Council for Court Excellence
Improving Justice for the Community

Statement

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

Public Hearing
on the
Re-entry Facilitation Amendment Act of 2012, Bill 19-889

September 25, 2012

Good morning, Chairman Mendelson, and members of the Judiciary Committee. My name is Theodore C. Whitehouse, a Director of the Council for Court Excellence ("CCE") and Chair of its DC Prisoner Reentry Initiative. With me is June B. Kress, Executive Director of the Council for Court Excellence. We are testifying on behalf of CCE on Bill 19-889, the Re-entry Facilitation Amendment Act of 2012. No judicial Director of the CCE Board participated in the formulation of this testimony and I appear today in my individual capacity and not on behalf of any client.

The Council for Court Excellence 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 of and support for the justice system.

Beginning with our work in 2005 to develop and promote the "Criminal Record Sealing Act" legislation passed by the DC Council in 2006, CCE has been addressing the systemic effects of a criminal record on employment. We testified before this committee during its last public hearing about the topic of reentry, on November 18, 2011, discussing the findings and recommendations of CCE's then-newly released report, *Unlocking Employment Opportunity for Previously Incarcerated Persons in DC* (November 2011). The report was aimed at increasing public understanding about the collateral consequences of a criminal conviction, with an emphasis on the effects of a criminal record on employment.

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The report made five policy recommendations, two of which are reflected in the Re-Entry Facilitation Amendment Act of 2012.

Those two recommendations were for the District of Columbia to enact employer liability protection legislation and for DC to establish a "certificate of good standing" program. It is worth repeating the CCE's rationale underlying these proposals, which we also described at the November 2011 hearing:

1. Although one-third of employers that responded to the CCE survey said they had hired a previously incarcerated person in the past, or would do so if the opportunity arose, more than 50% of those surveyed said factors such as legal liability protection, certificates of good standing or rehabilitation, coupled with industry-specific skill training would "significantly increase or influence hiring."

2. Jurisdictions, such as New York, Minnesota, and others, have adopted these legislative reforms based on the principle of having the public sector take the moral lead with respect to hiring former offenders and offering strategic and important incentives to the private sector.

3. There is no single piece of legislation that CCE found in its research of other jurisdictions that offered a "magic bullet" solution to the challenge of employment for previously incarcerated persons. Other jurisdictions have employed the reforms proposed in the Re-entry Facilitation Act, among other mechanisms. As we said in our 2011 report, the proposed reforms are likely to offer a series of "5% solutions" and not affect the entire population of persons with a criminal record seeking employment in DC. Our view is that multiple ways to facilitate employment have a better chance of reaching the larger population.

Our section-by-section comments follow:

Section 2 – Limited Liability.

CCE supports the language of the proposed bill's section 2. The language is consistent with the recommendation made in CCE's 2011 reentry report.

Section 3 – amendments to Title 16 (Criminal Record Sealing Act).

CCE does not take a specific position on the proposed language, other than to note that the proposed reduction in the waiting period from 10 to 7 years is consistent with CCE's 2006 report which provided research and a draft proposal for the original Criminal Record Sealing Act. Data from the DC Superior Court about applications for record sealing from May 5, 2007 through July 26, 2012 indicate that the Criminal Record Sealing Act has provided a mechanism for almost 2,400 people to seal their criminal records in whole or in part. This information is provided below. We requested additional information, such as the docket number, charge and

final disposition, as well as permission to look at the case files for cases in which the motion to seal was denied. This additional information was not provided by the court.

DC Code Sec. 16-802 (actual innocence)

Denied/dismissed	332 (26%)
Granted	623 (49%)
Pending	264 (21%)
Other	48 (4%)
Total	1,267 (100%)

DC Code Sec. 16-803 (sealing arrest/conviction record)

Denied/dismissed	1,345 (34%)
Granted/grtd in part	1,771 (45%)
Pending	742 (19%)
Other	69 (2%)
Total	3,927 (100%)

Clearly, there is a constituency that can and has applied for their criminal records to be sealed – about 1,000 people apply per year on average for the approximate five years the Sealing Act has been in effect.

Section 4 – Issuance of Certificate of Good Standing.

The certificate of good standing program proposed in the legislation presents some concerns for CCE based on our research and findings on certificates of good standing, as well as the CCE Reentry Committees further discussion in July 2012. These include[i]:

1. **Unspecified legal impact.** The certificate of good standing program, as proposed, appears to be reliant on the goodwill of employers and does not appear to have significant legal effect. The program might not be sufficiently effective unless it provides some legal relief from certain statutory barriers, such as housing. The DC Public Defender Service has an extensive listing of statutory barriers to employment and housing based on a criminal record.

2. **No option for immediate relief.** New York State offers the option of a certificate that is available from the court immediately on application. The notion of immediate relief from the Department of Corrections is one that should strongly be considered for the proposed legislation, since research strongly correlates employment with reduced recidivism. There was concern among the CCE reentry committee members that the proposed statutory waiting period would reduce the program's effectiveness and practical impact.

3. **No articulated process for certificate revocation.** The standard for revocation should not be just "rearrest"–What if the arrest was improper? There should be increased due

process and an opportunity for the certificate recipient to respond to a notice of certificate revocation.

CCE appreciates the practical Home Rule challenges when trying to legislate about corrections-related programs in the District that involve federal agencies. Having the DC Department of Corrections serve as the certifying agency appears to be the only option if, as the CCE report found, employers are determined to be most interested in seeing a certificate issued by either a correctional agency or the court.

It is important to note that CCE's recommendation to have the DC criminal justice agencies develop and administer the program was made because, after long discussion, the CCE Reentry Committee could not reach consensus on exactly how to administer the program and which agency or agencies would take responsibility for it. Some of the concerns expressed were budgetary: the certificate of good standing program might require hiring additional staff to handle applications and the certification process. There were comparisons to the budgetary effects of the Criminal Record Sealing Act on the staffing patterns of some agencies. It is worth knowing if indeed the DC Department of Corrections will have to assume a fiscal responsibility for the certificate program and, perhaps more importantly, DOC's assessment of the likelihood of it obtaining the information necessary to issue a meaningful certificate of good standing.

We also want to bring to the Judiciary Committee's attention, in its continuing efforts to address issues relating to reentry, a recent publication by the American Law Institute.[ii] In its recent Discussion Draft about the Model Penal Code: Sentencing, ALI suggests two alternatives to "impose a presumption against collateral sanctions," both of which appear to focus on the sentencing judge. CCE takes no position on the proposal, but does want to alert the Committee to it.

Thank you for the opportunity to testify and for your efforts, Chairman Mendelson, to introduce this important legislation. CCE stands ready to assist the DC Council on this legislation should the need arise. We are happy to answer any questions that you may have.

[i] See the Council for Court Excellence report, *Unlocking Employment Opportunity*, recommendation 2, pages 17-20, for further discussion of these issues and how other jurisdictions addressed them.

[ii] In its "Model Penal Code: Sentencing, Discussion Draft No. 4," dated April 16, 2012, ALI discusses alternative new provisions for the Model Penal Code, Section 6.08.Notificattion of Collateral Sanctions; Order of Relief.