

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES  
HOUSE JUDICIARY COMMITTEE HEARING

IN RE: HOUSE BILL 1053, 1543, 1569  
and HOUSE RESOLUTION 255

STATE CAPITOL  
MAIN CAPITOL BUILDING  
ROOM 140  
HARRISBURG, PENNSYLVANIA

TUESDAY, SEPTEMBER 18, 2007, 10:00 A.M.

BEFORE:

HONORABLE THOMAS R. CALTAGIRONE, CHAIRMAN  
HONORABLE RON MARSICO  
HONORABLE DEBERAH KULA  
HONORABLE DAYLIN LEACH  
HONORABLE BRIAN LENTZ  
HONORABLE KATHY MANDERINO  
HONORABLE JOHN PALLONE  
HONORABLE DON WALKO  
HONORABLE JEWELL WILLIAMS  
HONORABLE TOM CREIGHTON  
HONORABLE JOHN EVANS  
HONORABLE GLEN GRELL  
HONORABLE KATE HARPER  
HONORABLE BERNIE O'NEILL  
HONORABLE KATIE TRUE  
HONORABLE BEVERLY MACKERETH

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## P R O C E E D I N G S

CHAIRMAN CALTAGIRONE: I'd like to get started with the hearing on House Bills, testimony on 1053, 1543 1569 and House Resolution 255. And if the other testifiers don't mind, I have two very special friends here.

And since we're jumping off right on time, I'd like to have them, because they have other business to attend to up here in Harrisburg, since they have some great experience in dealing with these very issues.

I'd like to have both Dennis Joyce and Charles Clement come up and just give us a little bit of your experience in dealing with this issue.

CHAIRMAN CALTAGIRONE: I'm Chairman Tom Caltagirone and Chairman Marsico to my left, and if the other members would like to introduce themselves.

REPRESENTATIVE MANDERINO: Good morning. I'm Kathy Manderino, and I'm Philadelphia and Montgomery Counties.

REPRESENTATIVE O'NEILL: Good morning.  
Representative Bernie O'Neill from Bucks County.

REPRESENTATIVE MARSICO: Representative Ron Marsico, Republican Chair, Dauphin County.

CHAIRMAN CALTAGIRONE: Tom Caltagirone, Berks County.

MR. ANDRING: Bill Andring, legal counsel.

MR. MCGLAUGHLIN: I'm Dave McGlaughlin, staff of the Judiciary Committee, Majority. Thank you.

REPRESENTATIVE CREIGHTON: Tom Creighton, Representative from Lancaster County.

CHAIRMAN CALTAGIRONE: There you go. Let's get started.

MR. CLEMENT: Chairman Caltagirone and other members of the Judiciary Committee, my name's Charles A. Clement, Jr. I've been a magisterial district judge for 19 years in Cumberland County, and I also serve as the legislative liaison to our Special Corps Judges Association in Pennsylvania.

And we've been following these bills with great interest because we're impacted greatly at our level of judiciary with some offenses. As you all know, a magisterial district judge takes pleas of guilt or innocence and presides over summary trials.

For the last 19 years, I've been bombarded with young adults that had gotten into trouble as juveniles, 14, 15, 16 years old, with retail theft charges or disorderly conduct charges, underage drinking charges.

And they plead guilty, pay their fines or costs or do community service, and they have that, the blemish on their record, never believing that it could impact them in their early 20's when they apply for a job after college.

And most notably are those folks that go through college to become school teachers, and when they apply for jobs, a disorderly conduct on a record in a lot of districts prevents somebody from getting that job after investing four or five years and getting the teaching certificate and the education to have a job like that.

In looking at these bills, we're happy to see that there's a movement towards an expungement process, and we'd be willing to answer any questions. Judge Joyce is from Allegheny County, and he has the same experiences, probably more experiences than I do with his tenure on the bench.

MR. JOYCE: I'm Magisterial District Justice Dennis Joyce from Allegheny County. As Chuck indicated, I've been a judge for 26 years. And during that period of time, of course, it's come across our benches quite a bit with people who have run into the little scrapes with the law in summary offenses and attempting to move forward in their lives afterwards.

And this may be holding them back if it does show up on a record. I think it's, it should be pointed out anyhow, that the only summary offense where an individual would be fingerprinted would be retail theft, but these records with computers and access to information become a lot more readily available than it may have been

in the past.

So I commend the Committee for proceeding with this. I have a couple of questions, I guess, about the House Bills 1569 and 1543, in particular where they talk about a release from confinement or supervision. That's not the norm in most summary offenses. Fines and costs or community service is the norm.

And I wonder if that should be worked into the legislation somehow from the point of disposition of the case. I also have a question on retail thefts, whether an expungement is going to affect the prior convictions in dealing with those in the future if there are subsequent offenses as the grading of those retail theft offenses increases.

But for the most part, I think that -- I applaud the legislation and think that for the one-time offender, it's an opportunity where they can correct things that maybe they made a little mistake in the past. But I think either of us are available from questions from the Committee if you need to.

MR. CLEMENT: The issue with regard to retail theft, the first offense is a summary provided the dollar value is 150 or less; the second offense is a misdemeanor regardless of dollar value; third offense is a felony. So if you were to expunge the first offense, and that's what

Dennis was alluding to, then how do you track the escalated criminal grading of the second offense?

It's the only crime, summary crime, that a juvenile gets fingerprinted. There's mandatory fingerprints required for a 16-, 17-year-old as it relates to retail theft. So that somehow impacts on the tracking of it, so those are some issues that should be incorporated in the thought process. But, again, I'm in agreement with Dennis.

The issue as it relates to prosecution following final release from confinement or supervision for five years after conviction of a summary offense, that's generally not the case. Generally the case is fines, costs, community service or some other creative disposition for a juvenile offender at the magisterial district justice level. So maybe some wording to help facilitate that would be helpful.

CHAIRMAN CALTAGIRONE: Thank you.

Members of the Committee, questions?

Yes?

If none of the members have questions, I just realized this. We have a number of very classic indications from my standpoint. I guess bad checks is perhaps another area that we have to take a look at as far as being able to maintain some sort of record for the

purposes of subsequent offenses, but not for general release on his employment inquiries and other inquiries.

So I guess something similar to an ARD, would that kind of be accepted as -- you know, currently DA maintain the certain records on ARD offenses only for the purposes of later consideration if that might be granted again. Would that type of procedure be satisfactory?

MR. CLEMENT: That would make sense to a certain extent.

MR. JOYCE: I think it would, and in some -- in Allegheny County, our DA doesn't participate in our ARD for summary offenses just, because the size of the county, it would be hard to do.

But I think that the -- it's going to have to be preserved in some way, and I guess it could be, an analogy could be brought like DUIs, where if you go through the ARD program, the charge might be dismissed; but if you get another one, it's your second offense. So it certainly could be done, something very similar to that, through the DA's office or through other agencies.

MR. CLEMENT: In other consideration, as it relates to bad checks, a lot of times on our level, the dollar value of the bad check requires it to be a misdemeanor graded offense. It's a check written for more than \$2 hundred. And with that, there's the need for



processing fingerprints, photographs, create the offense tracking number.

But quite often at the magisterial district judge level, the victim, the shop owner, the business, is more interested in getting restitution. And a lot of times, there's an agreement between the prosecution and the defense attorney to reduce the charge by making full restitution at the preliminary hearing and the defendant pleading guilty to a summary bad check.

And that might be one way to catch future bad checks because you've been processed on the original misdemeanor charge that was later reduced to a summary and closed out. So that would be a consideration. That would have to be something that would be followed, I would think, by the District Attorney's Office as you've suggested.

CHAIRMAN CALTAGIRONE: Any other questions?

Chief Counsel Andring.

MR. ANDRING: Yeah. Some of the proposals we're considering with limited expungement to summary offenses, and some would include after a period of seven, eight, ten years, at least some misdemeanor 3s and maybe even some M2s -- since you deal directly with the people who were convicted of the M3s and then reduced, what's your impression on it including at least some of those within an expungement process?

MR. CLEMENT: I would think that the ungraded misdemeanors like small amount of marijuana, possession of drug paraphernalia, we don't deal with them too, so that's handled through --

MR. JOYCE: Philadelphia Municipal Court judges would deal with the M2s. A core part of our association, we do take pleas of guilt at our level for M3s and ungraded misdemeanors. I would think that they're very worthy of consideration, and the issue is a singular offense. We're not talking about a repeat offender that's had several bites of the apple.

Your legislation's designed for a singular offense so it doesn't impact on their future job opportunities or other opportunities, educational opportunities. There's a lot of -- applying for a college loans ask the question, have you ever been convicted, and that could have an impact on your financial aid.

CHAIRMAN CALTAGIRONE: Okay. Thank you. Thank you very much.

MR. JOYCE: Thank you.

CHAIRMAN CALTAGIRONE: We'll next hear from Janet McNeal, Captain of the Pennsylvania State Police.

If you would, if you want to introduce yourself for the record, for the members here.

MR. MCHALE: I'm Captain Bill McHale. I'm the

Director of the Legislative Affairs Office for the Pennsylvania State Police.

MS. MCNEAL: I'm Captain Janet McNeal, Director of Operational Records Division of Pennsylvania State Police.

MR. VARBUSKIRK: Good morning. Trooper Roy irk, Supervisor of the Investigative Records section of the State Police.

CHAIRMAN CALTAGIRONE: Thank you.

MS. MCNEAL: Good morning, Chairman Caltagirone, Chairman Marsico and members of the Committee. I am Captain Janet McNeal, Director of the Operational Records Division of the Pennsylvania State Police, Bureau of Records and Identification.

On behalf of Colonel Jeffrey D. Miller, Commissioner of the Pennsylvania State Police, I want to thank you for the opportunity to talk to you about various legislative proposals regarding the expungement of criminal records. By law, the Pennsylvania State Police is required to maintain a central repository of all criminal history record information.

There are currently more than 47 million files in our computerized criminal history record information database. Many different entities rely on these criminal history files to comply with various statutory mandates

related to firearms purchases and Megan's Law, for example. Over the years, public policy has shifted in favor of giving the public more information about criminal offenders.

This trend is readily apparent in the development of Megan's Law as well as the increasing number of statutes requiring individuals to have criminal history record background checks. Even in the employment arena, the trend in public policy is toward more open disclosure.

For example, Act 3 of 2005 removed restrictions that had prevented employers from releasing information about former employees, thereby allowing new employers to have more information about the people they hire. Expunging criminal conviction moves in the opposite direction.

Indeed, people convicted of certain offenses are prohibited from purchasing guns, serving as foster or adoptive parents, working with children, working in long-term care facilities, etcetera. Just last year, Act 179 was signed into law requiring criminal background checks for anyone 14 years of age or older who resides in the home of a prospective foster or adoptive parent and for anyone 18 years of age or older who lives in the home of a family day care home provider.

The whole point of conducting these criminal

history checks is thwarted if the central repository is required to destroy any trace of a prohibiting conviction. The movement toward more open disclosure also underlies the Supreme Court's decision to make criminal court records available to the public through the internet.

In the past, the public could only obtain court records by going to the courthouse to review paper documents. In 2002, the AOPC began developing a statewide policy for electronic access to court records. For the next few years, a specially-appointed committee reviewed work of 19 other states and the Federal Government.

The committee held public hearings and opened its draft up for public comment. The committee ultimately determined the public interest is best served by allowing electronic access to both preconviction and postconviction information with limited reaction.

More detailed information on the Court's policy is available on the internet at [www.aopc.org/index/publicaccesspolicy/default](http://www.aopc.org/index/publicaccesspolicy/default). Currently, the State Police expunges information about a specific criminal proceeding when no disposition has been received within 18 months after arrest and no action is pending or a court order's expungement of nonconviction data.

We also expunge information about someone convicted of underage drinking when the person is at least

21 years of age and has satisfied all terms and conditions of the sentence. In fact, we expunge more than 34 thousand records every year. House Resolution 255 and House Bills 1053, 1543 and 1569 all recognize the importance of employment to our society.

When people work, they pay taxes, stimulate the economy and are more likely to stay out of trouble from the law. The legislation recognizes that society benefits when people who have committed a less serious crime when they were young, but have remained crime free for a significant period of time, are not precluded from meaningful employment.

