



**Written Testimony of Beth Mellen Harrison
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**Committee on Public Safety and the Judiciary
Council of the District of Columbia**

B19-0889, “The Re-Entry Facilitation Amendment Act of 2012”

The Legal Aid Society of the District of Columbia¹ supports the goal of the Re-Entry Facilitation Amendment Act of 2012: to alleviate the adverse collateral consequences that a criminal record may have on residents of the District of Columbia. We submit the following written testimony focused on ways in which the current bill could be strengthened.

The Re-Entry Facilitation Amendment Act addresses an important policy issue for the District of Columbia. The Council for Court Excellence estimates that 60,000 residents in the District have a criminal record.² These individuals may face a lifetime of adverse consequences and unfair treatment based on their criminal records, including social stigma, employment and housing discrimination, disqualification for public benefits, and the loss of other civil rights. Access to employment is of particular importance for returning citizens upon release, because stable employment is critical to preventing recidivism and unlocking access to housing and other basic needs.³ While the provisions of the Re-Entry Facilitation Amendment Act are well-intentioned, the Act does not go far enough to provide meaningful relief to returning citizens, and some of the Act’s provisions could even create new obstacles to successful reintegration into the community. We therefore urge the Council to reconsider specific provisions of the Act based on the concerns raised below.

The Re-Entry Facilitation Amendment Act does not go far enough to protect returning citizens from employment discrimination.

Individuals with criminal records face enormous obstacles to employment. A survey of returning citizens by the Council for Court Excellence found a staggering unemployment rate of 46 percent. The vast majority of those surveyed – 80 percent – reported that when applying for work they are asked about their criminal records “all the time.”⁴

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 80 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law.

² Council for Court Excellence, *Unlocking Employment Opportunity for Previously Incarcerated Persons in the District of Columbia* 7 (2011), available at http://www.courtexcellence.org/uploads/publications/CCEReportonExpungement_041406new.pdf.

³ *Id.* at 8-9.

⁴ *Id.* at 9-10.

The Re-Entry Facilitation Amendment Act offers legal protections for employers that hire returning citizens, thereby encouraging employment. The Act provides limited liability for employers that employ returning citizens, so long as the employer has made a good-faith determination that certain factors⁵ favored hiring or retaining the employee. The law would protect employers from negligent hiring lawsuits based on the conduct of employees with criminal records, thus removing a key barrier to the hiring and retention of these employees. Employers report that limited liability protection for employing individuals with criminal records could “significantly increase or influence hiring.”⁶

While limited liability protection for employers is an important first step, it does not go far enough to address employment discrimination against individuals with criminal records. For several sessions, Councilmember Marion Barry has introduced important legislation that would address the problem directly, the Human Rights for Ex-Offenders Amendment Act (currently introduced as Bill 19-0017). That bill would prohibit discrimination in employment, housing, and education for individuals with an arrest or conviction record. Amending the Human Rights Act to bar discrimination against returning citizens is a much more comprehensive approach to prevent the adverse collateral consequences of a criminal record. It would extend beyond adverse effects on employment to cover housing and education and would get to the heart of the matter by barring discriminatory behavior rather than simply incentivizing non-discriminatory behavior.

Rather than passing the Re-Entry Facilitation Amendment Act and its protections for employers as stand-alone legislation, we urge the Council to combine these provisions with the Human Rights for Ex-Offenders Amendment Act to create a comprehensive legislative scheme that protects returning citizens from discrimination while also protecting employers from claims of negligent hiring.

The provisions of the Re-Entry Facilitation Amendment Act providing for a certificate of good standing should be reconsidered.

