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Statement
of the Council for Court Excellence
before the
Committee on the Judiciary
Council of the District of Columbia

Public Oversight Hearing
on
Re-entry Programs and Services for
the District's Returning Citizens

November 18, 2011

Good morning, Chairman Mendelson and Chairman Brown, and members of the Judiciary and Workforce Development Committees. My name is Jay A. Brozost, Chairman of the Council for Court Excellence Board of Directors. With me today is June B. Kress, CCE Executive Director. I appear today in my capacity as CCE Board Chair and not in any other capacity. No judicial member of the CCE Board of Directors participated in the formulation of this testimony.

The Council for Court Excellence ("CCE" or "the Council") is a local nonprofit, nonpartisan civic organization that is dedicated to improving the administration of justice in the courts and related justice agencies in the District of Columbia. Since being founded in 1982, CCE has been a unique resource that brings together members of the civic, legal, business, and judicial communities to identify and promote justice system reforms, improve public access to justice, and increase public understanding and support of the justice system.

Beginning with our work in 2005 to develop and promote the "Criminal Record Sealing Act" legislation passed by this Council in 2006, the Council for Court Excellence has been addressing the effects of a criminal record on employment. We have done so through our DC Prisoner Reentry Initiative advisory committee. The members are Theodore Whitehouse, Chair, Willkie Farr & Gallagher; the Honorable Mary Ellen Abrecht, DC Superior Court; Avis Buchanan, DC Public Defender Service; John Clark, former DC Corrections Trustee; Phillip Fornaci, DC Prisoners' Project of the Washington Lawyers' Committee; Judi Garrett, Federal Bureau of Prisons; Cedric Hendricks, Court Services and Offender Supervision Agency; Clifford Keenan, DC Pretrial Services Agency; Ann Cuningham Keep and Susan Lynch, civic members of CCE's board; Robert Okun, US Attorney's Office for DC; Tyrone Parker, Alliance of Concerned Men; Earl Silbert, DLA Piper and President of CCE's

board; Margaret Singleton, DC Chamber of Commerce; and Charles Thornton, DC Office on Ex-Offender Affairs.

In our 2011 action plan, *Unlocking Employment Opportunity for Previously Incarcerated Persons in the District of Columbia*, CCE found almost 50% unemployment in a sample of over 550 previously incarcerated persons. [1] The chronic unemployment among persons with criminal records exacerbates the city's already high unemployment rate and threatens D.C.'s long-term economic health and safety.

The report was developed by the advisory committee named above, which includes a broad range of stakeholders in the District's criminal justice system, including law enforcement and corrections officials, employer organizations, non-profit organizations that provide services to current and former offenders, and members of the CCE Board of Directors. As they began their work, there was consensus among the group that employment among previously incarcerated persons was a critical issue and that CCE was well-qualified to address it, recognizing there are other equally pressing social service needs among former offenders, including housing, substance abuse, mental health, and education, among others. CCE's goal was to identify consensus reforms to strengthen employment reentry services, programs, and policies currently utilized by the District.

National context of criminal records and employment

Statistics about the impact of the United States' criminal justice system are becoming increasingly common, and many of you attending this hearing today are familiar with them. In the event you are not:

- Approximately 2.3 million people are confined in federal, state, or county prisons or jails in the U.S. [2]
- The US has just five percent of the world's population, but confines over 23 percent of the world's prisoners. [3]
- More than 5.1 million people are reported to be under some form of correctional control. [4]
- According to recent estimates, between 12.3 and 13.8 million people have a felony conviction. [5]
- Perhaps most surprising is the recent estimate of 92.3 million people in the United States who have a state criminal record, which include arrests that do not result in convictions. [6]

Research shows that securing meaningful employment can have positive effects on reducing recidivism, increasing the likelihood of previously incarcerated persons successfully reentering society, and enhancing public safety. This notion is supported by several studies showing stable employment lessens the chances of reoffending following release from prison. [7] Research also suggests that higher wages lessen the likelihood of re-offense. [8] Additional studies suggest that, at the bare minimum, employment increases the amount of time that previously incarcerated persons spend crime-free before returning to prison. [9]

CCE Report Findings

An estimated 60,000 people in the District have criminal records and about 8,000 of them return to the city each year after serving sentences in prison or jail. After just three years, some 4,000 will be back behind bars. While the lack of a job is only one factor leading to recidivism, research shows that when the previously incarcerated have stable employment they are less likely to return to crime and public safety improves.