Removing unnecessary obstacles to employment is good for Pennsylvania, and it is good for public safety. We know that joblessness among ex-offenders has been linked to recidivism. According to the United States Department of Labor, nearly one-third of adult prisoners were unemployed in the month before their arrest, and they, ex-offenders often face obstacles preventing employment after they are released.

Research shows the inmates re-entering communities are most vulnerable to failure in the early stages after release from jail or prison. Put simply, an ex-offender who works is less likely to need social services and less likely to victimize anyone else. Of

course, expungement cannot be without limits.

The need to expedite some expungement has to be balanced with the need to make sure that public safety is not compromised by removing a conviction from someone's criminal record. Indeed, employers should know whether job applicants have committed certain crimes, even if they were committed a long time ago.

While these pieces of legislation attempt to achieve the appropriate balance, I do have a few suggestions to enhance public safety. First, when convictions are expunged from the public record, they should be retained for use by law enforcement and the courts.

It is important to recognize the vital need to maintain accurate criminal history for law enforcement purposes. The safety of our officers and our citizens is seriously undermined when police do not have access to complete information about people with whom they come into direct contact.

In addition, expungement of criminal convictions will handicap police, prosecutors and the courts in identifying and dealing with recidivists appropriately. Escalating offenses could be expunged, allowing a repeat offender to escape the consequences of recidivism. If a person commits an offense after conviction has been

expunged, the sentencing court will not have a true picture of the person's criminal history.

Police and prosecutors would lose valuable evidence in cases where the expunged-prior crime would establish the defendant's motive, absence of mistake, common scheme or identity through modus operandi. In protection from abuse cases, people would be allowed to erase important information about their history of domestic violence.

Consequently, even if you decide to expunge criminal convictions from the public record, we urge you to allow law enforcement and the courts to retain the information for future use. Nevertheless, if you decide complete expungement is necessary, there are certain convictions that should always be retained.

Second, limit expungement to crimes committed by those 21 and under. Consideration should be given to limiting the expungements to those who were 21 or younger when they committed the crimes at issue. The primary argument we usually hear in favor of expungement legislation is that it is unfair to prevent someone from being employed because of a youthful indiscretion.

It is true that a person should not be denied a job because of a relatively minor crime committed decades ago when he or she was young. In contrast, the case for



allowing expungements for those who have committed crimes when they were over 21 years old is far less compelling. By the time a person reaches his or her 22nd birthday, we should expect that person is mature enough to know the consequences of following the law.

Breaking the law after the age of 21 is a significant matter that should be reflected on one's criminal record. Third, all assaults should be excluded. No such crime should be eligible for expungement. Assaults are serious crimes even if they are graded as simple assaults. As I am sure you realize, individuals who commit an aggravated assault are sometimes allowed to plead down to misdemeanor simple assault.

These situations sometimes include domestic violence cases and assault against law enforcement officers. We do not know how many aggravated assault cases involving domestic violence were reduced from aggravated to simple assault.

Likewise, we do not know how many aggravated assaults were pled down to simple assault even though they were committed against people who protect our streets, prosecute and decide our criminal cases, teach our children and even those who make our laws. However, we know from experience that it is a significant number.

Last year, there were 4,370 simple assaults

graded as a second and third degree misdemeanor, which would be expungable under this legislation. There is no question that some of these are domestic violence cases, serious assault that ended up as simple assault convictions or assault against law enforcement, criminal justice providers, teachers and public officials.

As a result, we should do what's best for public safety and not permit expungement of assault crimes under this legislation. Fourth, any crime of domestic violence should be retained. I want to raise another matter related to this legislation and domestic violence.

State and federal law prohibits someone convicted of a misdemeanor domestic violence crime from purchasing a gun. When someone tries to purchase a firearm in Pennsylvania, the Pennsylvania State Police research any misdemeanor conviction to determine if the crime was a domestic violence crime regardless of the name of the crime.

Because we know from experience that a domestic violence crime may be pled down to third degree misdemeanor, such as disorderly conduct or harassment, this legislation runs the risk of allowing domestic abusers to purchase guns. Therefore, we urge you to help protect domestic violence victims by prohibiting expungement of any crime involving domestic violence.

Expunging these crimes would put weapons in the hands of domestic abusers. In addition, crimes of domestic violence should never be expunged because it is important for the courts to know when determining whether or not to grant a petitioner a protection from abuse. Judges need to see the complete criminal record history during a PFA proceeding to protect victims of domestic violence.

Fifth, recklessly endangering another person should be retained. The crime of recklessly endangering another person, a second degree misdemeanor, should not be subject to this legislation. A person commits this crime if he recklessly engages in conduct which places another person in danger of death or serious bodily injury.

In 2006, 856 people were convicted of recklessly endangering another person, which could involve child abuse, domestic abuse or someone recklessly supervising a child. Putting a person at risk of death or serious bodily injury is serious and should continue to be part of a person's criminal history.

And sixth, registered sex offenders should not benefit from this legislation. To ensure that no registered sex offender could ever have the record of the sex offense expunged, anyone required to register under our Megan's Law statute should not be able to have the underlying sex crime expunged.

This will ensure that if new crimes are ever added to the list of Megan's Law crimes, which may be required under by the Federal Government under the Adam Walsh Act, they will not be expungable. Moreover, no person registered as a sex offender in Pennsylvania, even if that person's underlying sex offense was committed in another state, should have any other crime expunged under this legislation.

We need to be able to keep track of sex offenders and any other criminal activities they engage in, and anyone who is a sex offender should not benefit from an expedited expungement process. Speaking of sex offenders, the crime of indecent exposure should not be expunged even if it is graded as a second degree misdemeanor.

Research shows that some who commit this crime are capable of more serious sex offenses, and we were fortunate they did not do anything worse. Last year, nearly 1 hundred people were convicted of indecent exposure graded as a second degree misdemeanor. Seventh, those who obstruct justice or intimidate witnesses should not benefit from this legislation.

Individuals -- excuse me -- who try to tamper with our judicial system by intentionally lying to law enforcement or the courts or intimidating a witness should not enjoy the benefits of the proposed legislation. This

would include individuals convicted of crimes listed primarily in the 4900 Series of Title 18, such as fault swearing, tampering with physical evidence or obstruction of justice.

In 2006, 86 people were convicted of tampering with physical evidence and 76 for obstructing justice. The same applies to intimidating or retaliating against a witness. Although these offenses are usually graded as felonies, there are instances in which both are second degree misdemeanors.

In 2006, there were more than 35 misdemeanor convictions for witness intimidation and retaliation. Witness intimidation is a major problem in Pennsylvania and has made prosecutions difficult or impossible in many cases. Those who commit this crime should not get a break.

Eight, crimes involving guns should not be expunged. Given the seriousness and proliferation of gun violence throughout the Commonwealth, any violation of the Uniform Firearms Act or theft of a gun should not be expungable. Any crime that involves a firearm is or has the potential to be a violent crime.

People must know that if they are convicted of any crime involving a firearm, that crime will not be expunged in an expedited fashion. Furthermore, any crime that is serious enough to disqualify someone from ever

possessing a firearm ought be excluded from this legislation. Finally, I want to remind the Committee that expunging the kind and amount of criminal convictions under discussion in these bills will double or even triple the number of expungements the State Police has to process.

We currently process over 34 thousand expungements each year. If this legislation is enacted, we could be processing anywhere from 75 thousand to 1 hundred thousand expungements annually. To handle the increased workload, the State Police would have to spend an estimated minimum of \$750 thousand on personnel, training, work space, equipment and supplies.

Subsequently, should the Legislature determine that these bills are in the interest of public safety, we ask the General Assembly to consider these costs in the context of next year's budget.

In conclusion, on behalf of Colonel Miller and the Pennsylvania State Police, thank you, again, for the opportunity to testify before your committee. The administration and State Police look forward to working with you and other members of the Legislature to help refine and advance your legislation.

CHAIRMAN CALTAGIRONE: Thank you for your testimony.

Representatives, any questions?

REPRESENTATIVE LEACH: Thank you.

Thank you for your testimony. I was, practiced criminal law to a greater or lesser extent for 17 years. And based on the many things I saw, I agree with you on a couple of points, specifically that there should be crimes for which expungement is not possible, particularly crimes that the studies show are likely to be crimes where recidivism is a risk for even after a long period of time; for example, the more serious sexual crimes and domestic violence crimes.

I disagree, however, with the notion that, you know, a lot of these crimes sound -- and if I misunderstood your testimony, please let me know, but if some of these crimes sound minor or they're misdemeanors or low-grade misdemeanors, but they must have done something worse because often people plead down and so forth. I think you got to go with what people are convicted on.

I mean, there are people who are overcharged and convicted of something more serious than they did because they didn't have the resources or they pled guilty because they were advised with the path of least resistance. And they're not going to get a grade by saying 20 years later, well, I pled guilty or I was convicted of this crime, but I really didn't do something that bad.

We're going to look at that conviction and say,

that's what you did. And I think we have to do it the other way too, which is you can't say, well, you were convicted of a low-grade misdemeanor, but you must have done something worse because people often do. I don't think that's an appropriate way of looking at it.

I think you have to look at the actual crime on which there was a conviction. And that's a comment, and you can respond to it. My question, my first question -- I have a couple -- is the idea of keeping -- allowing law enforcement to keep the records in an expungement seems to me to obviate one of the major benefits of the expungement.

And it was -- you argued that, you know, we want to -- in case there's some need in the future, it seems to me that if we draft this legislation, which is strict about the terms of the amount of time since the crime has passed, the studies are pretty clear that if you committed, for example, a second degree or lower misdemeanor and five or seven or nine years go by, you are unlikely to be a recidivist for that type of crime.

And so -- and then you say, well, but we may need it for modus operandi or to establish something like that, but it seems like an esoteric point to retain all of these people's records. It seems like it's something that happens infrequently, and I wonder if you have studies you can point to or any data you can point to about the need



for law enforcement to go back for minor crimes that have not been, that have not recurred to establish things like modus operandi or something like that. Is there any actual raw data on that that you can point to?

MR. MCHALE: I don't believe there's any hard data, but the only thing is criminal history records for law enforcement purposes, now they're in the realm of employment.

And we're trying to just make the distinction that we agree that there might be some reasoning for the expungement side, but from the law enforcement perspective, I think it's important for officers to realize who they're dealing with, who they encounter with on a daily basis. So I don't think there's any hard study or data, just our feelings on these pieces of legislation.

REPRESENTATIVE LEACH: The other point is that I think we have to be careful about not -- I've always been a fan of looking at individual cases rather than creating full categories of exclusions. For example, it sounds reasonable to say, well, we don't want to expunge assault, and in many assaults that I've seen or can imagine, that would be true.

But if someone's in a barroom brawl over a football game in college when they're 18, that doesn't seem like the sort of thing that should stay with them the rest

of their life. Secondly, you mentioned indecent exposure. When I was practicing, I had a case of a guy who mooned the opposing school, you know, during a game, chess, I think. I don't remember what the game was.

But anyway -- it's very distracting when you're trying to do the Sicilian Defense and -- no. But what I was saying is, you know, there are cases where, you know, gees, do we really want this to follow someone the rest of their life. And I think that's what we're trying to wrestle with.

So I would be more, in my view -- and you can comment on this, but I would be more in favor of, rather than categorical exclusions, creating standards, where a judge would be able to look at a crime and see, well, is this the sort of crime -- I mean, someone who exposes themselves in a, you know, junior high school playground is very different than someone who, you know, moons someone at a football game when they're drunk.

I mean, I'm not condoning either thing, but I'm thinking, I think they should be treated differently. And so that's my suggestion in terms of categorical exclusions, and you're welcome to comment on that if you want to.

Thank you, Mr. Chairman.

MS. MCNEAL: I have no comment.

CHAIRMAN CALTAGIRONE: Representative Manderino.

REPRESENTATIVE MANDERINO: Thank you for your testimony. It really highlights what is kind of a difficult decision that I struggle with just about the whole way to go here. Let me preface my questions and comments by saying that I absolutely agree with the public policy goal of legislation like this.

