

I. INTRODUCTION

1. Petitioners, five individuals and a non-profit social service provider, bring this Petition for Review in the Nature of a Complaint in Equity to challenge the constitutionality of the lifetime employment ban contained in The Older Adult Protective Services Act (Act 169 of 1996 and Act 13 of 1997, codified in relevant part at 35 P.S. §§ 10225.501 through 10225.508) (“OAPSA” or the “Act”). The challenged provisions prohibit nursing homes, home health care programs, residential mental health and mental retardation facilities, and other health care facilities from employing in any position any individual who was convicted at any time of any one of a broad range of disqualifying misdemeanors and felonies. The Act’s draconian lifetime employment ban is absolute and permanent: There is no ability for an individual or a covered facility to seek an exemption or to establish that an ancient conviction has no bearing on the individual’s present fitness for a particular job. The Act irrebuttably presumes that anyone convicted of any one of the enumerated criminal offenses at any time in his or her life is forever unfit to hold any position at any covered facility.

2. More than a decade ago, this Court held that OAPSA’s lifetime employment ban was unconstitutional as applied to a group of petitioners similarly situated to Petitioners herein. *See Nixon v. Commonwealth*, 789 A.2d 376, 382 (Pa. Cmwlth 2001) (“Petitioners’ well-pled facts vividly illustrate the constitutional infirmities present in Act 13 and the draconian impact of its enforcement. They further demonstrate the arbitrary and irrational nature of the challenged provisions and establish that no rational relationship exists between the classification imposed upon Petitioners and a legitimate governmental purpose. . . .”), *aff’d sub nom., Nixon v. Dep’t of Public Welfare*, 576 Pa. 385, 404 (2003) (“[T]he criminal records chapter [of OAPSA], particularly as applied with regard to its application to the Employees, does not bear a real and

substantial relationship to the Commonwealth's interest in protecting the elderly, disabled, and infirm from victimization, and therefore unconstitutionally infringes on the Employees' right to pursue an occupation."). Since that time, this Court has repeatedly relied upon the rationale and holding in *Nixon* to strike down lifetime employment bars in other state statutes and regulations. See, e.g., *Johnson v. Allegheny Intermediate Unit*, 59 A.3d 10 (Pa. Cmwlth. 2012); *Jones v. Penn Delco School District*, 2012 Pa. Commw. Unpub. LEXIS 955 (Pa. Cmwlth. Dec. 13, 2012); *Croll v. Harrisburg School District*, 2012 Pa. Commw. Unpub. LEXIS 957 (Pa. Cmwlth. Dec. 13, 2012); *Ake v. Bureau of Professional & Occupational Affairs*, 974 A.2d 514 (Pa. Cmwlth. 2008); *Warren County Human Services v. State Civil Service Comm'n (Roberts)*, 844 A.2d 70 (Pa. Cmwlth. 2003).

3. Moreover, important social science research conducted since this Court's *Nixon* decision confirms that OAPSA's draconian lifetime employment ban is based upon a faulty premise. Research on redemption establishes that the recidivism risk of individuals with criminal records declines over time and, at a certain point, a prior criminal conviction loses any material value in predicting future criminal conduct. As set forth in the Expert Declaration of Dr. Kiminori Nakamura ("Nakamura Declaration"), attached hereto as Exhibit A, "the value of criminal records in predicting future criminality diminishes with time and becomes virtually irrelevant after a maximum of no more than seven years for individuals with a single conviction, and no more than ten years for those with multiple convictions – and even less time for individuals with non-violent offenses." *Id.* at 2-3. Therefore, OAPSA's absolute and permanent lifetime employment ban, which is premised upon an irrebuttable presumption that anyone ever convicted of a disqualifying crime at any point in his or her life is forever unfit to hold any

employment position at any covered facility, is irrational, unreasonable and at odds with social science research.

4. Shortly after the Supreme Court's *Nixon* decision, the Department of Aging, noting that it "anticipate[d] legislative action in the near future" on OAPSA's lifetime employment ban, announced a policy in the interim ("Interim Policy") that "facilities will not be sanctioned for hiring or continuing to employ individuals who demonstrate rehabilitation by evidence of a minimum of five-year aggregate work history in care-dependent services, without incident, from either the date of conviction or release from incarceration, whichever is later." See Interim Policy, attached hereto as Exhibit B, ¶ 5. However, the Interim Policy (a) does nothing to remediate the Act's unconstitutional effect, (b) has not been well-publicized in the industry and is not easily accessible on the Department of Aging's website, and (c) has been inconsistently applied and enforced by Commonwealth representatives over the years. Indeed, given the Act's lifetime employment ban, it is currently impossible for any individual who had not already aggregated a five-year work history in the industry at the passage of Act 13 in 1997 to gain qualifying experience within the Commonwealth.

5. Despite this Court's and the Supreme Court's *Nixon* decisions, the line of authority issued by this Court post-*Nixon* striking down lifetime employment bans in other statutes, the ongoing social science research establishing the faulty premise behind OAPSA's lifetime employment ban, and the Department of Aging's anticipation of legislative action on the topic, the General Assembly has not amended or other modified the Act's unconstitutional lifetime employment ban in the 14 years since *Nixon*.

6. The overbroad scope of OAPSA's lifetime employment ban unconstitutionally and unlawfully precludes the individual petitioners in this action, each of whom is fully qualified

for employment in covered health care facilities, from pursuing their lawful occupation, and arbitrarily and unconstitutionally prevents the non-profit provider petitioners from staffing its programs with the best and most effective employees. Therefore, the employment-prohibiting provisions of OAPSA:

- (a) violate Article I, Section 1 of the Constitution of the Commonwealth of Pennsylvania by unreasonably and arbitrarily precluding the individual petitioners from lawful employment for which they are otherwise qualified;
- (b) violate the right to due process inherent in Article I, Section 1 of the Constitution of the Commonwealth of Pennsylvania by unreasonably and irrebuttably presuming that the individual petitioners are unqualified for employment in covered health care facilities;
- (c) violate the right to equal protection inherent in Article I, Sections 1 and 26 of the Constitution of the Commonwealth of Pennsylvania by unreasonably and arbitrarily precluding the individual petitioners from lawful employment for which they are otherwise qualified while allowing other individuals with similar convictions to retain their employment status if they happen to have been employed by a covered facility for more than a year before the effective date of the Act (*see* 35 P.S. § 10225.508); and
- (d) violate the right to due process guaranteed by the Constitution of the Commonwealth of Pennsylvania of petitioner Resources for Human Development, Inc. by arbitrarily and unreasonably interfering with its right to conduct lawful business within the Commonwealth and by arbitrarily and unreasonably interfering with its ability to hire and employ individuals who best and most safely serve the proper needs of its clients.

II. JURISDICTION

7. This Court has original jurisdiction of this action pursuant to 42 P.S. § 761 and may grant declaratory relief pursuant to the Declaratory Judgments Act, 42 P.S. §§ 7531 *et seq.*

III. PARTIES¹

A. **Petitioner Tyrone Peake**

8. Tyrone Peake is a 52-year-old father of three adult daughters. Born and raised in Philadelphia, Mr. Peake graduated from Gratz High School but had an undiagnosed learning disability and low literacy level. Despite these challenges, he went on to work as a security officer for many years. Mr. Peake subsequently decided to go back to school so he could have a more fulfilling career helping individuals who were experiencing some of the same struggles he had endured in his youth.

9. After pursuing two years of literacy and tutoring support, Mr. Peake graduated from The Community College of Philadelphia in December 2014 with an associate's degree in behavior health and human services. He is also certified in addiction studies as a Recovery Specialist.

10. Despite his education, training and several years of experience gained in the field, Mr. Peake has been barred from obtaining work in OAPSA-covered facilities due to a single criminal conviction that occurred more than three decades ago and that bears no relationship whatsoever to his current ability to work in his chosen profession.

11. Specifically, *33 years ago when he was 18 years old*, Mr. Peake and several of his friends were arrested and convicted of attempted theft of an automobile. Notably, Mr. Peake cannot drive and was not involved in the actual theft, although he did ride with his friends in the stolen vehicle. He was sentenced to three years of probation, which he served without incident. He subsequently moved to a different neighborhood, changed his peer group and has not been arrested for, or convicted of, any crime since 1982.

¹ Petitioners' supporting declarations are attached as Exhibits C-H, respectively.

12. Notwithstanding the passage of more than three decades and that fact that his single brush with the law is totally irrelevant to his current fitness for his lawfully chosen profession, OAPSA's employment-barring provisions are preventing Mr. Peake from moving forward in his new field. He is currently working at Petitioner Resources for Human Development, Inc. as a Recovery Specialist in a facility not covered by the OAPSA but he only is able to work 16 hours per week for \$11 per hour and receives no employment benefits. With his degree and experience, Mr. Peake would otherwise be eligible for full-time employment at an OAPSA-covered facility, where he would likely earn a higher income and receive employment benefits; however, he has already been denied work because of the Act in several such positions, including the long-term psychiatric care facilities at Einstein Hospital, Girard Medical Center and Temple University Hospital.

13. The employment-barring provisions of the OAPSA unlawfully prevent Mr. Peake from moving forward with his career and being able to provide for himself while serving others in need.

B. Petitioner Joan Grey

14. Joan Grey is a 60-year-old Philadelphia native who has more than 20 years of caregiving experience. In 1974, Ms. Grey obtained her Licensed Practical Nurse (LPN) degree from James Martin Vocational School. For more than two decades, Ms. Grey provided direct health care services at such institutions as St. John Neumann nursing home, Philadelphia State Hospital and several nursing agencies.

15. Despite her LPN degree and extensive caregiving experience, Ms. Grey has been precluded from being employed in the health care field as a result of OAPSA's lifetime

employment ban due to a single criminal conviction that occurred 16 years ago and that bears no relationship to her current ability to work in her chosen profession.

16. Specifically, in 1998 – *17 years ago* – Ms. Grey allowed a young man to sell drugs from her home and was subsequently convicted of possession with intent to deliver. She served a short jail term and thereafter was sent to a drug treatment program at Interim House. Ms. Grey served her brief incarceration and treatment program without incident and has had a clean criminal record since the 1998 conviction.

17. Notwithstanding that the conviction took place 17 years ago and that it has no bearing whatsoever on Ms. Grey's present ability to perform jobs in the health care field, OAPSA precludes her from continuing to work in her chosen profession.

18. Ms. Grey has been rejected for employment by Bayada Home Health, Vitol Support Home Health, JEVS Human Services and Community Care. Despite a strong and growing job market for home health aides, she has been able to find only intermittent and part-time work, sometimes earning as little as \$100 per week in income. But for the unlawful employment-barring provisions of OAPSA, Ms. Grey would be working a stable job in her chosen profession.

19. Ms. Grey is passionate about nursing and home health care. Even with the devastating effect that OAPSA has had on her employment prospects, she has participated in numerous volunteer opportunities involving Narcotics Anonymous, HIV education, and other important public health issues. She is also the primary caretaker for her elderly mother and for a neighbor. The inability of Ms. Grey to find stable work in her chosen profession due to OAPSA's unlawful employment-prohibiting provisions is unduly interfering with her ability to support herself and those for whom she cares.

C. Petitioner Charles Ford

20. Charles Ford is a 55-year-old man who lives in Philadelphia with his family, including a 16-year-old son who is on the autism spectrum and has epilepsy. Despite a challenging early life, in 2002, Mr. Ford went back to school and attained his high school degree. He has also amassed over 30 years of experience as a cook, including 15 years in meal preparation for individuals struggling with homelessness and drug and alcohol addiction.

21. Despite this extensive experience, OAPSA has prevented Mr. Ford from progressing in his chosen field. He has not been able to move into a position in an OAPSA-covered facility that would provide a more stable and regular schedule to allow him to better care for his special-needs son due to convictions that occurred more than three decades ago.

22. Specifically, in 1980 – *35 years ago when he was 20 years old* – Mr. Ford became involved in an altercation at his neighborhood basketball court. He was subsequently arrested and convicted of robbery, attempted theft by unlawful taking, aggravated assault and simple assault. Two years later, he was convicted of disorderly conduct. He continued to struggle with substance abuse and depression for several years thereafter, before deciding to get help and turn his life around.

23. Thankfully, Mr. Ford has been completely clean and sober for the past 24 years. He regularly volunteers for Alcoholics Anonymous and devotes hours each week to helping others overcome their addictions. In addition to earning a high school degree from Christian Ministries Academy in 2002, he built a solid work history as a cook, working at Le Bec Fin for 13 years. Mr. Ford then decided that he wanted to apply his culinary skills in a setting with others who were struggling with the mental health and substance abuse challenges that he himself had faced at an earlier time in his life.

24. Consistent with that new mission, Mr. Ford has worked in several such facilities, including Project HOME and Gaudenzia, where he is currently employed in the position of Cook III: a supervisory role overseeing the food services program and ensuring compliance with food safety regulations. While he is happy to have come so far, Mr. Ford was recently denied a promotion to an OAPSA-covered facility, where he would have worked a regular weekday schedule and been better able to care for the medical needs of his son, because of his three-decades-old convictions.

