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Testimony from:  
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House Bill No. 2793, "AN ACT Relating to vacating criminal records."

February 3, 2020

House Public Safety Committee

My name is Arthur Rizer, and I am the director of Criminal Justice and Civil Liberties for the R Street Institute, which is a nonprofit, center-right public policy research organization. I am also an adjunct professor of law at George Mason University. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government, and that's why HB 2793 is of special interest to us.

I am a Washington native, and care deeply about my state. I received my bachelor's degree from Pacific Lutheran University and my law degree from Gonzaga. I served for almost 21 years in the U.S. Army, was deployed to Fallujah, Iraq, and was awarded the Bronze Star and the Purple Heart medals for my military service. I have been a law enforcement officer and served as a patrol officer here in Cheney, Washington. I worked for the Washington Attorney General's Office, and I am a former prosecutor with the U.S. Department of Justice.

I believe in automatic record clearance because it supports human dignity, public safety and our communities. Individuals should be held accountable when they commit a crime, but punishment must end at some point. Currently, those with criminal records face significant barriers and are denied employment, housing and educational opportunities. This harms their ability to reintegrate with society. We cannot disinherit generations of Washingtonians from their American dream and expect society to be better for it.

And the problem is vast. Over a million Washington residents have a criminal record. When these individuals are denied the basic ingredients needed to sustain a stable life, it harms our communities. Employment is a key factor in reducing recidivism, and those with criminal records have great difficulty finding quality employment. After a conviction is vacated from one's record, one study found that wages

go up by an average of 25 percent.<sup>1</sup> This allows individuals to provide for their families and communities and makes them less likely to commit crime. The same study demonstrated that expungements are linked to lower rates of reoffending. As a former law enforcement officer and prosecutor, I support clean slate because it will make Washington safer.

An ideal clean slate bill would expand the ability for individuals to vacate their records through automation, using technology to clear eligible records instead of a manual process in which individuals must petition the court.

Currently, vacating a conviction requires a lengthy petition process in which individuals must appear in front of a judge for a hearing. It's estimated that less than 5 percent of eligible Washingtonians ever take advantage of this process.<sup>2</sup> The process often requires an attorney and is otherwise difficult to navigate. By vacating convictions automatically after a number of years, clean slate aims to make this remedy accessible for the greatest number of affected individuals.

The intention and goal of HB 2793 is laudable—to bring relief to thousands by vacating their records. Unfortunately, the bill as written cannot be automated. This is because the bill relies on a statute that was designed to manually process individual petitions.

Fortunately, with some small changes, automation is possible.

First, the current wording of the bill only affects convictions that occurred after Jan. 1, 2000. This qualification denies second chances to hundreds of thousands of people in Washington who are the least likely justice-involved individuals to commit new crimes. Research shows that people age out of crime, yet old convictions continue to hold people back. From a public safety perspective, this makes no sense. By removing this specific date and allowing the Administrative Office of the Courts to explore opportunities for relief as far back in their records as possible, the legislation could benefit the largest number of individuals.

Second, the bill as it stands cannot be implemented. The current wording of the bill doesn't set up the Administrative Office of the Courts (AOC) for success in being able to automate relief. And the AOC has already told us this.

As an example, the current wording of the bill makes the waiting period for relief impossible to automatically calculate. The Administrative Office of the Courts does not keep the necessary data to determine sentence completion as the wording currently stands. For example, AOC data sources do not include custody release dates or completion dates for drug treatment and diversion programs. This is an

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<sup>1</sup> J.J. Prescott and Sonja Starr, "Expungement of Criminal Convictions: An Empirical Study," *Harvard Law Review* forthcoming; *U of Michigan Law & Econ Research Paper* No. 19-001, (March 16, 2019), p. 1. <https://ssrn.com/abstract=3353620>.

<sup>2</sup> Colleen Chien, "Email with the Author: Research forthcoming," Jan. 30, 2020. "Based on these numbers, less than 4% of individuals eligible for vacation relief and less than 1% of charges eligible for vacating have been vacated."

easy fix: Instead, the waiting period can be calculated from the date of the sentencing and sentence length—data that *is* readily available.

Additionally, the bill's intent is undermined by its own language in Section 4, which needs to facilitate implementation rather than just an evaluation. My concern is that in December of this year, when a report is due, the Administrative Office of the Courts will tell us what they've already told us: The bill as currently written cannot be implemented because of processing and data challenges. The current process was not designed for the digital age, but with a few changes it could meet the promise of clean slate.

Thank you, Representative Hansen and Representative Irwin, for working together to introduce this bill. With changes, it has the potential to create new opportunities for those struggling to deal with the lasting consequences of a criminal history.

For these and other reasons, we believe in clean slate and encourage you to explore the suggested changes and enhance this meaningful piece of legislation.

Thank you for your consideration.

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