

The Pennsylvania Lawyer

JANUARY • FEBRUARY 2022

PABAR.ORG

Family Lawyers as ADR Facilitators

Also in this Issue:

- Hollywood Courtroom Dramas and Trial Techniques
- Firing Medical Marijuana Card Holders
- Community Pardon Projects

Pardon Projects: Communities Coming Together in Restorative Justice

By Sharon R. López and Taylor E. Pacheco

“It just wouldn’t have happened without their help,” said Akeem Sims, sent to prison in 2006 for dealing cocaine and now on his way to becoming a CPA at a major financial services firm, thanks to a pardon he obtained with the help of law student “pardon coaches” at the University of Pennsylvania.

Issues that unite prosecutors and public defenders, the left and the right, business leaders and community organizers, and people of all faiths are an endangered species these days. But on one issue of criminal justice, most agree: Granting pardons to qualified former offenders enables them to qualify for jobs, housing and educational opportunities and allows them to become successful, contributing members of their communities.

“I am totally committed,” said Eugene Vittone, who was Washington County district attorney, president of the Pennsylvania District Attorneys Association and one of the founders of the first pardon projects in the state. “Once offenders have ‘repaid their debt to society’ as a judge has decided, then I think we all owe it to ourselves to give them the best chance they can to succeed and become contributing members of society. And that’s a pardon.” (Vittone died in late August 2021, shortly after completion of this article.) In launching the Pardon Project of Berks County, District Attorney John Adams predicted, “This will be beneficial not only to the individuals seeking a pardon but in the long run, will benefit our entire community.”



Beaver County District Attorney David Lozier is widely credited for his leadership in creating the pardon project there. Dr. Cheryl King, executive director of the Franklin Center (a community nonprofit serving homeless and low-income persons), explained: “Dave hasn’t missed a single meeting. He got our information on the county’s website, mobilized the bar association and helped screen the first pardon clients who were referred to our first pardon coaches.” “It’s primarily thanks to him that we have people lining up both for help, and to help,” said community organizer Rico Elmore. Elmore and Americans for Prosperity’s Emily Greene were the conveners and driving force for the Pardon Project of Beaver County.

“I’ve been seeing one pardon application per month, and supporting them,” said Lozier, “but I bet there are a thousand folks in this county who deserve that second chance.”

Why are pardons the issue?

What unites people across the state and the political divides is the potential for economic stability and empowerment that lies in the elimination of criminal history records. The movement began in the summer of 2018 as leaders began to realize the problems those histories were causing.

“It’s crushing that what someone was charged with 10 or 15 years ago, very often when they were young adults, can completely wipe out everything that person has done since then to improve themselves, even if they have accepted responsibility [for their crimes],” said Sarah Martinez-Helfman, president of the Samuel S. Fels Fund in Philadelphia. Dr. Nikia Owens, former managing director of Financial Security for the United Way of Greater Philadelphia and Southern New Jersey, put it more starkly: “Our society can invest every dollar we have in job training and

Granting pardons to qualified former offenders enables them to qualify for jobs, housing and educational opportunities.

workforce development, but we have no chance to succeed if these individuals are still prevented by the bad choices they made decades ago from getting the jobs or housing for which they are qualified today.”

Earl Buford, who recently served as CEO of Partner4Work, the workforce development agency for Pittsburgh and Allegheny County, agreed: “It is undeniable that criminal records are a major factor in keeping people in poverty. Their records are preventing them from getting jobs that are available and for which they are qualified. For some, these are professional jobs in accounting and health care; but even at the trades level, a criminal record stops them from enrolling in training programs or taking the examination that leads to a state license.”

The process wasn't working well until the Pardons Board made key changes.

The only way to erase a conviction for a misdemeanor or a felony in Pennsylvania is to get a pardon from the governor, and the only way to get to the governor is by first getting the recommendation of the statewide Board of Pardons (BOP).

You may have heard of Clean Slate. First in the country, this Pennsylvania law was championed by Sens. Scott Wagner (R-York) and Anthony Williams (D-Delaware, Philadelphia) and Reps. Sheryl DeLozier (R-Cumberland) and Jordan Harris (D-Philadelphia). It passed with near unanimity as Act 56 of 2018 and was quickly signed by Gov. Tom Wolf. The law requires that certain criminal records — arrests that don't end in convictions and certain low-level misdemeanors that occurred at least a decade ago — be “sealed” (hidden from public view) through an automated process. But for Pennsylvanians with higher-level convictions, such as felonies and first-degree misdemeanors, as well as for tens of thousands of people, many of whom are now parents and who were convicted of drug-related offenses when they were young, and for anyone seeking a job

that requires an FBI background check, Clean Slate doesn't help. For them, a pardon is the only way to move forward.