25. Despite the existence of the Interim Policy, Gaudenzia would not allow Mr. Ford to transfer to an OAPSA-covered site because they were being audited by the Department of Human Services and were afraid of being found non-compliant with the law. The Interim Policy has proved to be an inadequate remedy for Mr. Ford.

26. If not for the unlawful lifetime employment ban of OAPSA, Mr. Ford's ancient and irrelevant convictions would not prevent him from advancing his career and attaining the type of stable and regular employment schedule that he and his son need.

D. Petitioner Desmond Lowe

27. Desmond Lowe is a 48-year-old man who has lived in Philadelphia since moving from Jamaica as a small child. After graduating from Germantown High School, Mr. Lowe began working and has spent his entire career working in maintenance, cleaning, and food services in a variety of settings. He is the single father of a now-25-year-old son, whom he raised on his own.

28. Mr. Lowe particularly enjoyed his time working in health care settings, including at a nursing home in Doylestown and at the Children's Hospital of Philadelphia. Despite his decades of experience and passion for working in a health care setting, OAPSA precludes Mr.

Lowe from employment in many such jobs due to a single felony conviction from *more than 15 years ago*.

29. Specifically, in 1999 when Mr. Lowe was 33 years old, he was working at Prudential Life Insurance, preparing food for office staff. He had trouble getting to work and would occasionally borrow a car from his friend. On one such day, Mr. Lowe was pulled over by a police officer. He did not have the proper paperwork for the car and later learned that the car had been stolen. Afraid that a protracted trial would cause him to miss work and lose his job, Mr. Lowe chose to plead guilty to a charge of “theft by receiving stolen property.” He was sentenced to two years of probation, which he served without incident, and has not been arrested for, or convicted of, any other crime since that time.

30. Mr. Lowe continued to work after his conviction, most recently as a maintenance worker at Walmart for seven years; however, he was let go in 2014. Mr. Lowe attempted to reapply for the position he loved at the nursing home in Doylestown but was told that, despite his prior experience and work history, they could not hire him as a kitchen worker due to OAPSA.

31. The employment prohibitions under OAPSA are unreasonably preventing Mr. Lowe, a skilled and passionate worker, from finding employment in his chosen field.

E. Petitioner Rudolph Jainlett

32. Rudolph Jainlett is a 39-year-old man who has not had been arrested *in over 18 years* but is unemployed – and only able to find the occasional odd job – largely due to OAPSA’s lifetime employment ban.

33. Mr. Jainlett had a difficult early life. His mother passed away when he was only 14 years old and he moved into a group home until he turned 18. After living briefly with his

cousin, he was forced out on his own. He moved to Germantown and fell in with the wrong crowd.

34. During that time, Mr. Jainlett wrote bad checks in New York and Montgomery County, trying to make fast money. He was arrested in 1996 and convicted. In 1997, he was also arrested and convicted of auto theft in Philadelphia when he borrowed a car from his cousin that turned out to be stolen. Mr. Jainlett served a total of five years' probation for these offenses.

35. Shortly after his convictions, Mr. Jainlett's father fell ill. Mr. Jainlett spent the next six years providing extensive care for his father until he passed away – an experience that changed his life and made him passionate about pursuing work in home health care. Mr. Jainlett began working for other friends and family members, providing care for the elderly and children. However, he has been unable to find formalized and stable work through a home health care agency because of his criminal record from nearly two decades ago.

36. But for OAPSA's lifetime employment ban, Mr. Jainlett who is a passionate and experienced caregiver, would be able to find stable employment in his chosen field.

F. Petitioner Resources for Human Development

37. Resources for Human Development, Inc. ("RHD") is a non-profit social service organization that provides residential programming and services for individuals with mental illness, mental retardation and chemical dependency issues. Although RHD's central offices are located in Philadelphia, it operates programs throughout the Commonwealth and in several other states. With an annual budget in excess of \$250 million, RHD has more than 5,000 employees and serves more than 27,000 people in need per year, the vast majority of whom are Pennsylvania residents.

38. Given the size of the organization, RHD hires hundreds of individuals each year. OAPSA's employment-barring provisions have had a devastating impact and continuing effect on RHD's ability to recruit and retain outstanding employees. Many of RHD's programs providing residential services to adults fall within the scope of the Act, and these programs therefore must comply with the Act's lifetime employment ban. In 2014 alone, RHD was required to refuse permanent employment to 52 otherwise-qualified job candidates as a result of OAPSA's provisions.

39. The Act has significantly interfered with RHD's hiring and retention of qualified staff, thereby compromising its ability to provide the best possible services to its clients. Many of RHD's applicants and employees come from the inner city and are under-educated. For a multitude of reasons, these individuals do the work in social services that others refuse. Prior to passage of the Act, RHD had hired certain applicants notwithstanding a prior criminal conviction if they had rehabilitated themselves and shown they could provide outstanding support services to the most vulnerable populations RHD serves: the elderly, persons with mental illness or mental retardation, and those with substance addictions. RHD's experience has shown that certain people with criminal records can become valuable employees and members of the community. As a result of the Act's overbroad employment-barring provisions, however, RHD has no room in which to hire employees who are best qualified for their programs. It has been forced to terminate, refuse to hire, or limit available position to otherwise outstanding employees, all of which has led to the termination or reduction in social service programs that RHD is able to provide to the community. RHD views OAPSA's employment-barring provisions as counterproductive to the stated goal of protecting vulnerable populations.

40. Despite being a successful petitioner in the *Nixon* litigation, over the years the Commonwealth agencies have continued to apply OAPSA's lifetime employment ban to RHD's employment practices in connection with covered facilities.

F. The Commonwealth Respondents

41. The Department of Aging, an administrative agency of the defendant Commonwealth of Pennsylvania with principal offices at 555 Walnut St, 5th Floor, Harrisburg, PA 17101, is one of the agencies responsible for administering and enforcing OAPSA. 35 P.S. §§ 10225.504 and 10225.505(a)(3).

42. The Department of Human Services, an administrative agency of the defendant Commonwealth of Pennsylvania with principal offices at the Health and Welfare Building, 625 Forester Street, Harrisburg, PA 17120, is one of the agencies responsible for administering and enforcing OAPSA. 35 P.S. §§ 10225.504 and 10225.505(a)(3).

43. The Department of Health, an administrative agency of the defendant Commonwealth of Pennsylvania with principal offices at the Health and Welfare Building, 625 Forester Street, Harrisburg, PA 17120, is one of the agencies responsible for administering and enforcing the OAPSA. 35 P.S. §§ 10225.504 and 10225.505(a)(3).

IV. STATEMENT OF FACTS

A. The Older Adult Protective Services Act

44. In 1987, the Pennsylvania General Assembly enacted the Older Adults Protective Services Act, 35 P.S. §§ 10225.102 *et seq.* The Act established a network of agencies in Pennsylvania to provide assistance and protective services for older adults, including patients in OAPSA-covered facilities (such as nursing homes, home health care programs, residential mental health and mental retardation facilities). Any person could report that an older adult

needed services, and the agencies were required to investigate and provide such services. 35 P.S. §§ 10225.302-304.

45. In 1996, the General Assembly amended OAPSA by adding a criminal records chapter, 35 P.S. §10225.501-.508. Those provisions required any applicant seeking employment in an OAPSA-covered facility, and any then-current employee who had worked for less than two years, to submit a criminal records report to the facility. 35 P.S. § 10225.502(a).

46. As originally enacted in 1996, the amendment established two categories of past criminal convictions: a limited number of crimes that automatically disqualified an individual from obtaining or continuing employment in a covered facility regardless of the conviction date and a more robust set of crimes that disqualified an individual only if the conviction had occurred within the past ten years. *See* Act 169, § 5, then codified at 35 P.S. § 10225.503 (1997). Specifically, under Act 169, an individual convicted of certain violent or sexual crimes – including murder, rape and sexual assault – was banned for life from holding any employment position at a covered health care facility. Those convicted of certain “lesser” felonies or misdemeanors – including assault, low-level drug crimes and theft felonies and misdemeanors – were disqualified only if the conviction had occurred within the past ten years. *Id.*

47. On June 9, 1997, however, the General Assembly passed Act 13 (P.L. 160, No. 13) (“Act 13”), further amending OAPSA and amending Act 169. The legislature rewrote the disqualifying felonies and misdemeanors and removed the ten-year limitation period, making any disqualifying crime a lifetime ban. *See* 35 P.S. § 10225.503 (as amended). After passage of Act 13, any individual who has ever been convicted of any one of the enumerated crimes at any time in his or her life is forever disqualified from holding any employment position at any covered health care facility. *Id.*

48. The scope of OAPSA is exceedingly broad: Its provisions apply to all nursing homes, adult daily living centers, and other health care agencies and programs providing services to care-dependent adults within the Commonwealth. *See* 35 P.S. § 10225.103 (defining “facility” to include domiciliary care homes,² home health care agencies,³ long-term care nursing facilities,⁴ older adult daily living centers,⁵ and personal care homes⁶). The draconian nature of the Act is manifested by several different factors: (1) convictions extend far back to any remote time when a crime was committed; (2) the employment ban extends forward for a lifetime; (3) the prohibition on employment extends to all positions at a covered facility, not just those involving patient interaction;⁷ (4) the Act permits no exceptions, lacking any procedural protections for assessing individuals on a case-by-case basis; and (5) the act encompasses a broad range of crimes, including some that have historically been classified as misdemeanors.

49. In short, the Act imposes a lifetime irrebuttable presumption of disqualification based upon remote convictions for which the offender’s debt to society has long since been repaid. Even if the owner or operator of a covered facility, based upon his or her years of experience in the industry, believes that an applicant or employee with a prior conviction is the

² *See* 71 P.S. § 581-2.

³ *See* 35 P.S. § 10225.103.

⁴ *See* 35 P.S. § 448.802a.

⁵ *See* 62 P.S. § 1511.2.

⁶ *See* 62 P.S. § 1001.

⁷ The Act’s provisions also prevent contractors who provide services to covered health care facilities from working in those facilities if they will have direct contact with residents. *See* 35 P.S. §§ 10225.103 and 10225.503(a). Notably, the “direct patient contact” qualifier does not apply to employees of covered health care facilities.

best qualified candidate for the job, under the law the criminal history of the applicant or employee is the *only* factor that the employer may consider and employment is barred.

50. Administrators and owners of covered health care facilities found to be in non-compliance with OAPSA's employment-barring provisions are subject to administrative and criminal penalties. See 35 P.S. § 10225.505.

51. OAPSA's employment-barring provisions apply to all new job applicants, as well as those employees and operators who may have direct contact with care-dependent patients. See 35 P.S. § 10225.502. While the Act provides an exemption for those individuals who were in the continuous employ of the same facility for at least 12 months immediately prior to July 1, 1998 ("Exempted Employees"), all other employees and applicants are bound by the Act's provisions. See 35 P.S. § 10225.508(1). Moreover, if any Exempted Employee wishes to seek employment with a different covered facility, OAPSA's employment-barring provisions apply. See 35 P.S. § 10225.508(3). Thus, OAPSA prohibits formerly exempt individuals who subsequently lose their jobs from seeking new employment in their chosen field.

52. OAPSA's employment-barring provisions apply even to those individuals employed in non-caregiving capacities, such as administration, food service, housekeeping or grounds keeping. See 35 P.S. § 10225.503.

53. OAPSA does not allow for the possibility of recovery or rehabilitation of an individual, nor for the concept that crimes committed are sometimes unique to the circumstances of the offender. It results in the forced unemployment of individuals who have made a career in caregiving. Many individuals affected by the Act are being denied employment for crimes that occurred many decades in the past, regardless of whether those individuals have engaged in any

subsequent criminal behavior and without any consideration of their rehabilitation, their recent work history or the requirements of the employment position.

54. Petitioners Tyrone Peake, Joan Grey, Charles Ford, Desmond Lowe and Rudolph Jainlett are individuals whose lives and livelihoods have been detrimentally affected by OAPSA's unlawful and unconstitutional employment-barring provisions.

55. The Act's negative effects are not limited solely to those individuals precluded from obtaining employment in their occupation: The prohibitions on employing otherwise qualified individuals who have ancient convictions that do not bear on that individual's present ability to perform the job in question has an equally detrimental effect on the staffing of residential care facilities. The Act not only interferes with petitioner RHD's constitutional right to be free from arbitrary and unwarranted intrusion into the performance and operation of its business but it results in the loss of qualified caregivers who often have previous experience in the caregiving industry.

B. Prior Litigation Over OAPSA's Unlawful Employment-Barring Provisions

56. In August 2000, a group of similarly aggrieved petitioners filed suit in this Court alleging that the employment-barring provisions of OAPSA were unconstitutional as applied to them. On December 11, 2001, the *en banc* Commonwealth Court declared OAPSA's lifetime employment ban unconstitutional, holding:

Petitioners' well-pled facts vividly illustrate the constitutional infirmities present in Act 13 and the draconian impact of its enforcement. They further demonstrate the arbitrary and irrational nature of the challenged provisions and establish that no rational relationship exists between the classification imposed upon Petitioners and a legitimate governmental purpose. . . Accordingly, the Court holds that the criminal records provisions of the Act are unconstitutional as applied to Petitioners. . . .