You know, I think that, as a side, we don't believe in second chances to allow our citizens to become productive citizens. Then we are, by operation of our public policy, helping to create a criminal, a permanent criminal class. And I think that is very wrong-headed.

Having said that, I struggle with the question that you raised at the beginning, and that is, is the answer to the goal that we are trying to solve giving people a second chance for isolated incidences, letting them become productive members of society, not treating them as a permanent criminal underclass, is the solution expungement or is the solution the information we allow others outside of the criminal justice system to have in the first place?

And that's kind of -- by analogy, there's legislation that I would take out criminal content. There's legislation that's introduced every session in recent years to prohibit insurance companies from using credit scores in their underwriting practices.

Now, we could prohibit the whole idea of there being credit scores in the first place, or we can just say it is inappropriate to use it as a matter of public policy in this circumstance because it's an unfair criteria for X, Y and Z public policy.

I happen to think that's the better way to go. And I'm struggling with that in this context too: For example, we passed a law that said if you work in a nursing home with elderly people, you can't have this kind of offense in your background.

And I had one of my nursing homes send me all of the employees that they had to fire, and one of the people they had to fire was a 49-year-old woman, who when she was 17-years-old, got in a fight with another girl in high school over a boyfriend and had an aggravated assault.

Now, that's a very serious potential cursory crime or pred -- it's a serious crime that could potentially led to other things. But 30 years later, it never lead to other things except for getting fired from a job. So even when we try to make exceptions to a rule of expungement, we're going to run into situations like that.

And so I'm not arguing with what you, the comments that you made about assaults, for example. I want to go back to the question of what information ought people be allowed to have under what circumstances. I'm an

employer. I do a criminal history background check on an employee. Now, you tell me. There's some system that they can log into electronically, and I don't know that they actually get the report, but I've heard lots of complaints where they'll get a query that comes up.

I don't know what; this isn't a clean record, or you have to check with us for more information. And then faced with two potential candidates, one you got no query and one you got a query that may be inconsequential, I don't go any further because it's the easier route to hire the person who got the clean record.

So now I'm coming back to the issue of, is it more about what's on the record versus more about privacy and protection matters of what we allow people to have access to? And is there any way that we can, from a public policy point of view, change -- not change, limit -- the database to what we may decide as public policy leaders is allowed for others to have access to?

For example, if it was a summary offense, if it was offense -- or let's take some of the conditions in these bills that happened when it was a juvenile. It's just not going to show up on an employment history check. If it was a misdemeanor 3 that happened more than ten years ago, it's just not going to show up on an employment check.

Do you see where I'm going with this? It may

show up in a court record in subsequent years if you create another offense, but for the purpose of whether or not someone's going to hire you for a job, it's none of their business if it happened so long ago in your past that, as a matter of public policy, we have decided they're not entitled to that information.

You might want to think about that. I don't mean to put you on the spot, but that's, I think, the other side of this coin that warrants discussion. Sorry. Let me ask the question this way: If, as a matter of public policy, we set parameters, not -- the same kind of parameters, not saying this is to be expunged or this isn't to be expunged, but rather this is to be disclosed or this isn't to be disclosed, is that a doable database parameter that can be accomplished?

MS. MCNEAL: I don't know that I have an answer to your question on that, but I would just say that the State Police would be happy to work with the Committee to address those specific items because they certainly are valid and important issues.

And I think at that time, we can, you know, look at where you'd be looking to go with something like that and how it would be incorporated or what level of availability there is for that.

MR. MCHALE: Chapter 91 and Chapter 8 of the

Crimes Code is what dictates information that may be disseminated, and we're closely guarded by that. The other question went back to what's called the patch system, criminal information that is released when someone requests a record on a prospective employee.

There's certain indicators that -- name, date of birth, Social Security number, which keys that search. Sometimes you have multiple hits on certain information. It goes to what is called under review. That's what you're referring to, under review, which means we have to manually take that out and research it in whatever county we're directed to, and you would be Philadelphia County.

Some counties are very good about getting back to us; some counties are not. But unfortunately, there is a delay in some places, and that's what you're referring to in your example. But as far as the dissemination, we could work with the Committee.

Again, we're the protectors of the records, the law enforcement records. And we're into the employment realm now, so it's something that we could definitely work with the Committee on and progress.

CHAIRMAN CALTAGIRONE: Thank you.

There have been a number of members that have come since we started. If we could start over here, just introduce yourself and your county, and then we'll pick up

the questions.

REPRESENTATIVE WALKO: Don Walko, Allegheny  
County.

REPRESENTATIVE WILLIAMS: Jewell Williams,  
Philadelphia County.

REPRESENTATIVE GRELL: Glen Grell, Cumberland  
County.

REPRESENTATIVE LENTZ: Brian Lentz, Delaware  
County.

REPRESENTATIVE HARPER: Kate Harper, Montgomery  
County.

REPRESENTATIVE LEACH: Daylin Leach, Montgomery  
County.

REPRESENTATIVE MACKERETH: Beth Mackereth, York  
County.

REPRESENTATIVE MANTZ: Carl Mantz, Berks County.

REPRESENTATIVE KULA: Deberah Kula, Fayette and  
Westmoreland Counties.

REPRESENTATIVE PALLONE: John Pallone, northern  
Westmoreland and southern Armstrong Counties.

REPRESENTATIVE TRUE: Katie True, Lancaster  
County.

CHAIRMAN CALTAGIRONE: We'll go back to the  
questions.

Representative Harper, Pallone and Williams.



REPRESENTATIVE HARPER: As I listened to your testimony, I was finding myself in agreement with you on the things that should not be expunged. But then I noticed what was not there, and it was things that I would term as a lawyer as things that indicate a (inaudible), you know, the things that indicate a person's inability to be truthful under all circumstances, things that would indicate that.

And those things would include probably cutting checks, if you did it more than once, and also embezzlement and things that we view as white collar crimes. Certainly we would not want to expunge the record of somebody who had some kind of a sexual assault or endangering of children that might escalate.

We want to know that, you know, that the person might have those tendencies. So I'm thinking to myself, well, I'll just suggest that they add to their testimony on some of the bills, things that would indicate a person's inability to be truthful. Pretty soon we're covering the waterfront with every kind of crime.

So I guess my question is, do you have an opinion on whether it would be smarter to say which crimes should be expunged as in -- if we could successfully define those things which are youthful indiscretions, committed before a certain age, under a certain set of circumstances

and not repeated in the intervening 5, 10, 15 years, would that be a better way to go about this?

Because I can tell you as an employer -- and the House does do background checks -- I would not want to hire somebody who'd embezzled. I mean, if I hired them, I wouldn't want to hire them for a job that involved money.

You know, if I had a job of groundskeeper, which I don't have, you know, that might be an okay job. But I wouldn't want them to handle my district reimbursement account. Okay? So I guess I'm asking whether that is a better way to go. Do you have an opinion on that?

MR. MCHALE: I guess the best way that I can answer that on behalf of PSP is that something that -- I think this is the initial part of the bill process.

That's something that could be kicked around the Committee, and we'd be more than willing to sit down. But at this point in time, I don't know if we can answer that. It's hard to come up with an all-inclusive list, but I seem to understand what your concern is, getting to the character of a person.

REPRESENTATIVE HARPER: Right. Thank you.

Thank you, Mr. Chairman.

REPRESENTATIVE PALLONE: Thank you,  
Mr. Chairman.

Sorry I'm blocked by the podium, but I'm

Representative Pallone. All right. Sorry about that. But I guess I have some of the same issues that some of my colleagues have went on and said with the expungement issue, and I think you all know that I very vehemently support law enforcement in Pennsylvania. I certainly have family members that are PSP members and certain respect what you all do.

But also now that I've been having conversations with you that the number of inquires that you're getting are just more, more, more and more. When I studied law school in Ohio, they have a number of expungement provisions within their Class Code, which is the same as Pennsylvania, but we struggled with a lot of those issues.

And I look at that and I wonder if maybe we're not addressing this on the wrong side. And I know of a number of cases where there are folks that were convicted of crimes back in the, maybe the late '50's or early '60's that are no longer crimes today. And those are on their records, and they're not expungable.

And I feel for those folks because they can't even apply for an expungement. They have to go through the required process, which is becoming very arduous now, and it's my understanding that there's months and months and months of delay in getting the pardon process because there are so many applicants for them now.

In your opinion, if it seemed impossible, should we be addressing this in a backwards sense and saying that the information that is now contained very readily available on the internet when you go to the Unified Judicial System's website, that the information be more thorough on there so that when we do check the box, yes, I was convicted of this or that crime and see the information that's related to that so that it's more thorough and it answers the question for the employer that -- and I can use myself as an example.

If you index my name in the criminal court records in Westmoreland County, I will come up as a defendant. It's not because I did any heinous crime. I got a ticket, I appealed it and successfully got an acquittal on the appeal in Common Pleas Court after I had gone before the district justice.

And if you look at the records, it says, Commonwealth versus John Pallone. And I certainly didn't commit a heinous crime, and I certainly was found not guilty. The fact that it was a traffic violation, I don't have to reveal that on a job application, but if someone were to do a very thorough background check on John Pallone, they will see that I was a defendant in a criminal case in Westmoreland County.

And technically, under the way the law's

written, I'm not entitled to expungement for that. I think if I would petition the Court, they would probably grant it and erase it from the record or something like that. But should we be maybe looking at it from the other side and saying we should release more accurate information on cases that show up for individuals? And I have the same concerns that even Representative Leach indicated.

I have friends that when they were in college, pleaded guilty to an aggravated assault because of a bar fight, and then 10, 15 years later, applied for a job and found out they couldn't get the job because the criminal history check showed there was a felony on their record. And they really aren't felons.

They just got in a bar fight when they were 21 and did something stupid as a young man. So should we be looking at it from the other side, saying this should be the information that we should be releasing with more detail, and how complicated or difficult would that be if we, in fact, went that direction?

MR. MCHALE: I think in your case, you're talking about traffic citations, so it wouldn't --

REPRESENTATIVE PALLONE: Yeah, don't even dwell on that. I'm just saying, with others though, I mean, the aggravated assault for the guy who was 21 in a bar fight, you know, when he's 35, he has no options other than to not

get the job because he has a felony on his record.

MR. MCHALE: I'm not trying to comment on the police officer's report, so if you get the report, you can read everything and find out all the details.

REPRESENTATIVE PALLONE: In this era of digitized records, I mean, how difficult would that be to make a more thorough record available? If you look now on the internet, it basically just says, you know, Commonwealth versus Jones, Title 18, Section 3206 or whatever it is, whatever the crime is that you're charged with.

And then it shows either guilty, not guilty, whether or not the fines and costs have been paid or whatever. It really doesn't say what the circumstances were, you know, of the case.

MR. MCHALE: Well, my trouble with that is, all law enforcement reports are investigative in nature and are not to be released. A lot of those reports have facts in there that really would be embarrassing or demeaning or degrading to some folks, so I don't think they should be released.

You know, the system the way it is now, it shows the crime, section and the disposition. I guess you're saying you want more than, or you --

REPRESENTATIVE PALLONE: Yeah. Is it possible

to put more information in there? You know, I keep a database on a number of people who come into my office for constituent service, you know, and we don't just put in Jim Jones came to the office today. We say he came in because we worked on his driver's license or we helped him with his property tax or rent rebate form or whatever.

So there's enough information that we know why he was there or she was there. We don't just say Jones visited the office today. Is it possible, without revealing investigatory notes and even information that may not have ever been admitted into evidence, just a little more information to say that this aggravated assault, you know, it wasn't a guy who, you know, attacked a group of people with, you know, an AK47; it was a guy who got in a bar fight when he was 21 years old?

MR. MCHALE: I couldn't even imagine, you know, all the records that we have on file, to go back and research those reports, have someone go back to that information and put it in a summary form. And I don't know if that information -- I'm not so sure that could be --

REPRESENTATIVE PALLONE: How about heretofore, retroactive?

MR. MCHALE: Pardon me?

REPRESENTATIVE PALLONE: Heretofore, today's topic.