Until 2019, the pardon process in Pennsylvania was arcane, expensive and slow. It took almost five years from beginning to end and ended in failure for 93% of those who purchased the application form. But beginning in February 2019, the five-member BOP, under the chairmanship of newly elected Lt. Gov. John Fetterman, went to work, changing just about everything.

“Pennsylvania has long been one of the most heavily incarcerated states in the nation,” Fetterman explained. “While we have been leaders on the punishment side of criminal justice, we hadn't paid any attention to the rehabilitative or forgiveness side. The result is that we've been needlessly keeping families in poverty and keeping millions of dollars away from our communities. That makes no sense to anyone.”

That point was backed up by a pathbreaking 2020 report by The Economy League on the economic impact of pardons. Researching all pardons awarded over a 10-year period (2008-2018), it found that, with just a stroke of the governor's pen, \$16.7 million had flowed to communities across the state. “Pardons are a no-cost workforce development and neighborhood investment policy,” it concluded. Quickly seconding its findings, then-Pennsylvania Secretary of Labor and Industry Gerard Oleksiak called pardons “necessary to keep Pennsylvania's workforce globally competitive,” and the state's auditor general at the time, Eugene DePasquale, urged the BOP and the governor to issue more pardons, faster.

Reducing barriers to qualified applicants is key.

Today, the process is free, the pardon application form is available to download on the BOP's website, and it will be entirely online in less than a year. The BOP staff



“We're in the business of second chances.”



sees itself as “here to help,” said BOP Secretary Brandon Flood, himself a pardon recipient, who responds almost immediately to every email sent his way, including in the evenings and over the weekends. “We’re in the business of second chances.”

One step that often stopped applicants was obtaining copies of five records from the underlying prosecution, which the BOP requires be attached to each pardon application. Enter attorney Mary Walk, director of Delaware County’s Judicial Support Office. At her recommendation, county President Judge Kevin F. Kelly issued an administrative order in September 2020 that authorized copies of the records be provided for free, by email, without a hearing, simply upon the request of attorneys certifying that they were providing pro bono assistance to low-income clients seeking pardons. Within a year, almost two dozen other county courts joined in, many using the policy, procedure and fillable PDF forms designed by Michael McGeever, director of the Allegheny County Department of Court Records, and shared on that court’s website. “Having one form makes it easy for all of us, since pardon applicants often have convictions in more than one county,” said Judy Enslin, Beaver County Clerk of Courts and president of the Pennsylvania State Association of Prothonotaries and Clerks of Courts.

In late August 2021, another major change happened when the BOP eliminated the requirement that all applicants disclose in their application every interaction they had with the police or the courts when they were juveniles — a disclosure that the Pennsylvania Bar Association’s Board of Governors and House of Delegates opposed in a recommendation that was overwhelmingly approved in May 2020.

And when it comes time for the public hearing that is required by the constitution before a pardon can be recommended to the governor, that hearing is no longer held in the Supreme Court in Harrisburg, which often required applicants, their families and representatives to miss a day from work and to pay for travel and sometimes even a hotel room. Today, the hearings are conducted over Zoom.

Pardon projects, coaches and hubs increase access to powerful relief.

“It’s a whole new day,” said the Rev. Dr. Charles Mock, pastor of the Community Missionary Baptist Church and one of the leaders of the Erie County pardon project. “The clouds have parted, and the future has become brighter for thousands of people who have been struggling because of their past. And it’s not just hope because of the reforms, communities are coming

TRADEMARK
Copyright & Patent Searches

“Experienced Washington office for attorneys worldwide”

FEDERAL SERVICES & RESEARCH:

Attorney directed projects at all Federal agencies in Washington, DC, including: USDA, TTB, EPA, Customs, FDA, INS, FCC, ICC, SEC, USPTO, and many others. Face-to-face meetings with Gov’t officials, Freedom of Information Act requests, copyright deposits, document legalization @ State Dept. & Embassies, complete trademark, copyright, patent and TTAB files.