Nixon v. Commonwealth, 789 A.2d 376, 382 (Pa. Cmwlt. 2001).

57. On appeal, the Supreme Court of Pennsylvania affirmed this Court's decision, holding that "the criminal records chapter [in OAPSA], particularly as applied with regard to its application to the Employees, does not bear a real and substantial relationship to the Commonwealth's interest in protecting the elderly, disabled, and infirm from victimization, and therefore unconstitutionally infringes on the Employees' right to pursue an occupation." *Nixon v. Dep't of Public Welfare*, 576 Pa. 385, 404 (2003).

C. Relevant Developments Since the *Nixon* Decision

58. Over the years, this Court has repeatedly relied upon the rationale and holding in *Nixon* to strike down draconian lifetime employment bars in other state statutes and regulations. These cases featured a variety of criminal offenses, up to and including violent felonies such as aggravated assault and voluntary manslaughter. *See, e.g., Johnson v. Allegheny Intermediate Unit*, 59 A.3d 10 (Pa. Cmwlth. 2012) (holding lifetime employment ban contained in Public School Code unconstitutional as applied to an employee with a 30-year-old conviction for voluntary manslaughter); *Jones v. Penn Delco School District*, 2012 Pa. Commw. Unpub. LEXIS 955 (Pa. Cmwlth. Dec. 13, 2012) (holding lifetime ban contained in Public School Code unconstitutional as applied to employees with felony drug convictions from 25 and 30 years ago); *Croll v. Harrisburg School District*, 2012 Pa. Commw. Unpub. LEXIS 957 (Pa. Cmwlth. Dec. 13, 2012) (holding lifetime ban contained in Public School Code unconstitutional as applied to employee who was convicted of theft 20 years ago); *Ake v. Bureau of Professional & Occupational Affairs*, 974 A.2d 514 (Pa. Cmwlth. 2008) (holding Board erred in revoking CPA license due to felony harassment conviction that did not bear on petitioner's ability to perform his job); *Warren County Human Services v. State Civil Service Comm'n (Roberts)*, 844 A.2d 70

(Pa. Cmwlth. 2003) (holding lifetime ban contained in Child Protective Services Law to be unconstitutional as applied to employee with 22-year-old conviction for aggravated assault).

59. Moreover, the Supreme Court of Pennsylvania recently struck down provisions of the Sex Offender Registration and Notification Act (“SORNA”), 42 P.S. §§ 9799.10-9799.41, on the ground that the statute violated the due process rights of juvenile offenders through use of an irrebuttable presumption. *See In the Interest of J.B.*, 2014 Pa. LEXIS 3468 (Pa. Dec. 29, 2014). Applying reasoning that is equally applicable to OAPSA’s unlawful employment-barring provisions, the Supreme Court held:

[W]e conclude that SORNA’s registration requirements violate juvenile offenders’ due process rights by utilizing the irrebuttable presumption that all juvenile offenders “pose a high risk of committing additional sexual offenses,” 42 Pa. C.S. § 9799.11(a)(4), because that presumption is not universally true and a reasonable alternative means currently exists for determining which juvenile offenders are likely to reoffend.

Id. at *36.

60. Like SORNA’s unconstitutional registration requirements, OAPSA’s lifetime employment ban – which is based upon an irrebuttable presumption that anyone ever convicted of a disqualifying crime at any point in his or her life is forever unfit to hold any employment position at any covered facility – plainly violates due process because (a) it is based upon a presumption that is not universally true and (b) reasonable alternative means exist to determine whether an individual is qualified for a particular employment position, either by allowing employers to exercise their discretion in selecting well-qualified candidates or by establishing a system for otherwise-qualified applicants to obtain an exemption from OAPSA’s lifetime employment ban.

61. In addition to these judicial developments, important social science research conducted since this Court's original holding in *Nixon* confirms that OAPSA's draconian lifetime employment ban is based upon a faulty premise. As noted in the Nakamura Declaration (Ex. A), redemption research has now established that, over time, the recidivism risk of individuals with criminal records declines over time. At a certain point in time, a prior criminal conviction loses any meaningful value in predicting future criminal conduct because the individual is no more likely to commit a future criminal act than any other member of the general public. Rigorous social science studies have shown that the recidivism risk of those with a prior criminal record who do not reoffend falls below the risk of arrest for the general population approximately after four to seven years for violent offenders, four years for drug offenders, and three to four years for property offenders. *See* Nakamura Declaration at 2-3. Based upon these numerous studies, Dr. Nakamura concludes: "[F]or those who are concerned about the risks inherent in hiring people with criminal records, the value of criminal records in predicting future criminality diminishes with time and likely becomes virtually irrelevant after a maximum of no more than seven years for individuals with a single conviction, and no more than ten years for those with multiple convictions – and even less time for individuals with non-violent offenses." *Id.* Therefore, OAPSA's lifetime employment ban, which is based upon an irrebuttable presumption that anyone ever convicted of any enumerated crime at any point in his or her life is forever unfit to hold any employment position at any covered facility, is wholly irrational, unreasonable and at odds with relevant social science research.

62. Further, since the time of the *Nixon* decision, major changes in national policy have taken place concerning the employment eligibility of individuals with prior criminal records. The most obvious example occurred in April 2012, when the United States Equal

Employment Opportunity Commission (“EEOC”) issued revised guidance on the application of Title VII to criminal records. *See* Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (“Guidance”), available at www.eeoc.gov/laws/guidance/arrest_conviction.cfm (last accessed April 14, 2015). In the Guidance, the EEOC notes that national data shows that criminal record exclusions have a disparate impact based on race and national origin.⁸ To avoid running afoul of Title VII protections, the EEOC recommends that a prospective employer, in determining whether a prior criminal conviction should bar an applicant from a particular job, conduct an individualized assessment of factors relevant to evidence of rehabilitation, including the nature of the crime, the time elapsed, the nature and requirements of the job. *See* Guidance § V(B)(6). OAPSA’s draconian and absolute employment-barring provisions expressly prohibit any consideration of the EEOC-recommended factors. In doing so, the Act places Pennsylvania employers at risk of liability under Title VII, which preempts state law. *See* Guidance § VII.

D. The Interim Policy

63. In 2004, following the Supreme Court’s decision in *Nixon*, the Pennsylvania Department of Aging issued an Interim Policy that would apply until the General Assembly addressed OAPSA’s lifetime employment ban, which the Department “anticipate[d]” would take place “in the near future.” *See* Interim Policy, Ex. B, at second prefatory paragraph. Under the Interim Policy, “facilities will not be sanctioned for hiring or continuing to employ individuals who demonstrate rehabilitation by evidence of a minimum five-year aggregate work history in care-dependent services, without incident, from either the date of conviction or release from

⁸ RHD’s experience in applying OAPSA’s irrational prohibitions is consistent with the EEOC’s conclusion. Of the 52 individuals to whom RHD denied employment in 2014 solely because of OAPSA, 43 were African-American or Hispanic. *See* Declaration of Resources for Human Development, attached as Exhibit H, ¶ 5.

incarceration, whichever is later.” *Id.* ¶ 5. The Interim Policy further states that covered facilities “must reasonably investigate the character of an individual with a previously disqualifying criminal offense” and that any facility that chooses to hire such an individual is “required to obtain specific employer-provided documentation of that individual’s employment in care-dependent services and retain it in the individual’s personnel file.” *Id.* The Interim Policy also states that “the Court’s ruling in no way prohibits a facility from refusing to employ an individual, even one who has a clean aggregate five-year work history, based on information obtained in a criminal history report” and that a prospective employer “may consider criminal history felonies and misdemeanors, to the extent they relate to the applicant’s suitability for employment in the position sought.” *Id.* ¶ 6.

64. The Interim Policy has not been well publicized in the industry and is not easily accessible on the Department of Aging’s website. As a result, many covered facilities are not even aware of the Interim Policy.

65. In addition, Commonwealth representatives have inconsistently applied and enforced the Interim Policy over the years. Commonwealth representatives who have audited the employment practices of covered facilities have often been unaware of the Interim Policy or have sought to enforce OAPSA’s lifetime employment ban notwithstanding the existence of the Interim Policy.

66. More fundamentally, because of the effect of the Act’s lifetime employment ban, it is currently impossible for any individual who had not already aggregated the necessary five-year work history in the industry prior to the passage of Act 13 in 1997 to gain qualifying experience within the Commonwealth. Moreover, because the Interim Policy states that the five-years of care giving experience must have occurred *after* the conviction, even those individuals

(like Petitioner Joan Grey) who had decades of caregiving experience prior to passage of Act 13 are not helped by the Interim Policy if that experience was earned prior to their disqualifying conviction.

67. Thus, the Interim Policy has not obviated or otherwise remediated the unconstitutional effect of OAPSA's lifetime employment ban. It has been largely ineffectual and has not provided relief to affected individuals, including Petitioners Charles Ford and Joan Grey.

E. The Inaction of the General Assembly

68. Notwithstanding the decisions of this Court and the Supreme Court in *Nixon*, the numerous judicial decisions since that time striking down other lifetime employment bans or other unconstitutional barriers, changing national policies and social science research findings, and the Department of Aging's expectation in 2004 of "legislative action in the near future," the General Assembly has made no effort to modify or ameliorate the deleterious and unconstitutional impacts of OAPSA's employment-barring provisions in the intervening years.

69. The same constitutional infirmities in the statute that this Court found in 2001 and the Supreme Court found in 2003 remain in full effect today and continue to inflict severe and irreparable harm on Petitioners and on other equally affected citizens of the Commonwealth.

70. Petitioners therefore seek a judicial declaration that OAPSA's lifetime employment ban is unconstitutional as applied to them and cannot be lawfully enforced.

71. To avoid the need for continuous piecemeal litigation consisting of numerous as-applied challenges brought by similar groups of aggrieved individuals, Petitioners also seek a judicial declaration that OAPSA's lifetime employment ban is unconstitutional on its face and cannot be lawfully enforced.

V. CLAIMS FOR RELIEF

72. The lifetime employment ban of The Older Adult Protective Service Act, 35 P.S. §§ 10225.501 through 10225.508, violates Article I, section 1 of the Constitution of the Commonwealth of Pennsylvania by unreasonably and arbitrarily excluding the individual Petitioners and similarly aggrieved individuals from lawful employment for which they are otherwise qualified.

73. The lifetime employment ban of The Older Adult Protective Service Act, 35 P.S. §§ 10225.501 through 10225.508, violates the right to due process inherent in Article I, Section 1 of the Constitution of the Commonwealth of Pennsylvania by unreasonably and irrebuttably presuming that the individual Petitioners and similarly aggrieved individuals are unqualified for employment in covered health care facilities.

74. The lifetime employment ban of The Older Adult Protective Service Act, 35 P.S. §§ 10225.501 through 10225.508, violates the right to equal protection inherent in Article I, Sections 1 and 26 of the Constitution of the Commonwealth of Pennsylvania by unreasonably and arbitrarily precluding the individual Petitioners and similarly aggrieved individuals from lawful employment for which they are otherwise qualified while allowing other individuals with similar convictions to retain their employment status if they were employed by a covered facility for more than a year before the effective date of the chapter (*see* 35 P.S. § 10225.508).

75. The lifetime employment ban of The Older Adult Protective Service Act, 35 P.S. §§ 10225.501 through 10225.508, violates the due process rights of Petitioner RHD by arbitrarily and unreasonably interfering with its right to conduct lawful business within the Commonwealth and by arbitrarily and unreasonably interfering with its ability to hire individual employees who best and most safely serve the proper needs of its clients.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Honorable Court:

1. Assume jurisdiction of this suit;
2. Declare the lifetime employment ban of The Older Adult Protective Services Act, 35 P.S. §§ 10225.501 through 10225.508, unconstitutional, invalid and illegal as violative of the Pennsylvania Constitution insofar as the provision bars the individual Petitioners and similarly aggrieved individuals from eligibility for employment in covered health care facilities;
3. Declare the lifetime employment ban of The Older Adult Protective Services Act, 35 P.A. §§ 10225.501 through 10225.508, unconstitutional, invalid and illegal as violative of the Pennsylvania Constitution insofar as the provision arbitrarily and unreasonably interferes with the ability of Petitioner RHD and similarly aggrieved institutions to hire individuals that it deems best qualified to serve the proper needs of its clients;
4. Enjoin the Commonwealth and its agencies from enforcing the lifetime employment ban of The Older Adult Protective Service Act, 35 P.S. §§ 10225.501 through 10225.508, against any of the Petitioners or against any similarly aggrieved individuals or entities; and
5. Provide such other and further relief as this Court deems just and proper.

LeVAN LAW GROUP LLC

Dated: April 16, 2015



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Attorneys for Petitioners

NOTICE TO PLEAD

TO: Department of Aging of the Commonwealth of Pennsylvania
555 Walnut St, 5th Floor
Harrisburg, PA 17101

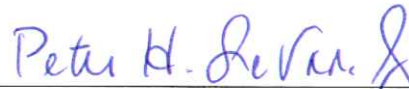
Department of Human Services of the Commonwealth of Pennsylvania
Health and Welfare Building
625 Forester Street
Harrisburg, PA 17120

Department of Health of the Commonwealth of Pennsylvania
Health and Welfare Building
625 Forester Street
Harrisburg, PA 17120

You are hereby notified to file a written response to the enclosed *Petition for Review in the Nature of a Complaint in Equity with Notice to Plead* within thirty (30) days from service hereof or a judgment may be entered against you.