MR. MCHALE: Like I said, we keep them for law enforcement purposes. We're here to talk about employment records. I would believe that'd be rather cumbersome and probably --

MS. MCNEAL: I would also be concerned about any potential impact for the victim. With the more information you're disclosing in that regard, then you run the opportunity of potentially embarrassing or whatever or concerns regarding the victim.

REPRESENTATIVE PALLONE: I understand. Thank you.

Thank you, Mr. Chairman.

REPRESENTATIVE WILLIAMS: Thank you.

I have a question. When a person gets an employment background check from the State Police and they don't have a criminal record and their name is used, someone uses their name as an alias for identify theft, how come it shows up as an alias on the person's record when they don't have any criminal record?

MS. MCNEAL: There is a process in place that addresses that, and that is, criminal history records do have a match criteria of name, date of birth, such as that. And we do have instances where people steal someone's identity or use it in the commission of a crime, and regretablely, that name forevermore gets connected to a



criminal activity.

However, we have a fingerprint-based system for that, and anyone whose identity has been stolen, they submit a set of fingerprints. Along with their identity, we confirm that they were not the person that committed that crime, and we annotate the criminal record to show that.

We provide them with a letter that they can carry to, if they were to go to an employer and the employer got this record back, then they can present that and they have their explanation, their verified, certified explanation that they can use for the employer to do that.

However, because that was named, that name was used in the commission of the crime, we can't just obliterate it and take it off because it is part of that overall criminal history record associated with a specific set of fingerprints.

REPRESENTATIVE WILLIAMS: But don't you think that the public is being harassed or -- you have to go through this process of getting fingerprinted. You have to go carry around a piece of paper because someone else did commit this crime, used someone else's name as an alias. And when employers are looking at that, that background or that record check from the State Police, they don't take the time to go through and see if this person is not the

person.

They just look at what they see in writing. And it just happened, it happened to my son. And I don't think that it's fair to have to go get fingerprinted because whoever did the 7528 or the investigating record when they were doing the investigation, they associated with the police who look at mother who came to identify her son who had a last name of Williams, which the person who committed the crime used an alias Desmond, and his last name was Brown.

And the police officer used his way of doing his police investigating to say, well, okay, this kid's name is Desmond; his mother's name is Williams; I'm going to put his name in there as the alias of Desmond Williams. Subsequently, my son now has to go through this process.

I don't think that the public should have to go through this process because -- in particular, if they didn't commit a crime. And he could be prohibited from getting college loans, prohibited from getting employment unless this is rectified.

And the only answer I keep getting is come to the State Police, bring your son, get him fingerprinted and he'll carry a letter for the rest of his life. I think that's totally unfair to the public for people who are not committing crimes. And it is a problem that we face a lot,

particularly in the African American community when the people are looking for employment because the employer is not going to look through those documents and say, well, let me see what he got arrested for or if this is true or not.

So, I mean, I'm glad you guys are here, but I think this is something that needs to be resolved. When a police officer takes and uses his own investigative skills and records and just got one connect A with B and the information is not correct and it causes somebody, you know, harm or possibly they not, they won't be able to get employment, I don't think that should, that information should have been furthered information.

I mean, when I was a police officer, I would never put someone else's name associated with a mother or a son or an alias, in this case, a name, and a mother for the sake of saying, this is one of his aliases, which when you read the report from the State Police -- I got the report.

It never stated that he was using his mother's name. So now my son has to go through this process of explaining every time he looks for employment or when he applies for a college loan or any other things like that.

MR. MCHALE: That's a problem, a concern that we've heard quite a bit over the last couple of years, and I'm going to ask Trooper Varbuskirk here to step up. He's

the keeper of the records. He'll be able to give an explanation on what's going to transpire, what's in the works.

MR. VARBUSKIRK: If an individual, in your son's case, I'm going to assume -- I'm probably wrong -- if they only used the name, that's one thing. But if they used your son's name, date of birth, Social Security number, somebody actually used that, that's important for law enforcement purposes in the future.

REPRESENTATIVE WILLIAMS: No, the date of birth was the same identical date of birth of the defendant and my son.

MR. VARBUSKIRK: If a police officer submitted a fingerprint card in error, we can correct those. If a police officer puts on a fingerprint card based on the information he has at the time of an arrest, it becomes an identity issue.

If a person uses your son's name, as a law enforcement officer, I want to know that he's using your son's name. Regretably, it is stuck there as the system is now. We heard a great deal of this over the last couple of years, as Captain McHale said. The new criminal history database that we have on record, on file now, actually has the ability to annotate that an identify theft took place.

So that when a rap sheet going back to an

employer or a criminal record going back to an employer, they actually have it annotated on there, that an identify theft took place in that case. It should be a flag to them at that point on that particular arrest that that individual used your son's name or that name in particular.

REPRESENTATIVE WILLIAMS: I understand that, but the police officer associated the defendant's mother's last name, which was different than the defendant. He used the name Desmond. The police officer then used his mother's name to say this is another alias. I mean, I got the record. I looked at the report.

I spoke to them, and they told me the only way we can resolve it is bring your son in, he gets fingerprinted and he has to carry a paper around for the rest of his life. I just don't think that's fair to, not only just my son.

Since you guys said that there is a lot of cases that's now, that you hear a lot of, I think there needs to be a process in place where the public does not have to go through -- I mean, you have to take a day off of work or a day from school, go to the State Police barracks, get fingerprinted; and then if you don't have this piece of paper on you at all times, you get stopped on the streets of Philadelphia by a police officer; he runs your name; it shows up; you're frustrated because you keep getting

stopped and it now turns into a disorderly conduct because you're angry because you say, look, this always happens to me.

And most police officers are not going to take the time to pull a, run a, pull a record, look at the 7548 or go through a background, an extensive background. And the public is being annoyed by it. I'm glad that you guys admitted that this is a problem.

MR. MCHALE: Well, with the concern that we've heard over the years from several people, I'm not going to sit here and criticize or condone or getting into the actions of a specific police officer or police department.

What we can do is we take your -- you know, you said you contacted us, and I'm sure you have. But we'll sit as a meeting and get your information and research it further. That's probably not going to be addressed here in the next couple of minutes, but what we're willing to do is get your information and look it up and get right back to you.

REPRESENTATIVE WILLIAMS: Thank you. Let me just also say, I applaud the State Police on supporting this legislation, and I think there's some corrections that we need to look at. But for the most part, I think this is a step in the right direction because the general public who may have committed a crime or may have did something

when they were younger, I believe that people deserve a second chance.

And in order to make that happen, we as legislators, we as the law makers, agencies around the Commonwealth, we have to look back, all the way back in our hearts and our minds to look at giving people second chances because sometimes children or young people make mistakes and those mistakes cost them the rest of their lives.

And elderly people who have committed crimes and was charged years ago, particularly seniors who are trying to get into senior citizen homes where they may have committed a crime when you were 10 years old and you're now 80 trying to get into a -- or you're 20 years old and you're trying to get into a senior facility, sometimes they run a background to see if they have a record.

You cannot get into a senior facility. At that time you can go in the service to serve our country, but you now cannot get into a senior center or sometimes nursing facility. Thank you very much.

CHAIRMAN CALTAGIRONE: Chairman Marsico.

REPRESENTATIVE MARSICO: Thank you, Mr. Chairman.

Thanks for your testimony today. We're running a little late. I know we're on a time frame here, but one

quick question. On your final page of your testimony, you talk about expunging and that you currently process over 34 thousand expungements each year. I'm just curious of what some of those expungements may be.

MS. MCNEAL: Two-thirds of them are ARD, and most of them are nonconvictions.

REPRESENTATIVE MARSICO: All right. Thank you.

CHAIRMAN CALTAGIRONE: Thank you both. We appreciate your testimony.

We'll next hear from Secretary John Heaton, Esquire, Board of Pardons, Lieutenant Governor's Office.

MR. HEATON: Good morning, Chairman Caltagirone.

Chairman Marsico, there you are. Good morning, Chairman Marsico, members of the Judiciary Committee and staff of the Judiciary Committee.

Thank you very much for the opportunity to be here this morning to talk about the particular bills under consideration today and also the need for expungement legislation in Pennsylvania and the effect of possible legislation as proposed and is now on the table on our Board of Pardons caseload.

I have prepared written testimony, which I made a real effort this week to try and enlighten this committee on the Board of Pardons present backlog. It is a -- now, not everybody views it as a problem, I want you to know. I



do view it as a problem, and I want to tell you that Lieutenant Governor views it as a problem. She's been meeting with Senator Greenleaf repeatedly urging him to -- and as a result of these meetings, we have Senate Bill 232, which was introduced earlier this year.

And it's been a concern of Lieutenant Governor since she took office and first found out about it, the backlog of cases in front of our board and the amount of time that it takes for someone to get a pardon.

And I have tried to capture the Board's caseload through statistics in the material I've given you, and you can see that the persons who, whose cases, reported cases that were merit reviewed by our board in September of this year, which would have been two weeks ago, waited an average -- of the 40 cases, you have to take an average -- they waited an average of 27 months to have their case merit reviewed.

Now, that's over two years. You add to that the amount of time it's going to take to schedule their public hearing, which automatically is scheduled for the next meeting, but sometimes it's not. It's between one and three months. And then assuming they're recommended to the Governor for a pardon, his review time has been averaging of late about a year.

So you're talking, you're seeing, you're between

the three- and four-year period. Now, this is getting worse. And that's why I view it as a problem. I've been in this job since '03, and I've seen the waiting time go from two to three years.

Someone came in and filed their application this week, a gentleman who wanted to work in a bank and who was excluded by, for once, a legal disability because there's FDIC regulations which the bank is bound to follow, and he had a conviction on his record that was a misdemeanor that was a prohibition.

And the only way he could get around that was a pardon. So he's in my office very, very, very, very serious. In fact, he had a major bank that was interested in hiring him that told him he needed a pardon. And so he asked me to find out exactly how many months it would take before the Board merit reviewed his case, decided whether or not to grant him a hearing.

It takes two votes of the five-member board to grant him a hearing. So we sat down and figured it out, we're hearing 40 cases a month 9 months a year, and I had to tell him that it would be a matter of, I think I told him 34 or 35 months before his case is merit reviewed. Well, he almost fell off his chair.

I mean, this job is available for him now. This employer is interested in him now, not -- and, of course,

that's just when it's going to be merit reviewed, and then he'd have to schedule a public hearing. And assuming he gets recommended to the Governor, it's going to take another year for the Governor to get to it.

We're soon looking at five years, and it's just a question of time until the pardon process is just simply unavailable to our citizens because they come to us needing a pardon now, and they don't need a pardon five years from now. And even the possibility of getting one five years from now has no interest to them because the job opportunities are available now.

And so it is a serious problem, and they -- and I have -- I've been in this job since '03, and I want to tell the Committee that the Lieutenant Governor, when she hired me to do this, told me that my biggest problem was the backlog of cases and the burden and the hardship it's placing on citizens who are being forced to wait in line.

Now, the Representative alluded earlier to months. It is not months; it is years. And the statistics that I have given you show that it is years. And there are a lot of citizens out there who are at their wit's end waiting years for a pardon because they need the pardon right now. And the only answer to this -- and we have a part-time board.

It's a five-member part-time board, and I have a

staff of four people, including myself. So you see, a lot of people would say, well, your board's lazy; you're not hearing enough cases. You'll see in the statistics that I gave you that the Board was doing 25 cases a month in 1999. We're now up to 40 cases a month. It increased by about 90 percent.

There's no way that our part-time board, as presently constituted under the law, can possibly keep up with the demand for pardons which is coming in. Our cases are coming in, and you see I have the statistics. You can see them. This is not conjecture; this is fact. The cases are coming in at the rate of 75 a meeting.

Now, we've pushed our board up to the point where it's doing 40 a meeting, which is a lot of work. This is a part-time board, and I seriously question, I seriously -- all the board members have full-time jobs, and I seriously question whether any other board or commission in the Commonwealth of Pennsylvania works as hard for so little compensation.

But these board members receive their monthly cases approximately two weeks before each meeting, and they have to spend hours and hours and hours piling through 40 cases. And to suggest to them that they would do 75 cases a month, I would suggest is just impractical and not reasonable. So the only answer to this is expungement

legislation.