COMPREHENSIVE: U.S. Federal, State, Common Law and Design searches, **INTERNATIONAL SEARCHING**

EXPERTS: Our professionals average over 25 years experience each

FAST: Normal 2-day turnaround with 24-hour and 4-hour service available

GOVERNMENT LIAISON SERVICES, INC.
200 N. Glebe Rd., Suite 321
Arlington, VA 22203

Ph: 703-524-8200, Fax: 703-525-8451

Minutes from USPTO & Washington, DC

TOLL FREE: 1-800-642-6564

www.GovernmentLiaison.com
info@GovernmentLiaison.com



Pictured, from left: Erie County Pardon Project volunteers Judge Stephanie Domitrovich; Julie Kresge, Erie County Bar Association executive director; Tina Fryling, solo practitioner and associate professor, Mercyhurst University; Jacqueline Wilson Lager, executive director, Northwest Legal Services; Taylor Baker, Mercyhurst University; Dr. Maria Garase, Mercyhurst University; J. Timothy George, Purchase George & Murphey PC; Colin Hurley, Mercyhurst University; Peter Agresti, pre-law program director, and assistant professor, Gannon University; Erie County District Attorney Jack Daneri; Erie County First Assistant District Attorney Elizabeth Hirz; Aubrea Hagerty-Haynes, Erie County First Deputy Clerk of Courts; and Antonio Howard, Federal Public Defender's Office for the Western District of Pennsylvania and community muralist

“By accepting the past and focusing on the future, pardons ... promote healing. That’s a path forward we all can take together.”

together to help their neighbors overcome the past.”

That’s because the forms and the process are now so straightforward that they can be easily taught. “Between June 1, 2019, and Nov. 30, 2021, we approved 50 courses on pardons in Pennsylvania, awarding 1,023 CLE credits to 792 attorneys,” reported Nathan Graham, provider relations coordinator for the Pennsylvania Continuing Legal Education Board. And it’s not just attorneys who are lining up to help: paralegal programs, communities of faith, social work and recovery programs, community action agencies, adult education teachers, community health providers — they are all learning about pardons.

Everyone who gets trained — it takes less than an hour — is called a pardon coach, because their principal role is simply to help applicants complete one government form and tell their personal story the best that they can. “It’s taking our volunteer coaches just three to four hours, from start to finish,” said Joe Mitchell, longtime pardon volunteer who heads the pardon project for the Barristers’ Association of Philadelphia, “and when they finish with one, they are asking for another person to help.”

“It’s such an easy lift, to learn what’s behind the form and to help coach someone

through it,” said Linda Ciampi, executive director of the Outreach Center for Community Resources in Scranton, and chair of the pardon project of Lackawanna County. “It’s eye-opening for my students, for sure,” added John Churchville, professor of legal studies at Lancaster Bible College, who hired three students to help him get a pardon project started in Lancaster County. “It is giving them a real appreciation not just of the criminal justice system, but of their power to help others.”

“Helping Erie County’s pardon project become a reality is one of the most exciting projects things I’ve ever worked on,” said Peter Agresti, assistant professor, and director of the pre-law program at Gannon University, which is a major hub for the pardon project of Erie County.

Lawyers, judges and lawmakers are working together to make pardon projects a success for those who deserve it.

The first pardon project outside Philadelphia was in Scranton. There, it was sparked by Joseph Price, a former Lackawanna Bar Association (LBA) president. He convened his colleagues on the LBA Access to Justice Committee to discuss the idea. Former Lackawanna County President Judge Michael Barrasse recognized how powerful



Pictured, from left: Jerry Musheno, board president, Lackawanna Pro Bono Inc. (LPB), and board chair, Skills in Scranton (Greater Scranton Chamber of Commerce); Linda Ciampi, chair of the Lackawanna Pardon Project and CEO of Outreach; and Sylvia Hahn, LPB executive director

the hope for a pardon could be for those involved in the drug court that he had created. “It is essential,” he said, “that the criminal justice system provide the opportunity and means for individuals to avail themselves of the dismissal of charges and a pardon for which they qualify. The lawyers and public who are volunteering are giving these individuals a true second chance to rebuild the life they want and deserve.” County First Assistant District Attorney Judith Price created the process by which pardon project clients will get their applications speedily reviewed, and hopefully endorsed, by the district attorney’s office there, potentially cutting the time from filing to BOP hearing to just one year.

