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Pardons: It's Time to Finish the Job

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Every person who has “lived experience” in the criminal justice system—an estimated one out of every three Americans—has a permanent record. Even after they have fully completed their sentences, their histories brand them as “ex-cons,” “ex-offenders,” and the like. That label sticks even for those whose offenses were decades ago for conduct that is no longer considered criminal.

Those with convictions have to “out” themselves repeatedly, and in almost every new situation, as they “check the box” that asks about criminal past on applications for apprenticeship programs, jobs, education, student loans, housing, business financing—making them easy targets for rejection, legal or not. Ex-offenders with drug busts when they were teens cannot chaperone their children’s school trips or coach their sports teams, be guardians for family members, or volunteer with community agencies. The overlap between criminal records and family intergenerational poverty is now beyond question.

The only escape from this prison—for them, their families and their communities—is for a judge to order that their criminal records be “expunged.” For that to happen, they need a pardon from the governor; and for *that* to happen, they need the recommendation of the Pennsylvania Board of Pardons (BOP).

Until 2019, the pardon system in Pennsylvania was much the same as elsewhere: a long and expensive bureaucratic slog that heaped indignities on the applicants and emphasized their criminal past to their employers, landlords, friends and neighbors as part of the investigation performed by probation and parole officers. It took five years to get to the end, and ended in failure for over 90% of those who had, with hope, purchased the application, nine pages long with 14 pages of instructions. Those who made it through were predominantly white, well-educated, well-off and well-represented.

All that changed in 2019, thanks to the strong support of Gov. Tom Wolf and the leadership of Lt. Gov. John Fetterman and Attorney General Josh Shapiro, both of whom serve on the BOP as required by Pennsylvania’s Constitution. Today, the whole process is free, the forms are short and written in plain English, the hearings are being held by Zoom (no longer in the Supreme Court in Harrisburg), and over 87% of those coming before the BOP in public hearings are being recommended. For his part, Wolf has approved 98.7% of the board’s recommendations, and will likely sign his 2,000th pardon warrant before 2021 comes to a close.

This is a new vision of criminal justice—one that encourages redemption and restoration, not just imposes punishment. All of that could change, dramatically, on Nov. 1, 2022, when



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Pennsylvania elects a new governor. We have just one year to complete the modernization of our pardon system to ensure it meets our society’s needs.

The steps are simple. They make complete sense. And we can help bring them about.

• **Expunge Pardoned Crimes Automatically.** The BOP estimates that only 30% of those granted pardons take the next step of going to court. The Pennsylvania Supreme Court has held when presented with pardon, a Judge **MUST** expunge the conviction. So why charge people up to \$300 per petition—money our low-income clients do not have, especially since, on average, they have been convicted of three separate offenses—each requiring a hearing involving the district attorney and a judge? Last year, pardoned crimes were included within “Clean Slate” and are automatically sealed. But the slate is not cleaned: the convictions are just hidden from most eyes most of the time, but never from police, prosecutors, employers using FBI background checks, contractors

working on federal contracts, and a slew of jobs. They're always there, ready to rise up and ban the individual when they least expect it. A simple word change—"seal" to "expunge"—is all that's needed. Just do it.

• **Update the Pennsylvania Code.** Published in Chapter 81 of 37 Pa. Code, the BOP's operating rules and regulations were last updated in 1997—that is, before email and Zoom, and when the number of applicants each year was comfortably under 200, not over 2,000 and rapidly rising, as today. Amending the code can take years ... or months if there is strong public support in favor of the changes. The Independent Regulatory Review Commission (which controls the flow and the fate of such things) actually counts the number of letters received as a metric of merit. The BOP will be seeking to modernize its administration early next year. When the call for public comment comes, do your part and voice (email) your support.

• **Finalize the Fast Tracks.** Because of the increased numbers, the time from application to pardon is almost three years. In September 2019, the BOP announced a pilot project that promised "accelerated review" for the easiest of cases: applicants whose only crimes related to marijuana and paraphernalia and did not involve sexual offenses or violence. The pilot worked and has been expanded to two more categories: crimes that occurred more than 15 years ago (no sex, no violence) and applicants who have the support of their local district attorney. On Nov. 9, the Pennsylvania Workforce Development Board (WDB) went further, unanimously calling on the state "to ensure the prompt review (within one year) by the Board of Pardons

of all applications for pardon from Pennsylvanians who completed their sentences five or more years ago on convictions that did not include crimes of violence and who have remained arrest-free ever since." These fast tracks need to go from pilot to permanence, confirmed in the code.

• **Classify Clemency as Opportunity, Not Punishment.** The WDB's unanimous call for more pardons, faster, grew out of the April 2020 report of The Economy League that studied 10 years of pardon data, and found that pardons contributed \$16.5 million dollars in "new money" to communities around the state, just by allowing people to compete for jobs for which they were qualified. Pardons, they wrote, are "no-cost workforce development and neighborhood investment tools." But organizationally, the General Assembly oversees and funds the BOP as part of "corrections". By definition as well as practice, clemency is only considered for those who have *been* corrected, and granted only to those whose redemption has been *proven*. Move the BOP to Labor & Industry.

• **Amnesty for Marijuana.** When the BOP adopted its marijuana pilot project in September 2019, the Administrative Office of the Pennsylvania Courts (AOPC) estimated that there had been roughly 57,000 such cases, mostly involving small amounts of marijuana, disposed of over just the preceding 10 years. According to Pennsylvania state police data, there were 20,200 adults arrested for marijuana-related violations in 2020 alone. The governor, the Lt. governor, and the attorney general are united in calling for legalization: as the AG tweeted this past June, "legalization must include expungement for

those in jail or who have served time for possessing small amounts of marijuana. Our Black and brown communities have been disproportionately impacted by this for far too long." The BOP and the governor should not wait for the General Assembly to act: they have the power to issue a general pardon (amnesty) for those offenders, just as President Jimmy Carter did in 1977 for those who dodged the draft for the Vietnam War, and as President George Washington did in 1795 for those involved in Pennsylvania's Whiskey Rebellion. Pardons heal social wounds. It's well past time to end the War on Weed. Three votes from the BOP, and one from the governor, are all it would take to close that chapter in Pennsylvania's history—while avoiding tens if not hundreds of thousands of individual hearings. When do we want it? NOW!

Simply put, pardons release potential. Thanks to the governor, lieutenant governor and AG, Pennsylvania has been leading the country in pardon reform for three years. They have one year left in office. It's time for them to finish the job, and for us to urge them on.

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