LeVAN LAW GROUP LLC

Dated: April 16, 2015



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CERTIFICATE OF SERVICE

I hereby certify that, in accordance with Pennsylvania Rule of Appellate Procedure 1514(c), on this date a true and correct copy of the foregoing *Petition for Review in the Nature of a Complaint in Equity with Notice to Plead*, along with the Notice to Plead and all supporting declarations, was served by certified mail, postage prepaid, upon the following:

Department of Aging of the Commonwealth of Pennsylvania
555 Walnut St, 5th Floor
Harrisburg, PA 17101

Department of Human Services of the Commonwealth of Pennsylvania
Health and Welfare Building
625 Forester Street
Harrisburg, PA 17120

Department of Health of the Commonwealth of Pennsylvania
Health and Welfare Building
625 Forester Street
Harrisburg, PA 17120

Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

Date: April 16, 2015



Attorneys for Petitioners

EXHIBIT A

Expert Report of Dr. Kiminori Nakamura

In

Tyrone Peake et al. v. Commonwealth of Pennsylvania, et al.

April 15, 2015

**Department of Criminology and Criminal Justice
University of Maryland
2220 LeFrak Hall
College Park, MD 20742
301-405-5477**

I. INTRODUCTION

A. Qualifications

I am an Assistant Professor of Criminology and Criminal Justice at the University of Maryland. My research spans issues related to corrections, prisoner reentry, collateral consequences of criminal-history records, research on criminal careers, and quantitative methodology. Much of my research focuses on the issue of "redemption" for individuals with criminal-history records. Redemption refers to the process through which the risk of recidivism declines to a level of appropriate benchmarks so that prior criminal convictions no longer meaningfully distinguish the ex-offender's risk of recidivism from that of the general population.

My work on redemption has been published in *Criminology*, the peer-reviewed flagship journal of the American Society of Criminology (ASC), and in the *National Institute of Justice Journal*. I have also presented my research findings at various conferences and meetings, including ASC's annual meeting, as well as conferences organized by the American Bar Association's Commission on Effective Criminal Sanctions, the New York Division of Criminal Justice Services, and the Ohio Ex-Offender Reentry Coalition. Additionally, my research on redemption has been cited in the Equal Employment Opportunity Commission's (EEOC) recent revised enforcement guidance on the use of criminal-history records in employment. My *curriculum vitae* is attached as Appendix A.

To prepare this report, I have been assisted by Julien Savoye, a Ph.D. student in Criminology and Criminal Justice at the University of Maryland. His resume is attached as Appendix B.

B. Information Reviewed for this Report

The list of documents we received from attorneys for petitioners is attached as Appendix

C. A list of documents I reviewed, including relevant scientific and professional articles and research, to form my opinion in this litigation is attached as Appendix D.

C. Compensation

Neither my work nor that of Julien Savoye is being compensated in this matter.

D. Summary of Issues Addressed

It is my understanding that this litigation has been initiated to challenge the constitutionality of Chapter 5 “Criminal History for Employees” of the Older Adult Protective Services Act (OAPSA) and in particular its Section 503¹ “Grounds for denying employment”, which prohibits certain health care facilities from hiring an applicant or retaining an employee who has been convicted of certain offenses.

I have been asked by counsel for petitioners to prepare this report. This report analyzes future crime risk for individuals with past criminal history in light of the well supported empirical findings from recidivism and redemption research. Specifically, I present how redemption research has established that, over time, the recidivism risk of those with criminal records declines, and that at a certain point, a criminal record loses its value in predicting whether that individual is likely to commit another criminal offense. The report will look at the provisions of OAPSA’s Chapter 5, as well as the Pennsylvania’s Department of Aging’s interim policy adopted in 2004, and examine whether they are effective tools in identifying individuals who pose a crime risk greater than that of the general population.

¹ 35 P.S. §10225.503

E. Summary of Opinion

Based on my review of the evidence presented to me in this case, as well as my experience as a criminologist researching and working on issues related to redemption and recidivism risk, it is my expert opinion that the lifetime employment bans established by OAPSA's Chapter 5 unfairly and unreasonably prohibit the employment of individuals with an old criminal history who in fact pose very little risk of reoffending and do not differ meaningfully from the risk posed by members of the general population. Its provisions are therefore likely to lead to arbitrary employment denial or termination decisions that are not supported by empirical evidence.

The findings of my "redemption" research, which is based on an empirical analysis of criminal-history records and is consistent with more general research on recidivism, show that recidivism risk declines steadily with time free of recidivism. Also, in relation to appropriate benchmarks, the research in this field has found, based on empirical evidence, that the risk becomes sufficiently low at some time point such that a criminal record no longer serves as a useful basis to distinguish the offending risk of past offenders from that of the general population, which includes individuals who both do and do not have criminal histories (i.e., "redemption" time). More specifically, the research has found that the recidivism risk of those with a prior criminal record falls below the risk of arrest for the general population after approximately four to seven years for violent offenders, four years for drug offenders, and three to four years for property offenders (Blumstein and Nakamura, 2012). Thus, for those who are concerned about the risks inherent in hiring people with criminal records, the value of criminal records in predicting future criminality diminishes with time and becomes virtually irrelevant after a maximum of no more than seven years for individuals with a single conviction, and no more than

ten years for those with multiple convictions—and even less time for individuals with non-violent offenses.

OAPSA's lifetime employment bans do not look at the age of criminal convictions, and therefore do not make any distinction between recent and older convictions. These provisions seem to be based on the scientifically unfounded perception that those who committed certain types of crimes in the past continue indefinitely, or at least for very long periods of time, to have a heightened risk of reoffending. This perception is inconsistent with the empirical findings from redemption research. By prohibiting the employment of individuals whose last conviction was older than the thresholds described above, OAPSA prohibits the employment of individuals who do not present a significant risk of offending.

The interim policy adopted by the Pennsylvania Department of Aging in 2004 is not consistent with redemption research either. Although it opens a door for employment of individuals who, following release or conviction, have worked for five years or longer in care-dependent services without incident, the policy nonetheless continues to prohibit employment of other individuals whose risk of offending is lower than that of the general population because they have stayed recidivism-free longer than redemption times.

II. FACTUAL BACKGROUND

A. OAPSA's criminal background check provisions

Passed in 1996, OAPSA's Section 503 prohibits certain health care facilities² from hiring an applicant or retaining an employee who has been convicted of certain offenses. These offenses are:

- All offenses defined as felonies under the Controlled Substance, Drug, Device and Cosmetic Act (drug-related felonies), including but not limited to:
Acquisition of Controlled Substance by Fraud; Delivery by practitioner;
Possession with intent to deliver; Illegal sale of non-controlled substance;
certain offenses related to designer drugs.
- The following offenses as defined in Title 18 "Crimes and Offenses" of the Pennsylvania Consolidated Statutes (18 Pa.C.S.): Criminal homicide;
Aggravated assault; Kidnapping; Unlawful restraint; Rape; Statutory sexual assault; Involuntary deviate sexual intercourse; Sexual assault; Aggravated indecent assault; Indecent assault; Indecent exposure; Arson and related offenses; Burglary; Robbery; A felony offense relating to theft as defined in Chapter 39 18 Pa.C.S. or two or more misdemeanors under this Chapter;
Forgery; Securing execution of documents by deception; Incest; Concealing the death of a child; Endangering welfare of children; Dealing in infant children; Intimidation of witnesses or victims; Retaliation against witness or victim;
Prostitution and related offenses; Offenses related to obscene and other sexual material and performances; Corruption of minors; Sexual abuse of children.

² These facilities, as defined in OAPSA's Section 103, are domiciliary care homes, home health care agencies, long-term care nursing facilities, older adult daily living centers and personal care homes.

- All Federal or out-of-State offenses similar in nature to those crimes listed in the two paragraphs above.

OAPSA exempts individuals who had been employed for at least a year in health care facilities when Chapter 5 became effective, in that they did not have to submit information on their criminal history.

OAPSA does not take the date of the convictions into consideration. Old convictions lead to the same outcome as more recent ones.

B. The Nixon case and the ensuing interim policy

The 2003 Pennsylvania Supreme Court "Nixon" case involved plaintiffs who, in spite of an extensive work experience in healthcare facilities, were laid off or barred from employment due to felony and misdemeanor convictions dating back from the 1970s or 1980s. The Court noted that "if convicted criminals who had been working at a covered facility for more than a year as of July 1, 1998, were capable of essentially rehabilitating themselves so as to qualify them to continue working in a covered facility, there should be no reason why other convicted criminals were not, and are not, also capable of doing the same." The Court therefore held that "the criminal records chapter [of OAPSA], particularly with regard to its application to the Employees, does not bear a real and substantial relationship to the Commonwealth's interest in protecting the elderly, disabled, and infirm from victimization, and therefore unconstitutionally infringes in the Employees' right to pursue an occupation." The Court declared OAPSA's criminal records chapter unconstitutional as applied to the employees involved in the litigation.

Following this decision, the Pennsylvania Department of Aging issued an interim policy in 2004 that authorized facilities to hire or continue to employ individuals who accumulated at

least five years of aggregate work history in care-dependent services from either the date of conviction or release from incarceration, whichever is later.

III. OPINION

A. Context for Redemption Research

The number of Americans who have contact with the criminal justice system—and thus possess a criminal record—has increased significantly in recent decades. Over 40 years ago, it was estimated that 22 percent of the U.S. population would be arrested for a non-traffic offense by age 23 (Christensen, 1967). More recent data show an even higher estimate of lifetime arrest prevalence (30 percent of the U.S. population by age 23); the increase is reflective of the fact that the criminal justice system has become more aggressive in dealing with crimes like drug offenses and domestic violence (Brame et al., 2012).

According to the Bureau of Justice Statistics figures published in 2009, over 7.3 million people—one in every 31 adults—are on some sort of correctional supervision, either in prison, jail or on probation or parole (Pew Center on the States, 2009). At the end of 2010, there were approximately 19.8 million Americans with a felony conviction, representing 8.6 percent of the adult population (Shannon et al., 2011).

Moreover, with the recent advancement in information technology, an individual's criminal background record has never been more easily accessible. According to surveys of human resource professionals, 80 to 90 percent of large employers in the United States now run criminal background checks on their prospective employees (Society for Human Resource Management, 2004, 2010), and there is ample research evidence to indicate that employers show considerable reluctance to hire individuals with criminal records (Decker, Spohn, Ortiz, and

Hedberg, 2014; Holzer, Raphael, and Stoll, 2003; Pager, 2003; Schwartz and Skolnick, 1962; Holzer, Raphael, and Stoll, 2004). Thus, individuals with criminal records are handicapped in employment, regardless of how old the criminal records are. As the practice of criminal background checks has become more prevalent, an evaluation of risk of future crime posed by potential employees with a criminal record has become increasingly important for employers. The fact that current technology allows employers and other decision-makers to search and retrieve decades-old criminal records with ease and at relatively low cost does not mean that those records are particularly useful in assessing the risk of future crime. In fact, research clearly shows that this is not the case.

B. Recidivism and Redemption

One of the most robust findings in criminology is the strong positive relationship between past and future criminal offending (Blumstein, Farrington, and Moitra 1985; Piquero et al. 2003), which in part explains employers' reluctance to hire people with criminal records. However, an equally robust finding in criminology research is that recidivism occurs relatively quickly, and that recidivism risk declines with time since the last contact with the criminal justice system (Beck and Shipley, 1997; Gottfredson, 1999; Langan and Levin, 2002; Maltz, 1984; Schmidt and Witte, 1988). As such, "time clean"—i.e., the time that elapses before a person recidivates—is critically important in understanding the relationship between past and future offending behavior.

Two studies by the U.S. Department of Justice's Bureau of Justice Statistics that tracked released state prisoners show that of those releasees who were re-arrested in the first three years, approximately two-thirds were arrested within the first year from their release. This research strongly indicates that those people with criminal records who recidivate are likely to do so

shortly after their release, and those with a longer period of recidivism-free time have a lower recidivism risk (Beck and Shipley, 1997; Langan and Levin, 2002; see also Gottfredson, 1999). In my expert opinion, these findings are applicable to the population of ex-offenders in Pennsylvania.

Given that general findings from recidivism studies show that the risk of reoffending declines with time, the question of how long it takes for the risk to become sufficiently low, such that criminal past is no longer a basis for distinguishing between ex-offenders and the general population, is an important one. This phenomenon—"redemption" (Blumstein and Nakamura, 2009)—has motivated recent research tracking the recidivism of those with a criminal record (arrest, conviction, incarceration) over a long follow-up time (10 years, 20 years, or longer), and shows that recidivism risk indeed declines over time and falls below the risk of the general population and converges with the risk of non-offenders (Blumstein and Nakamura, 2009; Bushway et al., 2011; Kurlychek et al., 2006, 2007; Soothill and Francis, 2009).