Right now, right now, I want to inform this committee because you need to know. The entire brunt of this background-checking frenzy, which has been going on since 9/11, the entire brunt of it is falling on the Board of Pardons, the entire brunt of it. And it is simply, it's simply not possible for the Board to keep up with it.

And so these people are waiting in a line that's now close to four years long. Pretty soon, we'll be five, six, seven years long. Pretty soon, our board will just be totally inaccessible to the public. And, you know, when you think about it, our board is created by the Constitution. It was created all the way back in 1874, and it's a distinguished board.

It's got the Lieutenant Governor chairing it and the Attorney General sitting on the Board. And I want to tell you that there's been no, no precedent for those two individuals not showing up for meetings. Both of them are present for every meeting and three distinguished appointees by the Governor to sit on our board.

And it's just incredible that this kind of a burden is being placed on our board when it's all employment related. Now, it's all employment related. And now I would like to jump back and testify to something that's not in my material, which I was reminded of and I

think you need to know about as a result of the State Police's testimony because they make a very valid point, which I don't think you will -- none of the legislation pending captures this point, and I think you need to be made aware of it.

Representative Leach picked up on it right away from the State Police's testimony. But you heard this morning that the opposition to expungement legislation is coming largely from law enforcement, and you're being told that there are law enforcement reasons to keep these records. And I have no doubt that's true because I reviewed the letters from the district attorneys and the letters from the judges on every single case.

And frequently, when the district attorney is against the pardon, he doesn't say anything about the employment. He says, for law enforcement purposes, we need to keep this record; I want it there; if this person gets arrested again, I need to know that that arrest and that conviction was there for law enforcement purposes.

And we heard this morning from the State Police. When asked about employment, they seem to say, well, we're being dragged into the employment realm. And, indeed, they are. I've been dragged into the employment realm. In fact, my job is now an employment advisor more so than anything else because I hear from people every day who are

caught up in this background-checking frenzy asking me for advice on how to deal with it.

And too many times, I have to -- fortunately, I can sometimes find another answer for them, like the bill that this House passed two years ago to expunge underage drinking convictions without a pardon. I don't even know if you realize you passed that. But I found -- I want to tell you, if you'll just bear with me for a minute, every day I get calls from people who are caught up in this background-checking frenzy.

And every day, I come out and say to my staff, this call just tops the last one. And I got one two days ago from a gentleman from Delaware County who told me that, who told me that for the last -- he's 65 years old. He told me that for the last 20 years or so, he's had exchange students live in his home, and his wife and he look forward to this, that they've been doing that for so many years.

And he tells me all the stuff that they learn from these students and how they're into the languages that these students teach, that these students use from their foreign countries and how much they learn. Well, anyway, this was the first year they ever did a background check, and they called him and advised him that this year, he's not allowed to have an exchange student in his home.

And I said to him, sir, what was the charge and

how long ago; 1962, underage drinking. And, now, I said to him, nobody in their right mind would do that. And he says, it doesn't matter; they did, and they told me they're under instructions and there's no alternative and they told me also that I need a pardon.

So he called his State Representative who told him to call me. That's how I heard this story. Unfortunately, I remembered that this body had passed Act 173 of 2004. I told him about that and -- now, somebody's going to argue that since he was convicted under the old penal code before the crimes code came in, that it doesn't apply.

But I told him to at least go up to the Delaware County Clerk of Courts Office and present that act and ask to have his conviction expunged. Well, he said, I'm going to have to hire a lawyer. And I said, well, maybe the Clerk of Courts will give you a break and take it up to a judge and -- that's another thing you're going to have to think about.

If you pass expungement legislation -- I've seen it just with the one you already passed in '04. Every courthouse is going to make a decision; are they going to let you come in under that act and get something expunged, or are they going to make you hire a lawyer. And then you're going to hear what the lawyers charge.



So anyway, this gentleman had a real problem. That's just an example. Every day, I hear another example of how the background-checking frenzy has gotten completely out-of-hand, and people are doing things that are absolutely ridiculous in the name of it.

And I don't know what is driving it, but all I know is the only answer is expungement legislation. Now, let me come back -- I've gotten wound up here, and I apologize for taking your time, but you need to know about this. You need to know about this because the State Police made a very valid point, that there's a different reason for keeping records for law enforcement purposes and for employment purposes.

And under -- the CRIA (ph) Act has not been amended since 1980 to take that into account, and it needs to be. Now, let me tell you how I found out about this. When I first got my job, the Lieutenant Governor impressed on me that I was going to find out how to resolve this backlog so that the citizens wouldn't be burdened the way they are.

She doesn't get any credit for this, of course, but this was -- and she's been after me every day since I've gotten this job, what have I done about the backlog. Well, I can't do anything about the backlog. You can. But now, she said to me to find out what every other state is

doing and find the best proposals and I'll go to the Legislature and we'll go from here.

So I did the appropriate searches to find out what all the other states are doing with their backlog of pardon cases. It turns out there's no clearing house, and there's no source of information available of what all the other states are doing because every state's clemency process is different. Every single one is different.

Some of them have a board; some of them have the Governor; some of them have an independent, some of them a dependent board. There is no clearing house. So I was referred to a lady named Margaret Colegate-Love (ph), who is -- there's no doubt in my mind now is the number one expert on clemency and pardons in the United States of America.

She was U.S. pardon attorney under senior President Bush and under President Clinton's first term, not his second term. She's tell you real quick, she had nothing to do with the Mark Rich pardon. But she's an expert on pardons, and the Lieutenant Governor asked me to find out from her what we can do in Pennsylvania.

So she came up here as a consultant on two separate occasions for three days the first time in '05 -- and an unpaid consultant because I had no money to pay her for her expertise and her fee. She came up here

for three days the first time and studied our system, our backlog, and for two days this last time in '07. And she made some very valuable comments, but the reason -- I have a reason for taking your time and getting to this.

At the end of the second day after her meeting -- and she told me a lot of things that you need to know, and I would seriously, seriously suggest -- she's on the ABA staff in Washington, and she is a pardon expert. She will tell you, as she told us, that our board is being demeaned -- demeaned, that was the word she used -- by hearing all these summary shoplifting cases.

It's absolutely demeaning to the entire, to the distinguished nature of our board, the constitutional nature of it and the reason it was established, for it to be hearing 35 ice cream sandwich cases every month. That was one of the points she made. But I want to go back and tell you because this point made by the State Police is a valid point.

And I never even picked up on it until I met with her earlier this year. She was up here in March, and she met with the Board after a meeting; and she met with Lieutenant Governor and a group of distinguished invitees, like the Secretary of Corrections and Board of Probation and Patrol, the night before.

After the meeting, Margaret came to back my

office and she made an observation which I have never heard before. She told me that Pennsylvania and South Carolina are the only two states in the United States of America that honor expungement orders by completely destroying the record. That's what she told me, and I had never heard that before.

And when you think about it, that's what the CRIA Act provides, and it's always been that way. And I think about all these letters I get from DAs saying, we need this for law enforcement purposes. They don't enumerate what they are, but there are valid reasons for law enforcement purposes.

So the State Police is in a position where they're forced to retain these records for law enforcement purposes knowing full well that employers don't need them and that they're being used for some of the ridiculous purposes that I related to you.

I would suggest to the General Assembly now and to this committee that you seriously look at the issue of -- and Margaret made a point to me right after she told me that we and South Carolina -- and I haven't checked that out, according to her, but she's the number one pardon expert.

She told me that we and South Carolina are the only two states in the whole country who don't maintain

records for law enforcement purposes. I want to tell you that this conforms to what I've experienced because I read every single pardon application that goes in front of our board, every single -- I've never seen someone ask for a pardon because the State Police have their record, never, not once.

They ask for a pardon because they're either in a problem with employment -- and 90 percent of the time it's employment. It's not law enforcement. I would seriously consider you take a look at the CRIA Act -- it hasn't really been seriously looked at since 1980 -- and take a look at whether there isn't a serious, there isn't a legitimate law enforcement need to keep records that we've obliterated in Pennsylvania.

And now we've gotten to the point where people are so backlogged for a pardon because that's the only way to get an expungement, but if law enforcement was allowed to keep the records so that district attorneys could be assured that this person got a record, that at least the law enforcement would have it, then I think -- and she made the point, the second point she made was that if we kept these records for law enforcement purposes, a lot of the opposition to expungement would dry up, would dry up.

And I can tell that, I don't think that the State Police would be here, anywhere near us with their

eight exceptions. Of course, they said that they want it kept for law enforcement purposes, then they want the eight exceptions, which, to me, is overkill. But I would -- I think it makes sense to provide by law that the records are kept for law enforcement purposes.

These employers that are getting the records, that's the criminal -- and not only employers. It's not just employers now. It's anybody who wants to volunteer, anybody who wants to live in senior housing. It's proliferating. It gets worse every day. And we're sending them all now, everybody affected by this frenzy is being sent to the Board of Pardons, and we just can't, can't possibly handle it.

So I would support legislation. And I think that we need to go at least as broad as Senator Greenleaf's 232, at least. And I did a survey this week and came up with the statistics as to how each of the three pending bills affect our caseload.

And if you look at my statistics, you'll see that Senator Greenleaf's bill would affect the caseload the most with, like, 31.5 percent of the cases that we've reviewed for the last year being covered by Senator Greenleaf's bill. The second bill, which is 1543, that comes up to 26.5 percent; and House Bill 1569, which is limited to just summary offenses, 18.3.

If you look at the type of backlog we have, you'll see that, I think, we need to go at least the Senator Greenleaf approach in order to make our backlog manageable. But, of course, the Board's going to need to chip in too. We're going to need to go to 12 meetings a year, and we're going to need to increase the number from 40.

But I think the Board would be much more willing to do that if the Legislature recognizes the problem, and there's no way they could possibly, no matter how hard they worked, cover the cases that are coming in now. But I think that something should be done to look at a bill that would go perhaps even -- and nobody suggested this, but I would suggest perhaps even separating out violent from nonviolent crimes.

And what's the -- of a nonviolent felony, for example, look at all the drug cases where they're involved in a sale. And we frequently have in front of the Board the women who were the one who actually delivered the drugs or got the money, and here they are 15 years later and they can't get a job because of a felony.

But it's not a violent crime, and there's no victim. And you wonder why they wouldn't be eligible for an expungement because their life's been ruined. But according to the way the bills have been introduced,

there's no, nobody would even dare introduce a bill to expunge a felony, and I suggest that perhaps you need to take a look at that. And, again, I'm not speaking on -- I forgot to put the admonition at the front.

I'm not speaking on behalf of our board. Our board only speaks with three votes and only speaks at meetings. I'm speaking on behalf of the lawyer who's been administrating the Board for the last three years. And I think I see a problem, and I think it needs to be dealt with by this committee.

And I've taken up way too much of your time already. I thank you. I would suggest that you get Margaret Love in here and have her tell you what other states are doing as far as expungements. It would be enlightening to you, and that's all I have. Thank you.

CHAIRMAN CALTAGIRONE: John and I have had a lot of discussions about doing this very thing, of course, and the end result is this hearing.

What's the total number -- I'm just curious -- that you have pending on the petitions waiting on pardons? I was just curious.

MR. HEATON: It's in those statistics, Representative Caltagirone.

CHAIRMAN CALTAGIRONE: I was just looking for that, John.



MR. HEATON: Oh, my gosh.

CHAIRMAN CALTAGIRONE: Because I know you have  
a --

MR. HEATON: I didn't submit this yesterday  
accidentally, but it came this morning. We have a total of  
1,112 cases currently waiting to be merit reviewed, 1,112.  
And that doesn't count all the ones that have been voted to  
recommend for a pardon and are currently pending over at  
the Governor's Office, so it's over a thousand now. And --

CHAIRMAN CALTAGIRONE: And the backlog?

MR. HEATON: Now, the backlog, that would be  
the -- we have 485 cases currently waiting to be merit  
reviewed that's -- but that's not the backlog because the  
backlog would also include the ones that are over at  
Probation and Patrol having the investigations done. So  
anyway, there's about 1,112 people waiting now for a  
pardon.