The Council for Court Excellence (CCE) surveyed over 550 previously incarcerated persons in the District of Columbia to learn about the employment challenges they face upon leaving prison or jail. Among the key findings:

- 46% of those surveyed said they were unemployed.
- 77% said they received no assistance from "anyone at the facility" in helping them look for a job.
- 80% of respondents said they were asked "all the time" about their criminal records when looking for a job.
- Just 50% of those who received an education or training certificate while they were incarcerated said it helped them find work after their release.
- There was little or no difference in employment rates for those who earned a GED or job certificate before or after prison and those who did not earn a GED or job certificate.

CCE also conducted surveys and interviews of a diverse group of nearly 20 District employers ranging in size from 15 to nearly 700 employees, and also with representatives of DC business associations. Their responses indicate that a variety of obstacles stand in the way of hiring previously incarcerated persons. Most (80%) said they do not have a policy in place for hiring previously incarcerated persons and instead rely on application forms that ask about criminal history. Although one-third of respondent employers said they had hired a previously incarcerated person in the past or would do so if the opportunity arose, more than 50% said factors such as legal liability protection, certificates of good standing or rehabilitation and industry-specific skill training would "significantly increase or influence hiring."

CCE recommendations

Since legal liability has long been a concern of DC employers with respect to hiring persons with a criminal record – it was also an issue during the legislative consideration of the "Criminal Record Sealing Act" – CCE strongly recommends that the DC Council promptly consider and enact liability protection for employers that hire previously incarcerated persons. Minnesota and New York provide examples of liability protection legislation increasing the likelihood of reentry employment by minimizing the risk of negligent hiring lawsuits against businesses employing previously incarcerated persons. CCE analyzed the Minnesota and New York statutes and held extensive committee meetings that created a specific proposal for the District of Columbia that combines the best of both approaches. The Minnesota model is also instructive in that it appears that Minnesota simultaneously enacted both employer liability protection (which they call "safe hire" legislation) and Minnesota state government "ban the box" legislation. Their model appears to be based on the principle of having the public sector

take the moral lead with respect to hiring former offenders and offering softer incentives to the private sector.

The CCE proposal states that information regarding a criminal history record of an employee or former employee shall not be introduced as evidence in a civil action against a private employer or its employees or agents that is based on the conduct of the employee or former employee if the employer has made a reasonable, good faith determination that the following factors favor the hiring or retention of that applicant or employee:

(1) The specific duties and responsibilities of the position sought or held;
(2) The bearing, if any, that an applicant's or employee's criminal background will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities;
(3) The time that has elapsed since the occurrence of the criminal offense;
(4) The age of the person at the time of the occurrence of the criminal offense;
(5) The frequency and seriousness of the criminal offense;
(6) Any information produced regarding the applicant's or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and
(7) The public policy that it is generally beneficial for ex-offenders to obtain employment.

These criteria match those in the Returning Citizens Public Employment Inclusion Act of 2010, enacted by the DC Council last year.

CCE also recommends that:

(1) the District's criminal justice system agencies should consider establishing a "certificate of good standing" program to promote licensing and hiring of previously incarcerated persons. As stated previously, employers expressed interest in a certificate of good standing issues by a corrections supervision agency or the court. Such certificates would increase employer comfort level when considering whether to hire previously incarcerated persons by indicating that the individual has completed their sentence and is in good standing with conditions of release.

(2) the DC Government Justice Grants Administration annually review the performance of DC Government contracts and grants related to reentry and develop a compendium of best practices to better direct future reentry funding. No such evaluations of DC-funded reentry programs were found.

(3) The Federal Bureau of Prisons, and, if necessary, the Court Services and Offender Supervision Agency and the US Parole Commission, should regularly review and revise the employment programming available to DC residents based on current employment trends and job forecasts. At present, job training opportunities in prison for in-demand jobs in the District are too few. Increasing the focus on applicable training would assist previously incarcerated persons in reentering society.

(4) The DC Superior Court **not** establish a reentry court, given that the DC Superior Court already has several specialized courts that provide social services to low-level offenders in an effort to reduce recidivism.

CCE believes that, if the District of Columbia affords employers the ease of liability protection necessary when employing those previously incarcerated, the local unemployment rate will drop and growing numbers of previously incarcerated persons will be able to become contributing and tax-paying members of society. Additionally, when more previously incarcerated D.C. residents have jobs, they will be able support themselves and their families and will also be less likely to commit crimes, thereby creating a safer community.