For example, Blumstein and Nakamura (2009) analyzed the New York State criminal history records of those who were arrested and convicted for the first time as an adult in 1980. The dataset contains nearly 90,000 individuals and tracks their criminal history for a time period that spans over 25 years. This research finds that the probability of recidivism (which is calculated as the probability of having a new arrest) declines as "time clean" increases, and the recidivism probability eventually falls below the risk of arrest for the general population (which includes individuals who both do and do not have criminal histories), and over time, nearly approximates the risk of arrest posed by individuals with no criminal histories.

Blumstein and Nakamura (2012) replicated the findings from New York with the data from other states and years³ and concluded that redemption times are relatively similar across states. Based on these findings, it is my expert opinion that redemption times would not significantly differ in Pennsylvania. In my opinion, based on Blumstein and Nakamura (2009, 2012) as well as other similar studies (Bushway et al., 2011; Kurlychek et al., 2006, 2007; Soothill and Francis, 2009), the more time that passes since last contact with the criminal justice system—i.e., arrest or conviction—the lower the risk of future offending behavior. More specifically, it is my expert belief and opinion, based on the redemption research conducted by myself and other criminologists, that the recidivism risk of those with a prior conviction record falls below the risk of arrest for the general population after approximately: (i) four to seven years for “violent offenders,” (ii) four years for “drug offenders,” and (iii) three to four years for “property offenders.”⁴ These redemption time estimates are based on those with a single prior conviction record. After taking into account the fact that redemption times should be longer for those with multiple prior records (Bushway et al., 2011), it is my professional judgment that more generalized redemption time estimates in comparison to the general public should be ten years as an upper limit, and depending on crime types, appropriate redemption times should be shorter than ten years. Thus, in sum, for those who are concerned about hiring people with criminal records, the value of criminal records in predicting future criminality diminishes with time. In my expert opinion, based on the substantial modern research, such records become irrelevant to risk of recidivism within ten years.

³ Using 1985 data from Florida and 1990 data from Illinois

⁴ Violent offenses include robbery, aggravated assault, forcible rape, and simple assault. Property offenses include burglary, larceny, motor vehicle theft, stolen property, forgery, fraud, and embezzlement. Drug offenses include both possession and sale/manufacturing of any controlled substance.

C. OAPSA and the interim policy in light of redemption research

Redemption research makes it clear that the likelihood that an individual with a criminal record will recidivate does not remain constant over time. Rather, as the amount of “time clean” increases, the less likely it is that the person will re-offend. This research is obviously relevant to the use of criminal background checks in employment, which at their core are designed to give employers insight into whether an applicant or employee poses a risk of future criminal behavior.

OAPSA’s lifetime employment bans and the Department of Aging’s interim policy raise a number of concerns when viewed through the lens of redemption research. First, OAPSA applies a permanent exclusion for those who are convicted of the broad prohibitive offenses, including violent, property, and drug offenses. Redemption research has shown, as noted above, that the redemption time, even for those with multiple convictions, is finite and ten years at the most.⁵ Thus, based on redemption research, the permanent exclusion set in the policy is excessive, and contrary to empirical data and research.

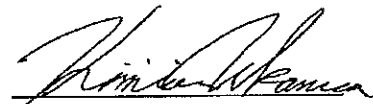
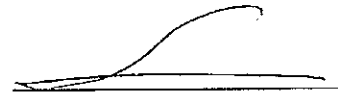
Second, the interim policy is also inconsistent with the state of research. Although it conditionally allows employment for individuals with a conviction record who worked for five years in care-dependent services without incident, redemption research shows that reoffending risk declines with time clean, regardless of employment status. Thus, someone without five years of experience in care-dependent services who still has stayed crime free for a sufficient period of time does not present a greater threat than the general population, but will nonetheless be barred from employment due to the interim policy.

⁵ Based upon conservative estimates, there are more than 200,000 individuals in Pennsylvania with a felony conviction record who have been “clean” for at least 10 years.

IV. CONCLUSION

In sum, based on recidivism and redemption research, I conclude that both OAPSA's lifetime employment bans and the Pennsylvania Department of Aging's interim policy, which prohibit individuals from employment even when their prior convictions are no longer an indicator of their risk of future offending, are inconsistent with empirical research.

This report is signed on 15 April 2015 in College Park, Maryland.


Kiminori Nakamura
Julien Savoye

APPENDIX A – Kiminori Nakamura's Curriculum Vitae

1. Personal Information

a. Contact Information

Nakamura, Kiminori

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Phone: (301)405-5477

Email: knakamur@umd.edu

b. Current Academic Appointment

Assistant Professor, Department of Criminology and Criminal Justice, University of Maryland,
2010-

c. Other Academic Appointments while at UMD

Faculty Associate, Population Research Center, University of Maryland, 2010-

d. Educational Background

Carnegie Mellon University, Pittsburgh, Pennsylvania

Ph.D. Public Policy and Management, 2010

H. John Heinz III College

Dissertation: "Redemption in the Face of Stale Criminal Records Used in Background Checks"

Committee: Alfred Blumstein, Daniel Nagin, Melvin Stephens

William W. Cooper Doctoral Dissertation Award, 2011

University of California, Irvine

M.A. Demographic and Social Analysis, 2005

B.A. Criminology, Law and Society, 2004

Magna cum Laude

2. Research, Scholarly and Creative Activities

a. Books

i. Book Chapters

i.a. Nakamura, Kiminori, and Alfred Blumstein. "Redemption for Sex Offenders." In press. In *Sex Offenders: A Criminal Career Approach*, eds. Arjan Blockland, Brijder Verslavingszorg, and Patrick Lussier. Wiley Publishing.

b. Articles published/R&R in Refereed Journals

b.i. Blumstein, Alfred, and Kiminori Nakamura. 2009. "Redemption in the Presence of

Widespread Criminal Background Checks." *Criminology* 47:2 327-359.

b.ii. Nakamura, Kiminori and Kristofer Bucklen. 2014. "Recidivism, Redemption, and Desistance: Understanding Continuity and Change in Criminal Offending and Implications for Interventions." *Sociology Compass* 8:4 384-397.

b.iii. Nakamura, Kiminori and Alfred Blumstein. "Robust Analysis of Redemption Patterns Across Time and Place" (R&R in Quantitative Criminology)

b.iv. Nakamura, Kiminori and Alfred Blumstein. "Redemption in the Context of Concern about the 'Next Crime' " (R&R in Criminology)

c. Professional / Extension Publications

ii. Reports

ii.a. Nakamura, Kiminori and Douglas Weiss. February 20, 2012. "Measuring Recidivism in the District of Columbia" (technical Final report submitted to the Criminal Justice Coordinating Council of the Government of District of Columbia)

iv. Other Professional Publications

iv.a. Blumstein, Alfred, and Kiminori Nakamura. 2010. "Process of Redemption Should be Built into the Use of Criminal-History Records for Background Checking." In *Contemporary Issues in Criminal Justice Policy: Policy Proposals from the American Society of Criminology* Pp. 37-52. eds. Natasha Frost, Joshua D. Freilich, and Todd R. Clear. Belmont, CA: Wadsworth.

iv.b. Blumstein, Alfred, and Kiminori Nakamura. 2010. "'Redemption' from stale criminal records in the face of widespread background checking." *The Correctional Psychologist* 42:11-14.

e. Conferences and Workshops: Talks, Abstracts and Other Contributions

i. Invited Talks

i.a. "Redemption: Applications and Methods" Executives of Probation & Parole Network organized by the the National Institute of Corrections, Washington DC, October, 2012.

i.b. "Redemption: Applications and Methods" Urban Chiefs Network organized by the National Institute of Corrections, Washington DC, September, 2012.

i.c. "Desistance, Redemption and the Use of Criminal History Record Information" (with Alfred Blumstein) SEARCH 2012 Annual Membership Meeting, Cincinnati, OH, July, 2012.

i.d. "The Concept of Redemption and its Impact on Reinvestment Strategies" Evidence-based Sentencing and Navigating the Risk and Needs Principle organized by the International Community Corrections Association (ICCA), Reno, NV, May, 2012.

i.e. "Redemption in an Era of Widespread Use of Criminal Background Checks" (testimony with Alfred Blumstein) National Association of Criminal Defense Lawyers Task Force on Restoration of Rights and Status After Conviction, Cleveland, OH, April, 2012.

i.f. "Criminal Background Checks and Setting Public Policy: What Does the Latest Empirical Data Show Us: Due Diligence, Background Checks and Employment" organized by the US Chamber of Commerce, Washington, DC, March, 2012.

i.g. "Redemption: Applications and Methods" Pennsylvania Department of Corrections, Camp Hill, PA, March, 2012.

i.h. "Redemption in the Face of Stale Criminal Records Used for Background Checks"

The Netter Symposium organized by Cornell University School of Industrial and Labor Relations, New York, December, 2011.

i.i. "Redemption in the Face of Stale Criminal Records Used for Background Checks"

NIJ Community Corrections Research Topical Working Group, Washington DC, November, 2011.

i.j. "Redemption in the Face of Stale Criminal Records Used for Background Checks" (Plenary presentation with Alfred Blumstein) The 19th Annual International Community Corrections Association (ICCA) Research Conference. Cincinnati, OH, September 2011.

i.k. "Redemption in the Face of Stale Criminal Records Used for Background Checks"

(with Alfred Blumstein)

i.l. "Taking on the Challenges Facing Workers with Criminal Records" organized by the

National Employment Law Project and the Community Legal Services. Washington DC, April 2011.

i.m. "Business Intelligence and Predictive Analytics in Criminal Justice" (invited panelist)

Optimal Solutions Group, LLC's Real-Time Seminar, College Park, MD, February 2011.

i.n. "Redemption in the Face of Stale Criminal Records Used for Background Checks" Symposium: Undoing the Effects of Mass Incarceration, George Mason University, Fairfax, VA, January 2011.

i.o. "Are Criminal Background Checks Misleading Employers?" Forum by The Job Opportunities Task Force and ReEntry of Ex-Offenders Clinic at the University of Maryland School of Law, Baltimore, MD, November 2010.

i.p. "Redemption in the Face of Stale Criminal Records Used for Background Checks" (with Alfred Blumstein) Ohio Ex-Offender Reentry Coalition meeting, Ohio Department of Rehabilitation and Correction, Columbus, OH, September 2010.

i.q. "Redemption in the Face of Stale Criminal Records Used for Background Checks" (with Alfred Blumstein) New York Division of Criminal Justice Services, Albany, NY, July 2010.

i.r. "Redemption in an Era of Widespread Background Checking" (with Alfred Blumstein) Occasional Series on Reentry Research, John Jay College of Criminal Justice, New York, March 2009.

i.s. "Redemption in the Presence of Background Checking - Some Preliminary Results" (with Alfred Blumstein) "Fair Use of Criminal Records in Employment" conference, organized by the American Bar Association's Commission on Effective Criminal Sanctions, Washington, D.C., January 2008.

ii. Presentations

ii.a. "Exploring the Timing of Early Parole Discharge" Presentations American Society of Criminology, Chicago, IL, November 2012.

ii.b. "Redemption for Reintegrating Prisoners: Preliminary Results" American Society of Criminology, Chicago, IL, November 2012.

ii.c. "Estimating Redemption Times for Ex-Offenders with Stale Criminal Records" Association for Public Policy Analysis & Management Fall Research Conference, Baltimore, MD, November 2012.

ii.d. "Determining the Timing of Parole Discharge Based on the Concept of Redemption: Preliminary Results" (with Kristofer Bret Bucklen) American Society of Criminology, Washington DC, November 2011.

ii.e. "Triadic Analysis of Peer Influence on Delinquency: Application of Simmelian Tie Theory" (with Douglas Weiss) American Society of Criminology, Washington DC, November 2011.

ii.f. "Examining the Redemption Process in the Context of Employer Concern about Particular Types of Crime" American Society of Criminology, Washington DC, November 2011.

ii.g. "Redemption in an Era of Increasing Use of Criminal Background Checks" The 16th Congress of the International Society of Criminology, Kobe, Japan. August 2011.

ii.h. "Redemption: The Effect of Prior Criminal History and Racial Differences in Risk Profiles" American Society of Criminology, San Francisco, November 2010.

ii.i. "Redemption for Sex Offenders" American Society of Criminology, San Francisco, November 2010.

ii.j. "Is Redemption Possible with Widespread Use of Criminal Background Checks?" Middle Atlantic States Correctional Association, Atlantic City, June 2010.

ii.k. "Is Redemption Possible with Widespread Use of Criminal Background Checks?" Defendant Offender Workforce Development Conference, Dallas, April 2010.

ii.l. "Process of Redemption Should be Built into the Use of Criminal-History Records for Background Checking" American Society of Criminology, Philadelphia, November 2009.

ii.m. "Robustness Testing of Redemption Estimates" American Society of Criminology, Philadelphia, November 2009.

ii.n. The National Consortium for Justice Information and Statistics (SEARCH) Membership Group Meeting, Washington, D.C., November 2009.

ii.o. The Herbert M. Singer and Richard Netter Conference "Race, Criminal Records and Employment: Legal Practice and Social Science Research", New York, October 2009.