CHAIRMAN CALTAGIRONE: And the other problem  
that I -- I worked a little bit with those numbers to get  
you some additional funding because compared to all the  
other obligations of state government, I think yours is  
probably one of, if not the smallest budgetwise and  
staffwise; and yet, everybody keeps jumping on your back,  
especially members of the House and Senate when they get  
phone calls from constituents, where their sons or

daughters cannot get certified, especially as teachers.

And --

MR. HEATON: Everybody wants to be moved to the front of the line, and as I indicated in my material, Representative, I have not. I've been doing this for four -- I have not moved a single person to the head of the line. It's simply not fair to the other people that are waiting their turn in line.

CHAIRMAN CALTAGIRONE: That's not the way it should be. You're right.

MR. HEATON: But even having additional staff and additional funding would not resolve the problem for the simple reason that my staff -- it's only four people, supplemented now permanently, I think, by two interns.

And I have one of the interns who's a Widener student with me here this morning who was very helpful to me in preparing these materials, and I have another intern back at the office from Central Penn Business School.

So we've been using two interns for the last three years because I can't get additional compliment for -- and I can show you, if you look at the statistics that I've provided, I can show you absolutely that the caseload has tripled. And it was 261 cases came in in 1969 {sic}; 668 came in in 2006.

And that's most of the -- all since 9/11, so I'd

say our caseload is very close to tripled since 9/11 because it is background-checking frenzy. And I have no additional staff, but fortunately, the Lieutenant Governor has cooperated with me to get interns. And the interns have been, I think, at least as good as a permanent employee.

And I'm not here asking for a budget supplement at all. I'm asking the Board to do something to help this thousand who are waiting their turn in line. But for every one of these thousand, there must ten -- we heard the number of expungements.

There must -- and I get calls every day from people who are caught up in this background-checking frenzy. And there's nothing they can do other than to get in line, and the Legislature needs to provide relief to them. And --

CHAIRMAN CALTAGIRONE: This is potentially one of the ways, I think.

MR. HEATON: Certainly. And it needs to be done. And I would certainly recommend that legislation be passed to allow the courts to share the burden of this background-checking frenzy with the Board, and I would suggest that there's no reason why it can't be done in a more generous fashion than it is by these legislation.

There's some sort of a sentiment that you're

soft on crime if you provide for expungement of minor offenses, and I just don't think it's the case. If you talk to these people that call me day in and day out, they need help getting a job. It has nothing to do with soft on crime. Most of them have turned their life around years ago. They're not even a threat.

CHAIRMAN CALTAGIRONE: Well, I think with the -- and I certainly would work with the Attorney General's Office and the State Police and try to get the fair balance. I think they're of a mind that many of us are -- that we need to keep information somehow and balance that on the need-to-know and allow for those that have done minor things in their youth, that cannot hold them back from employment purposes.

And it's striking that balance as to what types of crime and how long you want to keep that information, who has access to it. But I think we have to put in the minds of the people on this panel that we need to come up with something that would possibly strike that balance that I think would work.

MR. HEATON: I think you need to recognize for the first time that law enforcement has a different need for this information than employers do, and that could be the key.

CHAIRMAN CALTAGIRONE: I think that's the key,

yeah.

MR. HEATON: Like these escalator offenses, like summary shoplifting, I mean, these are -- these kids can't get jobs as teachers; they can't get jobs as nurses and now it's every day I get into another area where people are calling me that they can't get hired, and it's gotten completely out-of-hand.

Now, if law enforcement was allowed to keep that so that when they issue a citation, they could find out if there was a prior one, what does that need to go to employers for after, say, five years? That's -- but we need to get to how we can administer this so the State Police could keep this information.

And I bet you that if you found a way to legally distinguish the State Police's need to keep these records and law enforcement's need to keep these records and found a way to accomplish that by statute that a lot of the opposition -- you might even be considering going to nonviolent felonies at that point.

And I think if you went to nonviolent felonies and nonviolent misdemeanors and took all the people with victims and all the people who had hurt people out and make them come to the Board of Pardons so the victim can be there, if you did just that, I bet you -- well, I know because I did a survey this week -- you'd be up over 40

percent, and you'd be a good ways towards resolving our backlog. But something needs to be done.

CHAIRMAN CALTAGIRONE: Questions?

John.

REPRESENTATIVE PALLONE: Thank you, Mr.

Chairman.

And, Mr. Secretary, thank you. I think you answered my question that I asked the State Police, that we do this kind of in a back door way rather than through the expungement mechanism. And if I'm hearing you correctly, you're almost suggesting that we run parallel systems, one for the law enforcement environment and then one for the employment environment that has a five-, seven-, ten-year lookback versus forever lookback for law enforcement.

MR. HEATON: That's correct.

REPRESENTATIVE PALLONE: And do you know, having looked at the Pennsylvania Constitution and/or our current statutes, are we authorized to be able to do that now, or will we have to map some form of a legislation to do that?

MR. HEATON: Unlike a pardon, which is a constitutional remedy, which can only be granted after a public hearing in front of the Board of Pardons, an expungement can be controlled by the Legislature. And you can pass any conditions you want on expungement of records.

The incredible thing about the law as we find it

in Pennsylvania today -- I find this is absolutely amazing -- is that in Pennsylvania, we force somebody to go and get the extraordinary remedy of a pardon issued by the Governor of Pennsylvania in order to get something off their record for employment purposes. And, you know, if you really ever thought about it, you'd think that a pardon is an extraordinary remedy.

And we're forcing shoplifters with 69 cent packs of gum and ice cream sandwiches, and I could go down the list of -- I had five cases two weeks ago that were under \$12. I mean, and you're forcing them to go to the Governor for a pardon? It's absurd. And it demeans our distinguished constitutional board to be sitting there listening to this every month.

And you could maintain the records for grading purposes, so first, second and third, the State Police authorized to keep these records; but they were told, don't you dare give them to employers or expunge them for purposes of giving them to employers.

And once you got over that hurdle and decided you're going to let the State Police keep everything for law enforcement purposes, which is a legitimate need, not just grading -- there are other legislative needs that the DAs recite to me every month in the letters they send me opposing pardons.

Why should they be forced to oppose a pardon just because, enforce a pardon for somebody who needs it for employment purposes just because they're worried that the State Police won't have this record if they need it for a subsequent investigation? And Margaret told me, there's only two states in the United States where an expungement order means that you destroy the entire record. And I see no need for it, and I think you ought to look into that.

REPRESENTATIVE PALLONE: One final question, have you had an opportunity to discuss your concept or idea with PSP to see if it's even doable?

MR. HEATON: No.

REPRESENTATIVE PALLONE: I would suggest at some point maybe a subcommittee or you and the State Police get together and do that. Thank you.

MR. HEATON: I used to be the Chief Counsel for the State Police, believe it or not.

REPRESENTATIVE PALLONE: You've answered my questions, so thank you very much.

MR. HEATON: You're welcome.

REPRESENTATIVE PALLONE: Thank you, Mr. Chairman.

CHAIRMAN CALTAGIRONE: John, you're going to have that duty assigned to you.

REPRESENTATIVE CREIGHTON: Thanks, John. Thanks



for the passionate testimony.

MR. HEATON: You're welcome.

REPRESENTATIVE CREIGHTON: Did I hear you recommend that we expand the Board or maybe have multiple boards for different types of --

MR. HEATON: I listed in the summary -- I don't know if you got to it yet. I listed in the summary to my testimony that there are two possible alternatives from what I've seen in other states. First, you could expand our board to a full-time board that would be able to deal with this kind of a caseload, but that would take a constitutional amendment.

Do you really want to pass it two years in a row and then go to the voters over something like this when you can pass legislation that does the exact same thing? The only way you're going to expand the Board -- the Board is a five-member board. Each member is designated as set forth in the Constitution.

Margaret Love has written a book, which she covers every state. And she indicates in there that a lot of states have set up a, what they call a committee or an agency that issues certificates of employability to people who can't be employed. And we would do it in our Department of State here in Pennsylvania.

We'd have to set up a whole new bureaucracy to

do what the Board of Pardons is doing, and I just don't think it's worthwhile. And I suggest that the -- and the bottom line is that the courts have the wherewithal to hear these expungement cases and to do it now. And actually, I think it would be better forcing everybody to come to Harrisburg for a pardon because you'd be in the local county; the DA would be notified and given an opportunity to oppose if he wanted to.

He'd be right there, and any witnesses who, or perhaps victims would be available right there to come in and testify. So I'm suggesting that expungement legislation is the best way to go. The alternative's doing nothing and letting our backlog get up to five, six, seven years.

That's what we're facing right now, and it will happen because it's gone from two to four just in the three years, four years I've been there. It's gone from three to four. It will get to the point where our board is totally inaccessible and of no value. And arguably, there's a constitutional right to approach our board because it's in the State Constitution.

There's no right to a pardon, and there's no right to a hearing. There's cases on both of those. But I think you might have a right to approach our board and not have to wait five years. I'd take that case.

REPRESENTATIVE MANDERINO: Just a quick comment. First of all, John, thank you so much for your common sense remarks. Did we not do something very similar with PennDOT in the past five years, where we had kids who racked up 20 years of suspensions --

MR. HEATON: Yes.

REPRESENTATIVE MANDERINO: -- when they were 17 years old --

MR. HEATON: Yep.

REPRESENTATIVE MANDERINO: -- and kept getting pulled over by the local police for driving without a license and insurance, and then ten years later -- anyway, we set up a special --

MR. HEATON: Probation --

REPRESENTATIVE MANDERINO: -- administrative process that they can go through. I liked your first suggestion better about deciding what should be put on -- everything is for law enforcement purposes and then what is only available for employment purposes.

I really think that's where we need to go. But having said that, I also think that we have a precedent that we already recognize that we did within the scope of PennDOT on hearings for those kind of, you know, suspensions until you're 95.

MR. HEATON: That was Governor Casey, in 1991,

passed what -- initially passed. It's since been reinforced. It's called probationary license still. And I remember, he personally -- I was the Chief Counsel of PennDOT at the time, and he personally got involved in this because he got a letter from a gentleman who was suspended until 2038, which doesn't seem that far off now, but it was back -- and this man had no hope at all of ever getting his license back.

And he told Governor Casey he went to Mass every morning praying for his license back, and his prayers were answered because Governor Casey told me to draft a probationary license bill which allowed him to serve six years of his 2038 suspension and then be eligible for a probationary license. And there is a precedent for dealing with these kinds of problems by statute, and that's what I'm suggesting you do here.

MS. ALWINE: John, thanks for coming today. If you remember me, I'm counsel to the Republican Judiciary Committee. I had the pleasure of listening to you back in '03-'04 when you came before our committee. And I would love to say, when people comment on you being passionate, that has certainly increased exponentially since '03-'04 when you were, I would say rather cool, calm and collected.

I do want to comment on that, that obviously these numbers have gotten to you as well. And I would like

to suggest that, as you're saying, certainly this is a good step in the right direction, but I wouldn't discount any constitutional amendment. You talk about putting it before the people. They're the ones that are bringing these numbers in droves, talking about the need for expungement and pardon, more fluidity in the process.

So even though, yes, it takes two sessions and it takes putting it before the voters, but that may be where it belongs as well, to expand your board, getting you more help, making this (inaudible) as well as expungement through the legislative process.

MR. HEATON: Thank you.

Is that all?

CHAIRMAN CALTAGIRONE: John, I thank you. I think that's it.

MR. HEATON: Thank you very much.

CHAIRMAN CALTAGIRONE: Good job.

MR. HEATON: Thank you.

CHAIRMAN CALTAGIRONE: Next, we'll hear from -- and if we could, we'll bring the three of you up at one time and let you all testify; Janet Ginzberg, Community Legal Services of Philadelphia; Ann Schwartzman, Director of Policy and Education, Pennsylvania Business Society; and our friend, Larry Frankel, Legislative Director, ACLU Central Regional Office. If you don't mind just pulling up

a chair.

MR. FRANKEL: Actually, I was going to ask Andy Hoover to come up.

CHAIRMAN CALTAGIRONE: Sure. Bring another chair. I don't want my members to get ready and leave on us. I want them to hear what you all have to say first, and then we'll ask questions.

So, Janet, if you'd like to start off.