Yesterday, CCE published its full length report addressing barriers to reentry among previously incarcerated persons in the District, and we hope you will consult this report for further details, arguments, and evidence in support of the aforementioned recommendations. It is attached to this testimony for submission into the record. We commend you for holding this joint hearing to focus attention on an issue of such importance to the lives of many District residents and to the economic viability of our city.

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[1] Respondents were either those who, in Summer and Fall 2010, voluntarily appeared at the OEOA offices seeking assistance or were under the supervision of the US Probation Office and responded to a letter request from a probation officer.

[2] United States Department of Justice. Bureau of Justice Statistics. *Jail Inmates at Midyear 2009-Statistical Tables*. By Todd D. Minton. Washington DC. 2010. <http://bjs.ojp.usdoj.gov/content/pub/pdf/jim09st.pdf> also United States Department of Justice.Bureau of Justice Statistics. *Prison Inmates at Midyear 2009-Statistical Tables*. By Heather C. West. <http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf>.

[3] Newman, Jason. "Smarter Choices…Safer Communities." *Bureau of Justice Assistance National Conference*. Washington Hilton Hotel, Washington, DC. Dec. 6-8, 2010. Walmsley, Roy. "World Prison Population List." 8th ed. London: King's College, 2009. <http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wppl-8th_41.pdf>.

[4] Clement, Marshall, Matthew Schwarzfeld, and Michael Thompson. *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending*. Council of State Governments Justice Center, Washington D.C. 2011: Page 2. <http://justicereinvestment.org/summit/report>.

[5] This does not include those who may have had a misdemeanor conviction. Schmitt, John and Kris Warner. *Ex-Offenders and the Labor Market*. Washington, DC: Center for Economic and Policy Research, November 2010: Page 4, Table 1. See <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf> See also, Travis, Jeremy. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. Washington, DC: Urban Institute Press, 2005.

[6] This data does not include release by police without charging, declinations to proceed by prosecutor, or final trial court dispositions. United States Department of Justice. Bureau of Justice Statistics. *Survey of State Criminal History Information Systems, 2008*. Washington, DC. 2009. Table 1. Rodriguez, Michelle N. and Maurice Emsellem. *65 Million "Need Not Apply:" The Case for Reforming Criminal Background Checks for Employment*. Washington, D.C.: The National Employment Law Project, 2011: Page 27. Note 2.

[7] Pager, Devah. "Evidence-based Policy for Successful Prisoner Reentry." *Criminology and Public Policy*. 5.3 (2006): 505-514. See also Travis, Jeremy, Amy L. Solomon and Michelle Waul. *Prison to Home: The Dimensions and Consequences of Prisoner Reentry*. Washington, DC: Urban Institute Justice Policy Center. (2001): 31. See also Yahner, Jennifer, et al. *Illinois Prisoners' Reentry Success Rates Three Years After Release*. Urban Institute. August 2008. This article showed that 18% more previously incarcerated persons recidivated who did not work for at least a week in a 16 month period.

[8] Visher, Christy A. and Pamela K. Lattimore. *Major Study Examines Prisoners and Their Reentry Needs*. National Institute of Justice Journal. 258. (2007): 30-34.

[9] Unemployed PIPs are reincarcerated twice as quickly as those who are employed. See Englehardt, Bryan. "The Effect of Employment Frictions on Crime: Theory and Estimation." *Journal of Labor Economics*. 28.3. (2010): 677-718. See also Tripodi, Stephen J., Johnny S. Kim and Kimberly Bender. "Is Employment Associated with Reduced Recidivism? The Complex Relationship Between Employment and Crime." *International Journal of Offender Therapy and Comparative Criminology*. 54.5. (2010): 706-720.

[10] Pierre, Robert. "Ex-Offenders Protest Dearth of Jobs, Services." *The Washington Post* July 2, 2008: Page B4.

[11] Industry sectors represented include "agriculture, food or natural resources;" "education and training;" "human services;" "information technology;" and "law, public safety or security." Industry sectors in the CCE DC Employers Survey were based on categories developed by the DC Department of Employment Services, Office of Labor Market Research & Information. See Department of Employment Service. Office of Labor Market Research Information. *Labor Market Trends*. Washington, DC. 2010: Page 14. <http://www.does.dc.gov/does/frames.asp?doc=/does/lib/does/117547_Trends_web.pdf>.