ii.p. "Redemption in an Era of Widespread Background Checking" American Correctional Association 2009 Congress of Correction, Nashville, August 2009.

ii.q. "Criminal Background Checks and Hiring Ex-Offenders" National Institute of Justice Annual Conference, Washington, D.C., June 2009.

ii.r. "Developments in Redemption" American Society of Criminology, St. Louis, November 2008.

ii.s. "Redemption in the Presence of Widespread Criminal Background Checks" American Society of Criminology, Atlanta, November 2007.

ii.t. "Gang Territory and Community Social Networks" American Society of Criminology, Toronto, Canada, November 2006.

ii.u. "Street Gangs: Structure and Violence" Sunbelt Conference, Vancouver, Canada, April 2006.

h. Sponsored Research

i. Grants

i.a. "Exploring the Effects of Residential Relocation Through Community Corrections Centers on Recidivism: An Experiment" (PI). Pennsylvania Commission on Crime and Delinquency, July 2013-. \$130,000.

i.b. "Determining the Timing of Parole Discharge Based on the Concept of 'Redemption'" (PI). National Institute of Justice, August 2011-. \$200,000.

i.c. "Measuring Recidivism in the District of Columbia" (PI) For the Government of the District of Columbia (Criminal Justice Coordinating Council) 2011. \$43,000.

i.d. "The Immigration-Crime Nexus in the Context of Prisoner Reentry and Parolee Recidivism" (PI) The 2011 College of Behavioral and Social Sciences Dean's Research Initiative.

i.e. "Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences" (Co-PI with Alfred Blumstein). National Institute of Justice, October 2009-June 2011. \$250,000.

i.f. "Potential for Redemption in Criminal Background Checks" (Co-PI with Alfred Blumstein). National Institute of Justice, June 2007-June 2010. \$60,000.

i. Contracts

i.a. "Assessment of the Criminal Justice Information System" (PI) For the Maryland Department of Public Safety and Correctional Services. 2011-2012. \$70,000.

i. Work in Progress

ii. Working Papers

ii.a. Harris, Heather, Kiminori Nakamura, and Kristofer Bucklen. "Are Prisons Schools of Crime? Estimating the Effect of Prison Peers on Reoffending" (presented at the Association for Public Policy Analysis & Management Fall Research Conference, Baltimore, MD, November 2012)

ii.b. Nakamura, Kiminori, Nicolette Bell, Kristofer Bucklen, and Thomas Loughran. "Effects of Prison Visitation on Recidivism"

iii. Manuscripts under Review

iii.a. Nakamura, Kiminori. "Estimating the Timing of Parole Discharge Based on the Concept of 'Redemption'"

iii.b. Nakamura, Kiminori, Kristofer Bucklen, Kathleen Frey. "Short- and Long-Term Effects of Halfway Houses on Recidivism"

3. Teaching, Mentoring and Advising.

a. Courses Taught

Seminar in Corrections (13), Introduction to Criminology (100-200), Treatment of Offenders and Delinquents (30-50), Crime and Delinquency Prevention (30-50)

d. Advising: Research Direction

- i. Doctoral
Ph.D. Dissertation Committee Co-Chair
 - i.a. Mariel Alper (2012-2014)
Ph.D. Dissertation Committee Member:
 - i.b. Kristofer Bucklen (2011-2014)
 - i.c. Heather Harris (2012-2014)
 - i.d. David Mazieka (2012-2014)
 - i.e. Dawn Daggett (2012-2014)
 - i.f. Patricia Breen (2012-2014)
 - i.g. Mauri Matsuda (2013-2014)
 - i.h. Stephen McGuinn (2012-2013)

c. Teaching Innovations

- iv. Instructional Workshops and Seminars Established
 - iv.a. "Introduction to Social Network Analysis" Presentations University of Maryland, Department of Criminology and Criminal Justice, Lecture Series in Statistical Applications in Criminology and Criminal Justice. April 2011.
 - iv.b. "Social Network Analysis for Criminologists" American Society of Criminology, San Francisco, November 2010.

4. Service and Outreach

a. Editorships, Editorial Boards and Reviewing Activities

iii. Reviewing Activities for Journals and Books

Criminology, Journal of Quantitative Criminology, Social Forces

iv. Reviewing Activities for Agencies

National Institute of Justice

c. Campus Service

i. Departmental

Statistics, Human Relations, and Admissions Committees, Department of

Criminology and Criminal Justice, 2010, 2011, 2012, 2013

d. Consulting and External Engagements

i. Paid Consultancies

i.a. Expert retained by Outten & Golden LLP in the case Evelyn Houser, et al., v. Penny

Pritzker, Secretary, U.S. Department of Commerce

i.b. Expert retained by NAACP LDF in the case Waldon, et al. v. Cincinnati Public Schools

i.c. Expert retained by Morrison & Foerster LLP in the case Hardie v. NCAA,

ii. Other Unpaid Services

ii.a. "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq." US Equal Employment Opportunity Commission, April 25, 2012.

e. Presentations and Media Activities

ii. Media Activities

ii.a. "Paying a Price, Long After the Crime." The New York Times Op-Ed

ii.b. "Criminal History and Employment" by Len Sipes. DC Public Safety Radio, June 13, 2012. "Internet Lets a Criminal Past Catch Up Quicker" by Erica Goode. New York Times, April 28, 2011.

ii.c. "Shedding the Stigma of Prison: Cultural, Personal Changes Will Help Ex-Inmates Find Redemptive Place in Society, Advocates Say" by Martin Ricard. The Washington Post,

September 05, 2009.

ii.d. "When is it Safe To Hire Someone With a Criminal Record?" Press Release that was prepared by Carnegie Mellon University appeared in the online version of The Wall Street Journal, May 27, 2009.

5. Awards and Honors

d. Other Special Recognition

d.i. Carnegie Mellon University Fellowships William W. Cooper Doctoral Dissertation Award, 2011

d.ii. Elected to Sigma Xi, 2010

d.iii. H. John Heinz III College Doctoral Fellowship, 2006-2010

APPENDIX B – Julien Savoye's resume

Julien Savoye

6113 43rd ave, Hyattsville MD 20781 • jsavoye@umd.edu • 857-284-3161

Education

University of Maryland, College Park, Maryland, United States
Ph.D. student in Criminology and Criminal Justice, started August 2014
Focus: Criminal Justice, Research Methods, Quantitative Analysis

Harvard Law School, Cambridge, Massachusetts, United States
LL.M. degree, May 2012
Focus: Criminal Justice, Negotiations, Human Rights
Journal: *Harvard International Law Journal*
Honors: This school does not deliver honors to LL.M. students
Activities: Paper, a comparison of the French and U.S. prosecutor
Research Assistant, transitional justice in Southern Africa
Report on Human Rights in Asia
Research on incarceration policies in the United States

Ecole Nationale de la Magistrature (National School for the Judiciary), Bordeaux, France
Professional School - Qualification as a Prosecutor and as a Judge, July 2009
Focus: Criminal Law and Procedure, Civil Law and Procedure
Honors: This school does not deliver honors; Ranked 12th in 250 students
Activities: Student Government, President: participated in the school's board of directors

University of Paris 1 Pantheon-Sorbonne, Paris, France
Master's degree, June 2004
Focus: International administration, administration of international public organizations
Honors: "Mention assez bien" (Ranked 5th in 20)
Activities: Student Government, President

Institute of Political Studies (Sciences Po), Lyon, France
College degree, June 2003
Focus: Economics, International Relations, Law, Political Science
Honors: "Mention bien" (Ranked 3rd in 79)
Year abroad: University of Virginia in the U.S., 25 credits taken, GPA 3.525

Experience

Harvard Kennedy School of Government, Cambridge, Massachusetts, United States
Fellow, Program in Criminal Justice (July 2012 – July 2014)
Managed Harvard Kennedy School's "Indicators in Safety and Justice" project in Nigeria and Sierra Leone: helped government agencies in the justice and security sector drive reform; primarily helped the Attorney General of Lagos, Nigeria increase the pace of prosecution and the Director of Public Prosecutions and the police in Sierra Leone improve the quality of police investigations; helped them design and use indicators to track progress and to identify solutions to problems, and think creatively to design and implement governance, policy and management reform.

Office of the Prosecutor, Bobigny, France
Public Prosecutor. Department of Organized Crime, Drug Trafficking, Murders, Gun cases (Sept.2010- Sept. 2011). Department of Breach of Trust, Forgery, Corruption, Assault, Sexual Assault (Sept.2009-Aug. 2010)
Participated in the shaping of local policies to promote safety and access to justice. Handled criminal cases on behalf of the prosecution from start to finish including negotiation and trials. Presented

cases orally and in written motions. Monitored police investigations and respect of procedure rules. Gained a deep understanding of the justice system by directly working with courts, prisons, and police.

Embassy of France, Zagreb, Croatia

Intern (February 2007 - May 2007)

Drafted a report proposing reforms to improve the enforcement of civil judgments in Croatia. Drafted notes on prisons, property law and administrative justice in Croatia. Conducted interviews and research.

International Criminal Tribunal for the former Yugoslavia, The Hague, Netherlands

Intern, Chambers (May 2004 - August 2004)

Researched international criminal law and humanitarian law. Drafted parts of judicial decisions.

Languages

French (native), English (fluent), German (conversational), Slovene (beginner)

Interests

Enthusiastic traveler; soccer and badminton player

Appendix C – List of documents received from Community Legal Services of

Philadelphia

Older Adults Protective Services Act Offenses List

Commonwealth of Pennsylvania Department of Aging 2004 “Older Adults Protective Act – Criminal Background Check Provisions” Special Announcement

Nixon v. Commonwealth, 839 A.2d 277 (Pa. 2003)

Letter from Janet Ginzburg of Community Legal Services to James Schultz of the Office of General Counsel to the Governor (dated June 11, 2014)

Appendix D - Information Considered in Forming Opinions

Case-Related Documents

Older Adults Protective Services Act

Commonwealth of Pennsylvania Department of Aging 2004 "Older Adults Protective Act – Criminal Background Check Provisions" Special Announcement

Nixon v. Commonwealth, 839 A.2d 277 (Pa. 2003)

Letter from Janet Ginzburg of Community Legal Services to James Schultz of the Office of General Counsel to the Governor (dated June 11, 2014)

Academic References

Beck, Allen J. and Bernard E. Shipley. 1997. *Recidivism of Prisoners Released in 1983*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

Blumstein, Alfred, David P. Farrington, and Soumyo Moitra 1985. 'Delinquency Careers: Innocents, Desisters, and Persisters.' *Crime and Justice* 6:187–219.

Blumstein, Alfred, and Kiminori Nakamura. 2009. Redemption in the Presence of Widespread Criminal Background Checks. *Criminology* 47:2 327-359.

Blumstein, Alfred, and Kiminori Nakamura. 2012. *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences. Final report for the National Institute of Justice Grant #2009-IJ-CX-0008*. Washington, DC: U.S. Department of Justice.

Brame, Robert, Michael G. Turner, Raymond Paternoster, and Shawn D. Bushway. 2012. Cumulative prevalence of arrest from age 8 to 23 in a national sample. *Pediatrics* 129:21-27.

Brame, Robert, Shawn D. Bushway Raymond Paternoster, and Michael G. Turner. 2014. Demographic patterns of cumulative arrest prevalence by ages 18 and 23. *Crime & Delinquency* 60:471-486.

Bushway, Shawn D. and Robert Apel. 2012. A signaling perspective on employment-based reentry programming: Training completion as a desistance signal. *Criminology & Public Policy* 11:21-50.

Bushway, Shawn D., Paul Nieuwbeerta, and Arjan Blokland. 2011. The predictive value of criminal background checks: Do age and criminal history affect time to redemption? *Criminology* 49:27-60.

Christensen, Ronald. 1967. Projected percentage of U.S. population with criminal arrest and conviction records. In *The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Science and Technology*, Appendix J. Washington, DC: U.S. Government Printing Office.

Decker, Scott H., Cassia Spohn, Natalia R. Ortiz, and Eric Hedberg. 2014. *Criminal Stigma, Race, Gender, and Employment: An Expanded Assessment of the Consequences of Imprisonment for Employment. Final report for the National Institute of Justice Grant #2010-MU-MU-004*. Washington, DC: U.S. Department of Justice.

Farrington, David. P. 1986. Age and crime. In *Crime and Justice: An Annual Review of Research*, vol. 7, eds. Michael Tonry and Norval Morris. Chicago, IL: University of Chicago Press.

Federal Bureau of Investigation. 2003. *Age-specific arrest rates and race-specific arrest rates for selected offenses, 1993-2001*. Washington, DC: U.S. Department of Justice.

Giordano, Peggy C., Stephen A. Cernkovich, and Jennifer L. Rudolph. 2002. Gender, crime, and desistance: Toward a theory of cognitive transformation. *American Journal of Sociology*, 107, 990-164.

Gottfredson, Don M 1999. *Effects of Judges' Sentencing Decisions on Criminal Careers*. National Institute of Justice: Research in Brief. Washington, DC: U.S. Department of Justice.

Hirschi, Travis and Michael Gottfredson. 1983. Age and the explanation of crime. *American Journal of Sociology* 89:552-584.

