because of their convictions, such discrimination occurs very frequently. Employers have found easy ways to get around these anti-discrimination laws. New York State law allows employers and licensing agencies to ask individuals about past convictions for criminal and non-criminal offenses. Once employers find out about an individual's past criminal history, and if employers do not wish to hire an ex-offender, they can simply deny that individual a job by stating they found a more qualified candidate. Since many ex-offenders may be entering the work force for the first time and thus may not have an extensive work history, it is very difficult for them to challenge the reasons for the job denial as being pretextual.

This happens with such frequency that we often hear from clients that

the word on the street is to lie on employment applications about past criminal history. This is not a wise path for an ex-offender to take for many reasons, not least of which is that an employer can legally refuse to hire or fire an individual because he or she lied on an employment application, even if it would have been illegal for the employer to deny the person the job because of his or her past criminal record. It is because of the failure of our current laws to protect ex-offenders from being unfairly denied jobs or occupational licenses because of their convictions that the Second Chance Proposal is so important

The Second Chance Proposal

The Second Chance legislation would, for certain non-violent offenses, correct the failure of current laws to protect individuals with criminal histories from employment discrimination. By allowing non-violent offenders who demonstrate sufficient evidence of rehabilitation to have their criminal records sealed **for civil purposes**, the stigma that can result from a conviction record, and the obstacles to successful rehabilitation and reintegration into society that such stigma can cause, will be mitigated while protecting public safety and maintaining community trust.

Only individuals who have been convicted of no more than two non-

violent drug-related offenses and no more than two misdemeanors will be eligible to participate in the program. Individuals who have previously been convicted of a violent offense will not be eligible to participate in the program. The individual must wait five years after most recent date of sentence for those persons not sent to prison or jail, or five years after release from incarceration, before s/he can apply to have his/her record sealed. During this waiting period, the person cannot be convicted of any felony or misdemeanor offenses and not more than two non-Vehicle and Traffic Law violations. The individual must also complete certain program requirements. These requirements include completion of a public service component of at least one year; completion of alcohol or substance abuse treatment and regular monitoring for one year following treatment, if necessary; and the attainment of a GED or high-school diploma, if not already received.

The Second Chance proposal contains several provisions designed to protect public safety:

- The criminal justice system and law enforcement, including potential employers of police and peace officers, will still have access to the sealed criminal records.
- The participant applies to a Commission especially established

to handle these cases. The Commission consists of five members. The Governor, Majority Leader of the Senate, and Speaker of the Assembly each appoint one member of the Commission, and the New York State District Attorneys Association appoints two members of the Commission.

- The order granting the sealing is not automatic. The prosecutor and the Attorney general, if the Attorney General prosecuted a case, are given notice of the participant's application to the Commission for sealing and is afforded the opportunity to object to the participant's motion. Also, the Commission retains the right to deny the sealing order if it believes the interests of justice require it to do so.
- If the Commission grants or denies the sealing motion, the individual and the prosecutor and Attorney General if the Attorney General prosecuted a case, have the right to appeal the Commission's decision to either deny or grant the sealing motion.
- If someone is subsequently convicted of crime who has had their criminal record sealed, the subsequent conviction of a

misdemeanor or felony offense will result in the automatic unsealing of the person's criminal record.

By promoting the reintegration into society of appropriate non-violent offenders who demonstrate sufficient evidence of rehabilitation to have their criminal records sealed, the Second Chance proposal mitigates the stigma that can result from a conviction record while protecting public safety and maintains community trust. We applaud the City Council's efforts support the Second Chance legislation. We also urge the City Council to call upon the New York State Legislature to pursue other avenues that will facilitate the reintegration of people who have been involved with the criminal justice system while protecting public safety.