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TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bills No. 7079, 7204, 8083

ENTITLED, ACTS RELATING TO CRIMINAL PROCEDURE – EXPUNGEMENT OF CRIMINAL OFFENSES.

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

The Office of the Public Defender **strongly supports** the passage of House Bills 7079, 7204, and 8083, all of which would allow for the expungement of multiple felony charges in certain situations. Although all three bills would expand felony expungement rights, **the OPD particularly asks the Committee to support passage of H7204 or H8083, which would provide the greatest relief for the most people.**

Our support of this legislation is based on research indicating that laws expanding expungement opportunities for individuals enhance public safety, since people who receive expungements have low recidivism rates.¹ The same research demonstrates that individuals with expunged records exhibit an overall crime rate lower than the general population.² The research stresses how important it is to recognize and support individuals who have successfully reintegrated into society after completing their sentences.

We prefer H7204 and H8083 because it H7079 we are concerned about the number of crimes that are included in the H7079’s “other prohibited offenses” list (§12-1.-3-1(6)). These offenses are not only non-expungable but also would prevent someone who had even one of these crimes on their record from getting *any other charge* expunged. The list is expansive and runs the risk of turning a well-intentioned bill into an “exceptions swallowing the rule” dilemma. Some of the crimes—like an assault with a dangerous weapon in dwelling house, or first-degree child abuse—deserve their place on such a list. But one example highlights just how expansive this list is: the possession of a knife over three inches (a common misdemeanor) is considered an “other prohibited offense” under §12-1.-3-1(6)(xi).

Moreover, of the three bills, H8083 would provide the most relief to people the fastest, because the eligibility time period would be measured from the date of conviction rather than the

¹ J.J. Prescott & Sonja B. Starr, *Expungement of Criminal Convictions: An Empirical Study*, 133 HARV. L. REV. 2460 (2020).

² *Id.* at 2514.

end-of-sentence date. This bill addresses two issues related to the current expungement laws: 1) that studies have demonstrated that our current waiting times are too long, for over 90% of people who have not offended in three years will not do so again³, and 2) that people who have already proven themselves by remaining out of trouble for the length of their probation should not have to wait an *additional* period of time before their records can be expunged—time where they are on the sidelines for the important educational, employment, and housing-related opportunities referenced earlier.

One concern common to all three bills: we would suggest the removal of the phrase “nor arrested” from § 12-1.3-3(b)(1)(iv). This provision could prevent expungement for individuals who have been arrested but found not guilty or had their cases dismissed. A bad actor can easily get another person arrested on false charges, so being “arrested” is not a true reflection of recidivism. To better align the legislation with its intended purpose, we recommend removing the phrase “nor arrested” from this clause.

In short, we support expanding expungement rights to certain individuals with more than one felony on their record and encourage the Committee to pass one of the bills that would accomplish this goal. **H7204 and H8083 would help more people than H7079; thus, we particularly support the passage of those two bills, and we especially support the passage of H8083 as it would provide the most efficient relief to the greatest number of people.**

Sincerely,

/s/ Angela M. Yingling
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³ Matthew Durose and Leonardo Antenangeli, *Recidivism of Prisoners Released in 34 States in 2012*, U.S. DEPARTMENT OF JUSTICE, SPECIAL REPORT (July 2021), available at <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/rpr34s125yfup1217.pdf>.