The Re-Entry Facilitation Amendment Act allows returning citizens who have complied with their probation or supervised release conditions and have demonstrated good conduct during a waiting period to obtain a “certificate of good standing.” The Act itself does not specify what legal or practical significance such a certificate is intended to carry. The provision appears to be in response to a proposal from the Council for Court Excellence, which found that employers would be more likely to hire a returning citizen if the individual had such a certificate.⁷

While this proposal undoubtedly is intended to benefit returning citizens and ease the challenges of re-entry, Legal Aid urges the Council to reconsider passage of this portion of the Act based on several concerns. First, the Act would require some returning citizens to wait a

⁵ Among the factors the employer may consider are the relevance of the employee’s criminal background to the position, the time that has elapsed since the criminal offense, and the seriousness of the criminal offense.

⁶ CCE Report, *supra*, at 13.

⁷ *Id.* at 13.

significant period of time – for the entire period of any probation or supervised release or for up to five years from the date of sentencing, whichever is longer – to obtain a certificate of good standing. The law thereby sets up a two-tiered system of returning citizens: those who are eligible to receive such a certificate and those who are still waiting. But returning citizens need relief from the adverse collateral consequences of a criminal record immediately upon release, not several years into the future. Indeed, the three years after release are a critical time for preventing recidivism; the Council for Court Excellence reports that approximately half of all returning citizens will be incarcerated again within that period.⁸ While this portion of the Act is intended to remove barriers of entry to employment for returning citizens, the creation of a certificate of good standing inevitably will create a new barrier for those individuals who either are ineligible to receive the certificate or simply choose not to do so.

Second, the Act does not impose any obligations on employers when dealing with an applicant or employee with a certificate of good standing (or other third parties dealing with returning citizens, such as landlords), nor does it offer any legal protections for employers who hire or employ such an individual. Because the certificate lacks any formal legal significance, it is hard to understand whether or not it will actually be valuable for a returning citizen to obtain.

These two concerns are exacerbated by the reality that administering a system of certificates of good standing will require significant time and resources from already-burdened government agencies, and it is likely that many returning citizens who are eligible to receive the proposed relief will not even apply and many employers in the District will not even be aware of the program's existence. New York State, which has had a similar system in place for 20 years, reports that it takes at least 12 to 18 months for its state agency or court to process a request for a certificate of good standing. Practitioners in New York also report that too few employers are aware of its program and too few returning citizens bother to apply.⁹

Rather than spending time and resources on a program that is unlikely to provide substantial benefits to returning citizens, the Council should focus on broader, more comprehensive reforms that would, including passage of the Human Rights for Ex-Offenders Amendment Act and further expansion of the Criminal Records Sealing Act.

The provisions of the Re-Entry Facilitation Amendment Act allowing for the sealing of criminal records should be expanded.

Finally, the Re-Entry Facilitation Amendment Act contains provisions that will expand the scope of the current Criminal Records Sealing Act by reducing the period that a returning citizen must wait before moving to seal a record and allowing up to 20 days for the individual to amend a motion to seal that is not in compliance with the Act. The amendments also contain additional protections to ensure that cases that are not already publicly available remain so and that an individual whose records have been sealed may obtain a copy of certifications of

⁸ *Id.* at 7.

⁹ *Id.* at 20; see also Joy Radice, *Administering Justice: Removing Statutory Barriers to Reentry*, 83 U. Colo. L. Rev. 715, 732, 762 (Spring 2012) (noting that it takes 18 months for returning citizens to receive a certificate of good standing under the New York system).

compliance with a sealing order that are filed with the court by the relevant prosecutor, law enforcement agency, and pretrial, corrections, or community supervision agency office.

While Legal Aid supports these amendments, we urge the Council to consider an even broader expansion of the protections under the Criminal Records Sealing Act. For example, the only felony current eligible for sealing is failure to appear. The Council should consider expanding the list of felonies eligible for sealing to include other offenses where sealing is appropriate. In addition, the Council should consider further shortening or eliminating entirely the periods that returning citizens must wait prior to filing a motion to seal a criminal record.

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The Legal Aid Society of the District of Columbia appreciates this opportunity to comment on the Re-Entry Facilitation Amendment Act. We urge the Council to reconsider passage of the Act based on the concerns cited above.