Holzer, Harry J., Steven Raphael, and Michael A. Stoll. 2003, March. *Employer demand for ex-offenders: Recent evidence from Los Angeles*. Paper presented at the Urban Institute Roundtable on Offender Re-Entry, New York.

Holzer, Harry J., Steven Raphael, and Michael A. Stoll. 2004. Will Employers Hire Ex-Offenders? Employer Preferences, Background Checks, and Their Determinants. In *Imprisoning America: The Social Effects of Mass Incarceration*, eds. Mary Patillo, David F. Weiman, and Bruce Western. New York: Russell Sage Foundation.

Kurlychek Megan C., Robert Brame, and Shawn D. Bushway. 2006. Scarlet letters and recidivism: Does an old criminal record predict future offending? *Criminology & Public Policy* 5:483-504.

Kurlychek Megan C., Robert Brame, and Shawn D. Bushway. 2007. Enduring risk? Old criminal records and predictions of future criminal involvement. *Crime & Delinquency* 53:64-83.

Langan, Patrek A. and David J. Levin. 2002. *Recidivism of Prisoners Released in 1994*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

- Laub, John H. and Robert J. Sampson. 2003. *Shared beginnings, divergent lives: Delinquent boys to age 70*. Cambridge, MA: Harvard University Press.
- Maltz, Michael D. 1984. *Recidivism*. Orlando, FL: Academic Press.
- Maruna, Shadd. 2001. *Making good: How ex-convicts reform and build their lives*. Washington, DC: American Psychological Association Books.
- Pager, Devah. 2003. The mark of a criminal record. *American Journal of Sociology* 108:937-975.
- Paternoster, Raymond and Shawn D. Bushway 2009. Desistance and the "feared self": Toward an identity theory of criminal desistance. *The Journal of Criminal Law and Criminology*, 99:1103-1155.
- Petersilia, Joan 2003. *When Prisoners Come Home*. New York: Oxford University Press.
- Pew Center on the States. 2009. *One in 31: The Long Reach of American Corrections*. Washington, DC: The Pew Charitable Trusts.
- Piquero, Alex R., David P. Farrington, and Alfred Blumstein 2003. 'The Criminal Career Paradigm. In *Crime and Justice: A review of research*, vol. 30, edited by Michael Tonry. Chicago, IL: University of Chicago Press.
- Sampson, Robert J. and John H. Laub 1993. *Crime in the Making: Pathways and Turning Points Through Life*. Cambridge, MA: Harvard University Press.
- Schmidt, Peter, and Ann D. Witte. 1988. *Predicting Recidivism Using Survival Models*. New York: Springer-Verlag.
- Schwartz, Richard D. and Jerome H. Skolnick. 1962. Two studies of legal stigma. *Social Problems* 10:133-142.
- Shannon, Sarah K.S., Christopher Uggen, Melissa Thompson, Jason Schnittker and Michael Massoglia. April 1, 2011. Growth in the U.S. ex-felon and ex-prisoner population, 1948-2010. *Population Association of America Annual Meeting, Washington, DC*.
- Society for Human Resource Management. 2005. *2004 Reference and Background Checking – Survey Report*. Alexandria, VA: Society for Human Resource Management.
- Society for Human Resource Management. 2010. *Background Checking: Conducting Criminal Background Checks*.
- Soothill, Keith, and Brian Francis. 2009. When do ex-offenders become like non-offenders? *Howard Journal of Criminal Justice* 48:373-387.

Travis, Jeremy 2005. *But They All Come Back: Facing the Challenges of Prisoner Reentry*. Washington, DC: The Urban Institute Press.

Uggen, Christopher. 1999. Ex-offenders and the conformist alternative: A job quality model of work and crime. *Social Problems* 46:127-151.

Visher, Christy A., Sara A. Debus, and Jennifer Yahner. 2008. *Employment After Prison: A Longitudinal Study of Releasees in Three States*. Justice Policy Center Research Brief. Washington, DC: Urban Institute.

Visher, Christy A., Pamela K. Lattimore, and Richard L. Linster. 1991. Predicting the recidivism of serious youthful offenders using survival models. *Criminology* 29:329-366.

EXHIBIT B

Department of Aging

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGING
555 Walnut Street – 5th Floor
Harrisburg, Pennsylvania 17101-1919**

**Subject: Older Adults Protective Services Act – Criminal Background Check Provisions
Nixon v. Commonwealth of PA, et al, 2003 LEXIS 2604 (12/30/2003)**

The Supreme Court of Pennsylvania issued the above-referenced decision on December 30, 2003, which, in effect, held the criminal history background check prohibitive hire provisions of the Older Adults Protective Services Act (OAPSA) to be unconstitutional "as applied to the individual plaintiffs." The Court only granted specific relief to the individual plaintiffs and not to all persons affected by the criminal history background check provisions in OAPSA.

The Pennsylvania Department of Aging (PDA) anticipates legislative action in the near future. In the interim, the protective services program in PDA will operate as follows for all facilities required to comply with OAPSA:

1. Criminal history reports are still required for all applicants.
2. The PA State Police will continue to process applications for state criminal history reports and provide such information to the entity requesting the criminal history report.
3. PDA will continue to process FBI criminal history reports.
4. Letters from PDA will continue to indicate "clear" or "prohibited", based on FBI criminal history background check information.
5. Effective February 4, 2004, facilities will not be sanctioned for hiring or continuing to employ individuals who demonstrate rehabilitation by evidence of a minimum five-year aggregate work history in care-dependent services, without incident, from either the date of conviction or release from incarceration, whichever is later. Applicants are responsible for providing official verification of such dates. Care-dependent services include healthcare, eldercare, childcare, mental health, mental retardation, or care of the disabled. Facilities must reasonably investigate the character of an individual with a previously disqualifying criminal offense by means of interviews, references and evidence of work history. Facilities that hire such an individual are required to obtain specific employer-provided documentation of that individual's employment in care-dependent services and retain it in the individual's personnel file.
6. The Court's ruling in no way prohibits a facility from refusing to employ an individual, even one who has a clean aggregate five-year work history, based on information obtained in a criminal history report. Pennsylvania law, 18 Pa.C.S. § 9125, provides that an employer may consider criminal history felonies and misdemeanors, to the extent they relate to the applicant's suitability for employment in the position sought. The employer is required to notify the applicant, in writing, if the decision not to hire the applicant is based, in whole or in part, on the applicant's criminal history.

If you have any questions, please contact Debra Carroll at the Pennsylvania Department of Aging at (717) 783-6207.

For more information contact:

Name: Pennsylvania Department of Aging

Email: aging@state.pa.us

Address: 555 Walnut Street

5th Floor

Harrisburg, PA 17101

Voice: 717-783-6207

EXHIBIT C

DECLARATION OF TYRONE PEAKE

I, Tyrone Peake, hereby depose and state, subject to the penalties of 18 Pa.Con.Stat.Ann 4904, relating to unsworn falsification to authorities, that the following facts are true and correct to the best of my knowledge, information, and belief.

1. My name is Tyrone Peake. I live at 1325 66th St. Philadelphia, PA 19126. I am a 52 year old father of three adult daughters.
2. I currently work at Resources for Human Development (RHD) part time as a Recovery Specialist, and recently got my Associate's Degree in Behavioral Health and Human Services from Community College of Philadelphia. I would like to find full-time work in my new field, but cannot because of the Older Adult Protective Services Act (OAPSA).
3. I was born and raised in Philadelphia, and graduated from Gratz High School, but I had an undiagnosed learning disability. I graduated from high school with a low literacy level, and began hanging out with the wrong crowd.
4. One night in 1982 when I was 18 years old, my friends decided to steal a car. I cannot drive, and was not involved in stealing the car, but I did ride with them in the stolen car. I was found guilty of attempted theft, a felony charge, and was sentenced to three years of probation.
5. I had no problems while I was on probation, and decided at that time that I did not want to hang out with that crowd any more. I moved away to a different neighborhood, and have never been arrested or convicted of any other crimes in the thirty-two years since.

6. I began working my first job in the kitchen of the Sheraton hotel from 1988 until 1991. I then moved to working in security from 1991 until 2012. I worked as a Security Officer at Chestnut Hill College and at ACSS Security during that time.
7. I decided that I wanted to go back to school so that I could get a better job. I went through two years of tutoring and literacy support before I could begin my Associate's Degree. I was able to complete my Associate's Degree in Behavioral Health and Human Services in December of 2014, and also became certified in Addictions Study and as a Recovery Specialist.
8. In January of 2013, while I was working on my degree, I also began volunteering for Philadelphia Recovery Community Center (PRO-ACT) where I provide peer-to-peer recovery support services to participants. This involves facilitating group therapy sessions, one-on-one recovery coaching, and connecting individuals with services they need in their road to recovery.
9. I also began working in July 2013 at RHD in a part-time role as a Recovery Specialist. In this role I also work with individuals in recovery to provide them with the support and resources they need to be successful. I also complete consumer intake forms, make daily assessment plans, and monitor medications.
10. I truly enjoy working in these therapeutic roles because I know what it is like to struggle with a learning disability and can help others who have similar mental or behavioral disabilities to become integrated into society.
11. Currently in my role at RHD I make \$11 per hour and only work 16 hours each week. I receive no job benefits. With my new degree, if not for the OAPSA, I would be qualified to work in a wide range of full-time positions providing therapeutic care in residential facilities, and would make a higher salary and get job benefits.

12. I have been rejected already from several such positions, including as a long-term psychiatric technician at Einstein Hospital and in residential psychiatric facilities at Girard Medical Center and Temple University Hospital.
13. I have been accepted to the Bachelor of Arts Program in Behavioral Science at Alvernia University and will begin my studies in September of 2015.
14. I have worked so hard to overcome the challenges I faced in my youth, and I have dedicated myself to helping others overcome the challenges in their lives. I regret the youthful mistakes I made when I was 18 years old, but now 32 years later I am a completely different person.
15. I hope to be able to use the lessons I have learned and the skills and knowledge I have developed to continue helping others, while also finding a full-time position with a decent salary and job benefits.

2 / 5 / 15

DATE

Tyrone Peake

TYRONE PEAKE

EXHIBIT D

DECLARATION OF JOAN GREY

I, Joan Grey, hereby depose and state, subject to the penalties of 18 Pa.Con.Stat.Ann 4904, relating to unsworn falsification to authorities, that the following facts are true and correct to the best of my knowledge, information, and belief.

1. My name is Joan Grey. I live at 3443 Sheffield St. 2nd Floor, Philadelphia, PA 19136. I am 60 years old and a lifetime resident of Philadelphia.
2. Despite over 20 years of caregiving experience prior to my conviction, and the fact that I have been arrest-free since 1998, I have had great difficulty finding work in my field because of the restrictions in the Older Adult Protective Services Act (OAPSA).
3. I graduated from Lincoln High School and got my Licensed Practicing Nurse (LPN) degree from James Martin Vocational School in 1974. I then worked at St. John Neumann nursing home until 1981, and at the Philadelphia State Hospital until the early 1990s.
4. In the mid-1990s, I unfortunately fell into a drug addiction. I was not able to keep working during this time period, and was arrested several times for drug possession, but was never convicted. Then in 1998, I allowed a young man to sell drugs from my house, and I was charged with possession with intent to deliver – a felony charge.
5. I pled guilty to the offense and served a year in prison and two years on probation. During my time in prison, I decided I was done with drugs. I thank the police department for likely saving my life the night they arrested me. After that night, I never looked back.
6. When I was released from prison, I entered an inpatient drug treatment program at Interim House where I was able to get clean, and later served as a residential aide to help others do the same.

7. After I finished treatment, I focused for a while on my recovery and dealing with health issues. I began receiving Social Security Disability Insurance, which I was able to live on to support myself.
8. I also reconnected with my family. Our relationship had suffered while I was in my addiction, but once they saw I was committed to doing the right thing, we were able to begin having a relationship again. I moved away from my old neighborhood, and moved closer to my mother.
9. In addition, I used this time to give back to my community and use my experience to help others who are struggling with addiction. I am very actively involved in Narcotics Anonymous (NA) and serve as a sponsor. I also help to organize events, such as the NA world convention which was recently held in Philadelphia. I share my story often at meetings so that I can serve as a resource for others.
10. I have also served as an HIV peer educator with Philadelphia FIGHT and volunteered with Germantown Settlement and Action AIDS doing HIV education and outreach.
11. About three years ago, I decided that my health issues were under control and I was stable enough in my recovery to begin working again. I also felt it was time for me to return to the nursing field that I love so that I could help more people and feel more satisfied with my life. I also currently care for my elderly mother, and additional income would help me to better support her.
12. I began actively looking for work, but over the course of three years have not been able to find a job despite my twenty years of experience in the field.
13. I have been denied position at several agencies because of the OAPSA including Bayada Home Health, JEVS, Vitol Support Home Care, and Coinmunity Care. I have only been able to find

intermittent and part-time work in home health care, and sometimes I make as little as \$100 a week.

