Governor Deval L. Patrick
Remarks Before the Joint Committee on the Judiciary
State House, Boston, MA
Monday, July 27, 2009

Chairwoman Creem, Chairman O’Flaherty, and members of the Joint Committee on the Judiciary, good afternoon and thank you for the opportunity to appear here today in support of two bills that I filed earlier this year; namely, House Bill No. 4107, An Act to Enhance Public Safety and Reduce Recidivism by Increasing Employment Opportunities, and House Bill No. 4108, An Act To Prevent Crime and Reduce Recidivism by Increasing Supervision and Training Opportunities for Inmates.
On behalf of the hundreds of people here today, and the tens of thousands they represent, people who have attended hearings like this countless times over the past decade, people whose opportunity to improve their lives, the lives of their families, and their communities depends very much on what we do, or fail to do, today and in the next few months. I am asking you to make the public safer by fixing the CORI system and reforming certain of our criminal justice system laws.

Why CORI reform? Because ex-offenders who need work too often find our CORI system turns even a minor offense into a life sentence by permanently keeping them out of a job. A good job is the best tool to prevent repeat offending. Meaningful employment is fundamental to success. But people with criminal records often never get
the chance to make the case for their own hiring -- because even with all the requisite skills and experience, a criminal record becomes an absolute bar to hiring. Without the stability and the dignity of a job, ex-offenders too often make bad or desperate choices. We need a better way.

I acknowledge that employers need timely and accurate information about the criminal history of potential job applicants. Employers and volunteer organizations, especially those that provide services to vulnerable populations, need to know that they are not hiring someone who may put their clients, customers, co-workers or businesses at risk. Other employers may be required by federal and state laws and regulations, or national accreditation standards, to check criminal histories.
The other reality we can’t ignore is that today, only about 3% of employers in the Commonwealth rely on official criminal offender record information, or CORI, provided by the state. Under current law, most employers are not eligible to obtain CORI. To obtain access, eligible employers are required to go through a complicated process of applying to, and obtaining authorization from, the Criminal History Systems Board. So, most employers turn to private companies to do personal record searches. And here is where another serious problem arises. When employers go outside the state CORI system, we lose our opportunity to insure both the accuracy of those records, as well as the job applicant’s opportunity to make a case for hiring.

So, our bill expands access to official CORI, over a secure Internet connection, to all employers, landlords,
licensing boards, and volunteer organizations, without pre-
approval -- as well as to job applicants themselves. At the
same time, our bill would assure the accuracy and timeliness
that private data aggregators often lack.

We place no limits on employers’ decision-making
power -- employers are free to make their own determination
that an applicant’s criminal record makes him or her
unsuitable for employment. The only condition we impose is
that the employer give the applicant a chance to discuss the
criminal record -- both its accuracy, and its relevance to the
job in question -- before the employer makes the hiring
decision.

This is consistent with the guidance that the United
States Equal Employment Opportunity Commission has
been giving for the past 20 years for employers to defend against complaints of discriminatory hiring practices. So, to employers, this will be a familiar business practice.

Employers would be required to disclose what records they have reviewed, and applicants would have the right to discuss the accuracy and relevance of the record. In addition, to give individuals more control over their own information, our legislation would enable ex-offenders to monitor which employers have been checking their official CORI records.

Under an Executive Order that I issued in January 2008, when the state hires people, we do not ask about or look at a criminal record until the final stages of the process, once we have determined that the candidate is otherwise
qualified for employment. We have “banned the box” in state government, as some would say. We do not have a box on our job applications that reads, “Check here if you have been convicted of a crime.” I believe that this is the fairest hiring practice, and many private employers do the same. It does not necessarily follow, however, that we should make our state hiring policy the law for all employers in the state. Our legislation is crafted to give a fiscal advantage to those who do ban the box. Do the right thing and you get a discount on your CORI checks. Use the box and you will pay more. The difference would be used for re-entry and job training programs.

Under our bill, individuals will be able to seal their records sooner than they can today. Misdemeanor convictions would be eligible for sealing after 5 years,
provided there has been no intervening conviction, and felonies will be eligible for sealing after 10 years. These are not arbitrary time frames. Studies show that the risk of re-offending after this much time has elapsed crime-free is the same as for you and me, meaning people with no prior criminal record. Except for law enforcement, which would have access to all information without limit, CORI reports would not contain convictions eligible for sealing -- unless, like agencies that provide services to vulnerable populations, the requester is entitled or required by law or accreditation requirement to obtain additional records. For most employers, though, these old convictions are simply no longer relevant to their business or to public safety. Nonetheless, under our bill, employers who properly rely on state CORI will have immunity from negligent hiring suits.
There are 25,000 people currently incarcerated in Massachusetts, and nearly all of them will be returning to our communities. Given that a job is critical to re-entry and preventing recidivism, it is important from a public safety point of view that we not limit their chance to get back on their feet and stay there. Fix CORI in the ways we propose and we will have taken a step forward both for ex-offenders and for the public at large.

House 4108, briefly, would help offenders being released from incarceration ease back into their communities with access to necessary programs and services. In that regard, we have adopted Senator Creem’s longstanding proposal to provide parole eligibility to non-violent drug offenders serving mandatory minimum sentences. We have also proposed legislation to give these same offenders, if
otherwise eligible, the opportunity to engage in work release programs while still in custody. As the same time, we have proposed mandatory post-release supervision for those who wrap up their sentences without having had the opportunity for parole release before their sentence expires. The point of these measures is to acknowledge that our policies of simply warehousing non-violent offenders has not worked. Secretary Burke and Commissioner Clarke are here to discuss those proposals in greater detail.

I urge your prompt and favorable consideration of both bills.

Thank you.