MS. GINZBERG: Sure. Thank you. Good afternoon, Representative Caltagirone and committee members. My name is Janet Ginzberg, and I am Senior Staff Attorney in the employment unit at Community Legal Services in Philadelphia.

Thank you for the opportunity to testify. This is an issue that is of great importance, I think to everyone in this Commonwealth. In my testimony, I'm going to address a scope of the employment problems faced by people with criminal records. The existing law -- very briefly, I'll just talk about the existing law on expungement in place in Pennsylvania and why an expungement bill is so essential at this time.

I will say up front that we think that, of the three that are being considered, HB1543 would provide the most improvement of employment opportunities of people with criminal records, but I'm going to explain also why the

scope of expungement opportunities should be even broader than that presented in HB1543.

The playing field for ex-offenders is an employment (inaudible) in this Commonwealth. When I started at CLS eight years ago as an employment lawyer, the employment barrier of a criminal record was certainly there. It was certainly an existing, but not an overwhelming issue.

Now the employment problem with regard to criminal records is the single most common reason that people come to CLS seeking employment assistance. Every year, you see more clients than the year before, and the situation's only getting worse. Moreover, these employment problems are faced not only by people recently released from prison.

There's always a great deal of talk about re-entry as an issue. In our experience at CLS, anyone whose criminal background check comes back with anything -- and that means whether or not they've ever spent any time in prison -- most, in fact, have not -- will face employment problems.

This includes clients with summary offenses and convictions of all sorts of major and minor from 20 years ago. In fact, ironically we have numerous clients who tell us that they had less problem getting employment when they

were just out of prison 20 years ago than they have now just because of the increase of background checks.

The statistical research supports CLS's experience with records of persons with criminal records who face employment problems. And it's in my testimony. I'm not going to go through the statistics at this point, except to say that, as we all know, the numbers are increasing in those who have some sort of criminal record on their record, that minorities are more likely to have criminal convictions than white individuals are and that twice as many people are on probation or patrol as opposed to incarcerated.

And I think those are very significant statistics for us dealing with this issue. It's harder than ever for people with records of any kind to find work. Criminal records, as you heard, are more accessible than ever. The Pennsylvania State Police records are accessible if you pay a fee, and, of course, now the records are online with the AOPC.

Except for criminal records histories gotten through the credit agencies -- well, I guess those are the only ones -- an employer doesn't even need a person's permission to do a background check. Sometimes the individuals don't even know that a background check is being done on them.



According to a 2003 survey from (inaudible) magazine, 80 percent of their members perform criminal background checks, and that's up from 51 percent in 1996. Now, those records are from -- those statistics are from 2003, and we can tell anecdotically that that number has gone up even higher. Taken together, these studies are well known to people with criminal records and the services providers who work with them.

Millions of people are being forced out of the employment market because they have a single record, even if they do not present much more of a risk than other job seekers. In our years of representing thousands of ex-offenders, CLS has determined that the best solution for an ex-offender is to eliminate as much of a record, as much of a criminal record as possible.

The most effective way to avoid employment discrimination based on a criminal record obviously is for there to be no record at all upon which to discriminate. Representative Manderino mentioned earlier that perhaps a way of dealing with this is to limit the information that is out there for people to see, and maybe it's not just expungements.

And while I agree with that to a large extent, I also think that if the information is out there, the employers often find it; and while there are some laws that

prohibit, they either ignore those restrictions or get around them somehow. So we do think the best way of getting rid of a record is to have it expunged.

Nevertheless, the possibility of expungement is very limited in Pennsylvania. As you know, there's -- it's almost impossible to get a conviction expunged unless you're over 70 or older and have been arrest free for ten years or now for underage drinking. Other than that, the only things that can be expunged are arrests that don't result in conviction or people who go through the ARD program.

Some juvenile records can also be expunged. The vast majority of cases in which I've dealt with in Pennsylvania, there are no grounds for expungement. Secretary Heaton has explained about the pardon process. Right now, that is the only way to get a record cleaned up, a conviction cleaned up for adults.

And it's a good resource for those that wait the three years and get it and succeed, but as Secretary Heaton explained, it is very time consuming and is causing burden on the Commonwealth. Of the three bills that have been introduced in the House regarding criminal record expungement, HB1543, while very moderate, would most effectively expand the availability of expungement and, therefore, job opportunities in Pennsylvania.

It would provide for expungements for summary offenses and third and second degree misdemeanors after awaiting certain respective waiting periods. There's little doubt that this bill's enactment wouldn't be a big step forward. For the first time, there has been a significant number of Pennsylvanians' convictions would have hope for an expungement without the burden of the pardon process.

And as I said before, the importance of a clean record can't be overstated. At the same time, we believe that HB1543 does not go far enough in providing opportunities to clear records for individuals who have proven that they are capable of an eager, to be productive members of society.

We're disappointed that the bill does not include simple assaults from those that can be expunged. In our experience, simple assaults are commonly charged to individuals that get into arguments that escalate into physical altercations, quite often with no result in injuries, quite often with really nothing to be heard more than -- the example people often use is a barroom brawl or a schoolyard fight in which both individuals get simple assault convictions.

For individuals to be barred forever from seeking expungement for what is often a nonserious offense

that is a lasting repercussion even years later seems to us irrational. Second, we would like to see the Pennsylvania Legislature follow the lead of other states that are increasingly providing for a much broader realm of expungement. Eight states have expungement laws that (inaudible) to most adult felony convictions.

Four states permit expungement for stealing, which is somewhat a solution that was suggested of having separate tracks for law enforcement and public access. They have expungement of some or all first offenders after completion of their offenses, and that includes persons who have been incarcerated. And at least a dozen states provide for expungements of misdemeanors.

We believe that allowing for expungement for a broader realm of convictions would vastly improve the ability in Pennsylvania to find productive employment. Furthermore, we believe this can be done without any increased state security for recidivism in the state.

The most recent study shows that after seven years, seven years after a conviction, the likelihood that someone with a conviction is going to commit a crime goes down almost to the point of someone without a conviction of committing a crime. But after seven years -- and by the way, other studies show that the important factor is not the kind of the crime.

In fact, if anything, people who commit property offenses are more likely to recidivism than people who have committed violent offenses. But these studies have found that the individual's age and the length of time from conviction are the two main factors in determining the level of risk of that individual, not the kind of offense that was committed.

So we do believe that even people who have, what some folks consider more serious convictions, the studies show that they're more than likely not to commit another offense and, therefore, should be given a second opportunity to have a clean slate and move on.

In conclusion, to improve the employment of Pennsylvanians with criminal records, this Legislature should adopt a wide-ranging bill that would allow for expungements on most felonies, misdemeanors and even many other (inaudible) felonies after an appropriate waiting period, depending on the conviction involved and in accordance with the acceptable academic studies. Thank you for considering my remarks today. I'd be glad to answer any questions.

CHAIRMAN CALTAGIRONE: Thank you, Janet.

If we could next move to Ann and Larry.

MS. SCHWARTZMAN: Thank you, Chairman, and members of the Committee. I can actually say ditto for

most of the testimony and spare you listening to me rambling on, but there are a couple of points I thought maybe we should put out. The Prison Society, like many other organizations, are very supportive of expungement.

We think it should go a lot further. We deal with ex-offenders all the time, people that we feel and think that you might feel also are deserving of a second chance. Expungement in a broad way will really help show compassion by the criminal justice system and really commit to rehabilitation. If we want to give a second chance, if we want to curb recidivism, we need to get jobs for people. We need people who are going to pay taxes. We need taxpayers, not tax burdens.

Some of the cases that we've come across, because we do several re-entry programs, include employers who deny access based on job sensitivity, what they're calling a specific job and saying, absolutely no, I'm not going to hire an ex-offender regardless of the reasons; employers who conduct background checks that now include longer histories as well as a number of juvenile cases; employers who are unaware that there could be problems with the data involved in the background checks, the alias issue that came up before, as well as other things; and employers who deny access based on arrests alone.

Just seeing the quantity that comes up on the

internet for them is enough for them to say, forget it; I'm not going to consider that person, not looking at the skills, not doing an interview, just across the board saying no. One woman who attended a workshop had been arrested as a juvenile when she was 18.

She had been working at the airport for 25 years with a blemished-free record. Everybody loved her. She enjoyed her job. She did a good job. When 9/11 happened and background checks became more and more substantial, her employer came to her recently and said, you're out. That's it; no ands, ifs or buts. She is still unemployed. She doesn't know what to do.

She has kids. She has expenses. She is going to be on welfare very soon, and we, as taxpayers, are going to be paying for her instead of her adding to our tax base. Another workshop client had a series of arrests, but no convictions.

He is convinced that he's been turned down job after job because the employers pull up the information, don't read through everything, don't really know what's going on and figure he's too much of a risk regardless of what his record really talks about. Another person, a woman from Riverside, a Philadelphia prison for women, actually had been picked up for shoplifting when she was a juvenile.

In the meantime, she had years of culinary experience doing kitchen work, doing restaurant work, really doing what she considered good work. At some point, she found that she could not even get her foot in the door; she couldn't get an interview; she couldn't get any possibilities because when the background came up, she had this conviction.

She had been convicted of shoplifting, and she was not going to be hired by any of the employers that she tried. Another former offender that we had in a workshop just figured forget it; I'm not going to look for a job; everybody else here is talking; they're turned down left and right; it's just not worth it; I'm going to get some welfare; that's good enough for me.

We don't think it's good enough. We don't think people need guarantees for jobs, but we need to have some method, some process to give them opportunities, to give them the second chance. Support on these measures are very important for the offender themselves, their families and neighborhood, our communities and our tax base.

And the only way we can do it is to try to make sure that people can access jobs, can at least try to get into that process. Expungement is one way. There are a number of other things that we would recommend. One of the areas that we've been finding is that employers can access



this information.

They can find out about backgrounds, but a lot of them really don't know what it means. They don't know what to do with it. It's too much. They get scared, and they just figure, forget it. We think there needs to be training. There needs to be all kinds of mechanisms to help the employer really determine what is this; is this person still worthy of another chance.

We also feel that employers who conduct the background checks should go through the State Police for more accurate information as opposed to possible other sources, including AOPC that often has incorrect information that's incredibly difficult to correct.

We also feel that somehow, and I'm not sure how you'd do this, that the employers look at the convictions, not just arrests. We have many people who come to our workshops and talk constantly about the lengthiness of their arrest, not saying that is good, but that they're right out of the box for that.

A number of employers now are open to, but there needs to be a bigger process and more legislation dealing with tax credits, some way that they get a benefit for trying, for actually opening the door for some ex-offenders and a possibility of a certificate for rehabilitation that could be awarded to ex-offenders who

have been out of the street doing well for a certain amount of time that might bolster the possibility of employers looking at them seriously.

We would like to see expungement utilized as broad as possible. I wasn't even going to suggest looking at nonviolent crimes or possible felonies today, but we would definitely support that and think it would make a huge difference and a very important aspect that can be investigated here in the state. Securing a job is a particular importance, but we also need to look at job stability, job retention and the quality of employment.

Reducing the barriers is unbelievably important, and we commend you for looking at it here with the Committee as well as in the Senate. In the end, the commitment to compassion and rehabilitation will help make the criminal justice system a constructive force in society and give people opportunities so that they, in fact, can make positive contributions; people possibly like Nelson Mandela, Benjamin Spock, William Penn, maybe to a certain extent, Martha Stewart, who have records, who have been able to move ahead and contribute to society. In the end, we all benefit when former employers become taxpayers instead of tax burdens. Thank you.

MR. FRANKEL: Thank you, Chairman Caltagirone, and other members of the Judiciary Committee. Andy Hoover,

who also works at the ACLU is going to summarise the testimony. And then I'd like to offer some thoughts, comments, responses to some of the issues that have been raised here today.

MR. HOOVER: Thank you, Larry.

Thank you, Chairman Caltagirone. It's good to be here with you today. Just as Larry said, I'll summarize some key pieces that are in our written testimony. We do support, of course, the concept of expunging criminal records. We believe it will lead to reduced recidivism rates, and it's important for addressing public safety.