14. Since my conviction almost fifteen years ago, I have turned my life around completely and now I try to help others do the same. I know now that my mistakes were not worth it, and I am so sorry I ever got involved with drugs. I now spend my time trying to help others avoid my mistakes.
15. I hope I will have the chance to return to the nursing profession and find stable employment so that I can give back and help others who are sick and hurting like I have been during my life. I know I have the skills and experience to make a difference – I only need a chance.

2-20-15
DATE

Joan M Grey
JOAN GREY

EXHIBIT E

DECLARATION OF CHARLES FORD

I, Charles Ford, hereby depose and state, subject to the penalties of 18 Pa.Con.Stat.Ann 4904, relating to unsworn falsification to authorities, that the following facts are true and correct to the best of my knowledge, information, and belief.

1. My name is Charles Ford. I live at 2025 S. Bucknell Street, Philadelphia, PA 19145. I am a 55-year-old father of two sons whom I have raised – one is 29 years old and one is 16 years old and is on the autism spectrum and has epilepsy.
2. I currently work at Gaudenzia Incorporated at a drug and alcohol inpatient program as a Cook III, overseeing the kitchen, meal preparation, and ensuring compliance with safety regulations. I have over thirty years of experience in food service, and fifteen years of experience cooking in settings for vulnerable populations. I would like to be able to work at one of Gaudenzia's mental health residential facilities where I can work with a population I am passionate about serving with a schedule that is more regular, but I cannot because of the Older Adult Protective Services Act (OAPSA).
3. I was born and raised in Philadelphia, but did not graduate from high school because I had to leave to help take care of my family. I worked in various jobs such as carpentry and textiles throughout my late teens and early twenties, but unfortunately also began using drugs and alcohol. On one occasion when I was twenty years old, I was walking in my neighborhood and saw two people I knew getting into a fight on a basketball court. I got involved, trying to separate them, but ended up in the middle of the fight. I then went to a bar. When I came out, the police arrested me for the incident. Ultimately, I pled guilty to robbery, aggravated assault, simple assault, and theft. Two years later I was also convicted of disorderly conduct.

4. For about ten years after, I continued struggling with substance abuse, and I became depressed. It was difficult to move past the bad choices I had made. But slowly I began to change my life, and got the help I needed to get clean. I have been completely substance-free for 23 years.
5. As I began to turn my life around, I started working at Le Bec Fin, where I worked for thirteen years. I also decided to go back to school and get my high school degree. I got my diploma from Christian Ministries Academy in 2002.
6. I decided that I wanted to take the skills I was learning in food service and use them in a setting where I could serve people who were struggling with some of the substance abuse and mental health issues I had struggled with in my early life. In 1999, I began working at Project HOME where I stayed for six years, assisting shelter residents with activities of daily living, and oversaw weekend operations including meal preparation.
7. Then, I began working at Gaudenzia as a cook and have been working there for over ten years. I have been promoted several times, and now have achieved the level of Cook III which includes a lot of responsibility for overseeing the kitchen operations and ensuring compliance with laws and regulations on food safety.
8. Recently, I was transferred to one of Gaudenzia's inpatient mental health sites temporarily to fill in for someone who had been let go. At that site, I was able to work more regular hours with weekends off, which was much better for my family. My son has autism and epilepsy and has many medical needs. With his mother, I am a caretaker for him, and when I work irregular hours and on the weekend, it is very difficult for me to make sure he is getting the care he needs.

9. Gaudenzia wanted to keep me on in the mental health site, but when they reviewed my background they told me they had to send me back to my old placement because my convictions from thirty-three years ago bar me from working in mental health residential facilities under state law. Even though I had more than five years of care-giving experience, they said they could not allow me to stay at the mental health site because they were going to be inspected soon and they were afraid of violating the law.
10. Despite the struggles I went through and the bad choices I made early in my life, I was able to turn my life around and become a caring father, a hard worker, and a high school graduate. I have dedicated my adult life to providing care for others who are still struggling the way I once did, as well as caring for my son who has very serious medical issues.
11. I hope my convictions from thirty-three years ago will not continue to haunt me forever, and I will be able to work someday in a position where I can provide care to those struggling with serious mental illness, while also having the type of regular work schedule that will allow me to better meet the needs of my son.

2/4/15
DATE

Charles Ford
CHARLES FORD

EXHIBIT F

DECLARATION OF DESMOND LOWE

I, Desmond Lowe, hereby depose and state, subject to the penalties of 18 Pa.Con.Stat.Ann 4904, relating to unsworn falsification to authorities, that the following facts are true and correct to the best of my knowledge, information, and belief.

1. My name is Desmond Lowe. I live at 2429 W. Toronto St. Philadelphia, PA 19132. I am a 48 year old father of one adult son.
2. I am currently unemployed. I worked at Walmart for the past seven years, and was recently let go. I decided to try to return to working in a nursing home, as I had previously enjoyed working in that setting. I soon learned I was unable to work there because I was banned by the Older Adult Protective Services Act (OAPSA).
3. I was born in Jamaica, but moved to Philadelphia as a child. I graduated from Germantown High School, and began working. I worked a variety of jobs, including at Sears doing cleaning and grounds maintenance work, at White Dog Café doing cleaning, maintenance, and food preparation work, and at a nursing home in Doylestown where I worked in dietary services, serving food to residents and cleaning.
4. In 1999, when I was thirty-three years old, I was working in the dietary department of Prudential Life Insurance, preparing food for office staff. Occasionally I would have trouble getting to work, so I would borrow a friend's car. One day, I was pulled over by a police officer and did not have the proper paperwork for the car. I found out the car had been stolen.

5. I did not want to risk losing my job by having to miss work to go to court, or if I was sentenced to jail time, so I pled guilty to a charge of "Theft by Receiving Stolen Property." I was sentenced to two years of probation.
6. I had no problems while I was on probation, and have not been arrested or convicted of any offenses since that single conviction, over fifteen years ago.
7. I left Prudential Life Insurance in 2001, but continued working in positions involving maintenance, cleaning, and food preparation including at the Days Inn Hotel and the Willow Grove Park Mall.
8. I got more experience in the health care field in 2006 when I began working in health care waste services at Children's Hospital of Philadelphia (CHOP). I obtained a certificate for successful completion of the Bloodborne Pathogen Training, and worked for more than a year at CHOP removing and replacing hazardous materials, such as needles.
9. After working at CHOP, I got a position as a maintenance worker at WalMart where I worked for seven years before I was let go in 2014.
10. As I began looking for jobs, I decided I wanted to work in the health care field again because I had liked that setting the best. I had really enjoyed the time I spent working at the nursing home in Doylestown, and decided to try to apply to work there again.
11. When I went in to apply, I was told that even though I had a great resume and a lot of experience, I would not be able to be hired because of my fifteen-year-old felony conviction. Even though I

would have been working in the back of the kitchen doing dishwashing and food preparation, I was not allowed to be hired because of the OAPSA.

12. I have worked my entire adult life, building skills in maintenance, cleaning, and food preparation. I would like to take all that I have learned and use it to benefit others by working in a health care setting. Not only have I found that setting to be the most fulfilling over the course of my career, but I believe it would give me a stable and reliable job where I could get a decent salary and benefits to support myself.

3/23/15

DATE

Desmond Lowe

DESMOND LOWE

EXHIBIT G

DECLARATION OF RUDOLPH JAINLETT

I, Rudolph Jainlett, hereby depose and state, subject to the penalties of 18 Pa.Con.Stat.Ann 4904, relating to unsworn falsification to authorities, that the following facts are true and correct to the best of my knowledge, information, and belief.

1. My name is Rudolph Jainlett. I live at 6515 Everett St. Philadelphia, PA 19149. I am 39 years old and have lived in Philadelphia my whole life.
2. I am currently unemployed, except for the occasional odd job I do for family members. I am certified in home health care and have caregiving experience, but have been denied work because of the Older Adult Protective Services Act (OAPSA).
3. I was born and raised in Philadelphia, but did not graduate from high school the first time around. My mother passed away when I was 14, and I went to live in a group home from 1990 until 1993 when I was 18 years old.
4. I then lived with my cousin for a while and was doing well. My cousin had to move, so I was out on my own and moved to Germantown. That is when I started hanging out with the wrong crowd.
5. In 1996, when I was twenty-one years old and visiting friends in New York, I was writing checks to make fast money. In 1997, I also did the same thing in Montgomery County. I got arrested and convicted of bad checks, and then was also convicted of auto theft in Philadelphia in 1997 because I borrowed a car from my cousin that was stolen. I was sentenced to five years of probation total. I have not been arrested since 1997, over 18 years ago.

6. As a condition of my probation, I went back to school and got my high school diploma from Benjamin Franklin High School. I started at Starr Technical Institute in 2001 to get my Medical Assistant's degree, but had to drop out when my father fell ill. Caring for my father was a big turning point in my life, and I knew I was done getting in trouble. I took care of him for six years until he passed away.
7. I then began doing other home health care work. I got hired by Constance Hill, my friend's grandmother, and cared for her for a year. During that time, I also went back to school to get my certification for home health care.
8. I worked at a home health care agency called Cas next for about three months, but when they ran my background check they had to let me go because of my record.
9. I have tried to get home health care jobs at a few other places, but kept getting denied because of my record. I have been surviving by doing odd jobs, caring for my cousin who is pregnant, watching her kids, and doing some cleaning for friends and family.
10. I have spent my adult life caring for family members, and am passionate about pursuing a career where I can continue to provide care. I want to go back to school and further my education in the health care field. I also want to be able to find stable paying work in home health care. Because of the Older Adult Protective Services Act (OAPSA), my youthful mistakes from 18 years ago are preventing me from moving forward in my field.

3.20.15

DATE

Rudolph Jainlett
RUDOLPH JAINLETT

EXHIBIT H

DECLARATION OF RESOURCES FOR HUMAN DEVELOPMENT

I, Dennis Roberts, hereby depose and state, subject to the penalties of 18 Pa. Con. Stat. Ann. 4904, relating to unsworn falsification to authorities, that the following facts are true and correct to the best of my knowledge, information and belief.

1. My name is Dennis Roberts and I am the Corporate Associate Director of petitioner Resources for Human Development, Inc. ("RHD"). I make this declaration on behalf of RHD and I am authorized to do.

2. RHD is a non-profit social service organization that provides residential programming and services for individuals with mental illness, mental retardation and chemical dependency issues. Although RHD's central offices are located in Philadelphia, it operates programs throughout the Commonwealth and in several other states.

3. RHD has an annual budget in excess of \$250 million. RHD employs more than 5,000 individuals and each year serves more than 27,000 people in need, the vast majority of whom are Pennsylvania residents.

4. Given the size of the organization, RHD hires hundreds of individuals each year. The lifetime employment ban of The Older Adult Protective Services Act ("OAPSA" or "Act") has had a devastating impact and continuing effect on RHD's ability to recruit and retain outstanding employees. Many of RHD's programs providing residential services to adults fall within the scope of the Act, and these programs must therefore comply with OAPSA's provisions, including the Act's lifetime employment ban.

5. In 2014 alone, RHD was required to refuse permanent employment to 52 otherwise-qualified job candidates as a result of OAPSA's employment-barring provisions. Of the 52 individuals to whom RHD was forced to refuse employment, 41 were African American, 6 were Caucasian, 3 were multiple races and 2 were Hispanic.


6. The Act has significantly interfered with RHD's hiring and retention of qualified staff, thereby compromising its ability to provide the best possible services to its clients. Many of RHD's applicants and employees come from the inner city and are under-educated. For a multitude of reasons, they do the work in social services that others refuse. Prior to passage of the Act's employment ban, RHD had hired certain applicants notwithstanding a prior criminal conviction if the applicant had rehabilitated himself or herself and shown that they could provide outstanding support services to the most vulnerable populations RHD serves: the elderly, persons with mental illness or mental retardation, and those with substance addictions. RHD's experience has shown that certain people with criminal records can become valuable employees and members of the community. However, as a result of the Act's overly broad lifetime employment ban, RHD has been prevented from hiring otherwise highly qualified employees for their programs. It has been forced to terminate, refuse to hire, or limit available position to otherwise outstanding employees, all of which has led to the termination or reduction in social service programs that RHD is able to provide to the community.

7. RHD believes that OAPSA's employment-barring provisions are counterproductive to the stated goal of protecting vulnerable populations. RHD also believes that the Act's lifetime employment ban unduly interferes with the organization's constitutional right to be free from arbitrary and unwarranted intrusion into the performance and operation of its business.

8. Despite being a successful petitioner in the original *Nixon* litigation, over the years the Commonwealth agencies have continued to apply OAPSA's lifetime employment ban to RHD's employment practices in connection with covered facilities.

9. RHD currently employs petitioner Tyrone Peake in a "back up" capacity for approximately 16 hours per week. Mr. Peake's supervisor speaks highly of Mr. Peak's work and believes that he is a viable candidate for any opening for regularly scheduled work on a full- or part-time basis. However, the Act greatly reduces the potential employment positions for which Mr. Peake would be eligible. Mr. Peake would have an exponentially greater chance for full-time employment with RHD if the Act's lifetime employment ban did not eliminate a large number of potential employment positions within RHD's programs.

APRIL 10, 2015
DATE


DENNIS ROBERTS, Corporate
Associate Director of RHD