I do want to address a few things from some other states we've heard discussion of and what's happening in other states. In Nevada, you have a statute that authorizes the sealing of criminal records.

It also provides that all proceedings recounted in the record are deemed never to have occurred and the person to whom the order pertains may properly answer accordingly as to any inquiry concerning the arrest.

Now, Nevada courts have interpreted that language, and they found the statute was enacted to remove ex-convicts' criminal records from public scrutiny and to allow convicted persons to lawfully advise prospective employers that they have had no criminal arrests or convictions with respect to the sealed offense.

And we, as the ACLU of Pennsylvania, would urge this committee to consider language similar to Nevada's as you go through the process with this legislation. And you'll find many other states considering similar legislation as well, and Congress, in fact, is considering a bill similar to this.

I do want to address House Bill 1053 and specifically the section about expunging the records of those who have been exonerated of crimes. I had the opportunity to talk with and spend time with a number of people who have been found to be innocent after spending time incarcerated.

These are mostly men, gentlemen who have lost years off their lives for something they did not do, sometimes decades. And when they come out, they have to piece their lives back together. They face a number of obstacles, including mental health issues, a lack of access to healthcare, minimal financial resources and roadblocks to employment, of course, what we've been talking about.

We feel the least the Commonwealth can do to ease their transition is by automatically expunging their criminal record. And for that reason, we would support HB1053 or a bill similar that would allow this to occur. I want to also go back to what Secretary Heaton said, which he said that he felt like Senate Bill 232 provides a good

road map for dealing with this.

He said it should be at least as broad as Senate Bill 232, and we feel the same way, if you've had a chance to look at our testimony. We feel that Senate Bill 232 is, in fact, the floor for this issue rather than the ceiling, and it's the minimum of what we can achieve on this issue.

So we encourage you to take a look at SB232 and consider some of the language that's in there for the House versions of this legislation as well. It is noteworthy, and I'll wrap up with this, that others in the House of Representatives and elsewhere in the Commonwealth are also looking at proposals to tear down the barriers in employments, in employment that are faced by people who have been incarcerated.

Representative Parker and 27 co-sponsors, including members of this Committee, have introduced House Bill 1114, and that addresses tax credits to employers who hire ex-offenders. A similar proposal has been brought forth to Philadelphia City Council, and attached to my testimony is a Philadelphia Daily News article about that proposal.

So we think now is the time to move forward with this kind of legislation, and we are available to answer your questions as well. Thank you.

MR. FRANKEL: Thank you, members of the

Committee, again. I first -- there's been a lot of focus on the issue of the impact on employment and some other references that have been made. This criminal record problem affects housing; it affects ability to get benefits.

It's more than just employment, although employment is what people usually associate it with. And it isn't just there for an issue with regard to the offender or ex-offender, maybe his family, her family that is also affected in terms of housing, benefits; but I think it's all of us who really benefit from any effort we can take to reduce for risk of recidivism.

It is public safety, and some of this will contribute to someone becoming a productive taxpaying law-abiding citizen capable to provide better for his or her family. I think we all benefit from it. This isn't, you know, just the bleeding hearts who want to help people get a second chance.

It's those of us who want the bigger, you know, picture of what may help the public. I also want to emphasize that, except for the one portion of Representative McGeehan's House Bill 1053, which talks about automatic expungement, we are talking about discretionary, giving the judge's discretion to order an expungement.

There is no mandatory language here. And I'm happy to see that the letter, testimony submitted by the District Attorney's Association, points out that fact too. Expungement properly remains discretionary with the judge, so if there's a cause shown as why an expungement should not be granted, the judge can make that determination.

So when we're trying to figure out what to put in a pot, what would allow a person to even go into court, keep in mind and bear in mind that the discretionary position by the judge and the district attorney can have an opportunity to contest a petition for expungement.

There were a couple points in the testimony from the State Police which I'd like to address. I think some of their points about certain records maybe should not be a part, but others, I think, I hope you will take a different view. I am particularly concerned about using the age 21 as the drawing line.

I think it's arbitrary, and I don't think there's any hard data that tends to indicate someone that's 25 and 30 remain crime free for 10 or 15 years to get an expungement. And to talk about youthful indiscretion -- and I'm reminded, Congressman Henry Hyde (ph) had to apologize for a youthful indiscretion.

And I was pleased, not that he had to apologize, but it happened when he was 41, and he called that a

youthful indiscretion. Since I was about 41 at the time, I was pleased Congressman Hyde thought I was still young. I think people's definition of youthful indiscretion is broad. I think it's more important to focus on the individual circumstances.

Someone at 22 may still be immature. Someone at 25 could be immature. And if the academic data indicates that people who stay out of trouble for seven years, I don't think being 21 or 30 should make the difference. And it also could raise a potential equal protection problem or that kind of case.

You know, two people with similar crimes, similar backgrounds, one can't get expunged because he was one day short of 21; the other can because he's one day over 21 when that crime occurred. I know that Representative Leach addressed the whole issue, and it was raised a number of times in the State Police testimony. It's also raised in a letter by the District Attorney.

Look at what the crime that was charged, not the crime they pled down to. Well, I don't think you can really create a statute, well, let's look at the charge. I think we already know, and though those of you who have done criminal defense work, oftentimes people are overcharged in an effort to get them to plea down.

We have to, again, go back, look at the facts



and circumstances of the case and what was proven. There may be very good reasons that the person pled guilty to what occurred. The issue of crimes of domestic violence, I was a little confused by the testimony, and I think this needs a little exploration.

You know, there aren't necessarily indications in the records they look at that the crime is a crime of domestic violence, and they indicate they have to go back and search for what are those crimes of domestic violence. If we're going to create a category, we're going to have to create a system for better classifying and marking it in the records if something is a crime of domestic violence.

I don't think you're going to run into any argument for someone's who's supposed to be a registered sex offender. Once you get down to it, there really is little question in terms of what sex offenses should be allowed to get an expungement.

And it was interesting even the focus on indecent exposure because I think all of the bills indicate indecent exposure is to be added to the list of crimes which cannot be expunged. I think -- I'm not so sure why the point was brought up about indecent exposure. The next issue I just want to touch on, and Ms. Ginzberg pointed out that a lot of people are only sentenced in probation and they're still having their records expunged.

Probation means that the judge looking at the crime, looking at the sentence and guidelines determined that this person did not need to be incarcerated. They were not a threat to public safety where they needed to be incarcerated. So as you sort through which offenses do and don't fall into the categories, maybe one consideration that is given is whether the person was only sentenced to probation.

And, therefore, even though it's a misdemeanor 2 or a misdemeanor 3, the judge in evaluating the case and applying the guidelines determined that a sentence of imprisonment wasn't appropriate; therefore, maybe an opportunity for expungement may be more appropriate for that individual.

The last issue I want to address is the whole notion -- and I think it's going in a good direction between distinguishing between information that is available to employers or the other purposes I mentioned, benefits, housing versus law enforcement purposes. And I think that can be a productive way to begin looking at this.

I would caution, however, that there may be pieces of these bills that we can enact or you can enact, you can enact now, this session. This other concept may take more of the rest of this session to work out, and I

think it would be unfortunate given some of the data that's been presented and the need for the Pardons Board and the needs of individuals to delay offering some relief in this area while we perfect that other system.

I'm not suggesting that we don't look at another way of approaching it, but I hope that that is not used as an excuse to defer taking some actions that can probably be taken this session by this committee through the House and with the Senate joining in as well.

Finally, I should say House Bill 1114, which Mr. Hoover referred to, unfortunately, is in the Finance Committee, not this in this committee. And we're going to be in touch with the Chair of that committee and suggest maybe it be considered as part of, you know, a package of bills that I think are coming through now that are looking at ways to reduce recidivism and encourage rehabilitation. Thank you very much.

CHAIRMAN CALTAGIRONE: Thank you.

Questions from members?

Kathy.

REPRESENTATIVE MANDERINO: Thank you. Thank you all for being here. You don't need to answer right now, but I am interested in your feedback afterwards, and I'm sure the Committee would too on the following point: I was very much struck by John Heaton's testimony that, in

Pennsylvania, unlike -- and many of you said, here's what other states are doing, but in Pennsylvania, expungement is defined in a way it seems that is different than other states and is the main reason it seems that law enforcement gets so nervous when we talk about expungement.

So I am assuming that he is correct, and I'm just asking you that if you either disagree with that now or you disagree when you look at it, to let me know because it seems to me one of the critical -- and the first thing we ought to do is relook at how we define expungement and limit it to something less than the total destruction of the existence that a record ever was there.

CHAIRMAN CALTAGIRONE: Lentz.

REPRESENTATIVE LENTZ: Thank you, Mr. Chairman.

This question goes to any of the witnesses that cares to answer. I'm curious. Are there -- and I don't know the answer to this. Are there specific crimes that are excluded from considerations of pardons? Is there a list of crimes for which you can never be pardoned?

MR. FRANKEL: I don't believe so. I think the only restriction is that for life sentences, you have to have a unanimous vote from the Board of Pardons, which you can't get. Actually, you can.

I think there is one or two over the last ten years or whatever, and then the Governor doesn't pardon

them because they're afraid somebody's going to use that as a campaign issue against them. But there are no restriction on which crimes you can seek a pardon for.

REPRESENTATIVE LENTZ: So from that, we could include that anything that we exclude from this expungement law will end up in front of the Pardon Board in cases where a person has a meritorious argument to make. And in my experience, if a district attorney in a particular county objects to an expungement, that is ultimately denied. Is that your experience as well?

MR. FRANKEL: My experience, which is many years ago, is I never filed a petition for expungement the district attorney opposed, so --

MS. GINZBERG: And of the expungements that we have no arrest or ARD expungements, if the DA opposes, what that means then, at least in Philadelphia County, is that a hearing will be held as opposed to just the judge disagreeing with the expungement.

And then sometimes we've seen people get -- sometimes not. The DA objecting automatically means, in Philadelphia, you get a hearing probably issued, but not necessarily --

MR. FRANKEL: But I think going back to your previous comment, question, you know, what this -- some legislation that would allow more people to at least apply

for expungement could result in cases where there's no objection from the district attorney, the expungement being granted; and in that case, never having to go to the Pardon Board.

There would be a reduction, and I believe that there are district attorneys all throughout the state that would not be objecting to expungement petitions where you got some of the conditions that are already sent to our legislation where there's a period of time since there's been a conviction and where it was a relatively minor crime.

But the objection may become that there is a law enforcement need, and I think that is an issue to be looked at and looked to see how other states handle it to see if there's something we have in Pennsylvania.

Ms. Ginzberg talks about, indicates that we would see some movement on, you know, a decent number of cases if more people where are allowed, just allowed to file a petition that a judge would have discretion on whether to grant.

REPRESENTATIVE LENTZ: It seems to me, the more categories, broad categories to exclude, the less opportunity for the finder of fact to review the underlying facts for most crimes. There are some which we have talked about today which could not paint any fact pattern which

was at all conducive to expungement. But for most crimes, like we heard about with assault from a bar fight versus the more traditional assault, you can come up with a set of facts where that person would be deserving of an expungement.

It seems to me, not all crimes are equal, and if you exclude broad categories, then you take away the opportunity for the judge or a district attorney to review it and see whether or not it should be expunged. So I think we should keep that in mind. Thank you.

CHAIRMAN CALTAGIRONE: And I do want to, just for the record, mention that we do have testimony from the District Attorney's Office, State District Attorney's Association, and also the Attorney General. And I'm hoping that we can move forward with a piece of legislation that we can agree to.

I think we know what the problem is. I think it's been highlighted here today, and certainly if we can work out the details -- it's always the devil in the details -- and get some of this that I think we can agree to up for consideration before the full committee before the end of this year, I think it would be a major step forward. And you've heard what the problem is, and each one of us in the districts know it too well.

And a lot of these minor offenses, petty stuff,

that they're scarred for the rest of their lives, and they're looking to us for some type of help. And I think we have a safety net here, but we need to resolve this problem. And with that, we'll adjourn the hearing, and thank you all for your testimony.

(The hearing was concluded at 12:23 p.m.)



I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings to the best of my ability, and that this copy is a correct transcript of the same.

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Jennifer L. Sirois, Court Reporter,  
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