Allegheny County was next. There, the pardon project is led by a broad consortium of attorneys: President Judge Kim Berkeley Clark (who is also board chair of the Pennsylvania Legal Aid Network), Public Defender Matt Dugan, First Assistant District Attorney Rebecca Spangler, Allegheny County Bar Association (ACBA) past presidents Lori McMaster and Elizabeth Hughes, ACBA Pro Bono Center Executive Director Barbara Griffin and Neighborhood Legal Services Managing Attorney Jennifer Modell. Reed Smith LLP was the first law firm to sign on, agreeing to take a cohort of clients and holding the first statewide pardons CLE

for its attorneys and paralegals in both Pittsburgh and Philadelphia.

In Erie, the lawyers leading the pardon project are Chief Public Defender Patricia Kennedy; District Attorney Jack Daneri; Tim George, second vice president of the Erie County Bar Association; and Judge Stephanie Domitrovich. In Washington County, the driving force is Southwestern Pennsylvania Legal Services’ Executive Director Brian Gorman. In Centre County, the founders are Sharon Barney and Gopal Balachandran, both of Penn State Law. In Lancaster, the leaders are Christine Harrison-Mahrer, reentry manager for PA CareerLink, the workforce development agency; and attorney Mark Walmer, who has long represented people before the BOP and who has seen the changes over the past two years. “It’s all just unbelievable,” he said. In Berks County — the most recent pardon project to open its doors — the lawyers at the forefront are Mark Yoder, Bar Association President Justin Bodor, and Magisterial District Judge Tonya Butler, in addition to District Attorney Adams.

As they did with Clean Slate, Pennsylvania lawmakers on both sides of the aisle are now leading the push for pardons. “I am an enthusiastic supporter of our pardon project,” said Sen. Camera Bartolotta (R-



“It is undeniable that criminal records are a major factor in keeping people in poverty.”



“Once offenders have ‘repaid their debt to society,’... we all owe it to ourselves to give them the best chance they can to succeed and become contributing members of society.”

Beaver, Greene and Washington), who has championed Washington County’s pardon project and who co-chairs the Pennsylvania Legislature’s Criminal Justice Reform Caucus. “There’s nothing but upside to giving second chances to people who have turned their lives around and this important project deserves to go statewide.”

Sen. Judith Schwank (D-Berks) who leads the pardon project in the county, said, “I am an enthusiastic proponent because I know it can have a positive impact on so many of my constituents and better our community. Mistakes made long ago shouldn’t follow you for the rest of your life.” Her personal invitations brought all of the key players to the first “brainstorming” meeting and are resulting in Reading being one of the fastest-developing pardon projects in the state.

“Expanding access to pardons must become a bipartisan priority so that constituents all across the commonwealth can move forward,” said Rep. Joanna McClinton (D-Philadelphia, Delaware) who, as House Democratic Leader, is championing efforts to increase funding for the BOP so that it can handle the upsurge of applications. “It’s in everybody’s interest to get people contributing to our society to the best of their abilities.”

Pardons are a way of assuring fairness in the criminal legal system, an essential part of the path forward for a better society.

Less than a decade ago, the BOP received fewer than 300 pardon applications a year;

today it is receiving over 2,000 and is recommending over two-thirds of them to Gov. Tom Wolf, who has signed 1,714 as of Nov. 30, 2021 — more than any governor in Pennsylvania history. The Collateral Consequences Resource Project, which collects data on pardoning in all 50 states, ranks Pennsylvania’s new system among the most productive. Margaret Love, its executive director, and a former U.S. pardon attorney, reported, “Pennsylvania is one of only a handful of states [] where pardon plays a regular role in the justice system and is easily accessible to ordinary individuals.” “We can all be proud of that,” said Commonwealth General Counsel Greg Schwab, “and we’re doing everything we can to make sure these improvements last for years to come.”

“For so many reasons, society is paying great attention to the fairness of the criminal justice system,” said Allegheny County President Judge Clark. “Most of the responses have been to criticize and blame — the police, prosecutors, defense attorneys, judges and legislators — and that causes further divisions within our society. Pardons are totally different. By accepting the past and focusing on the future, pardons promise forgiveness and promote healing. That’s a path forward we all can take together.”



PBA Past President Sharon López is a partner in Lancaster’s Triquetra Law and is a member of the board of directors of Philadelphia Lawyers for Social Equity (PLSE), a legal nonprofit that provides education, representation and advocacy on behalf of low-income people with criminal records.



Taylor Pacheco is the PBA Young Lawyers Division Zone 1 co-chair, a member of the 2020-21 PBA Bar Leadership Institute class and deputy director of PLSE. PLSE started the Pardon Project in 2018 and has helped to create pardon projects in over a dozen counties across the state.

If you would like to comment on this article for publication in our next issue, please email us at editor@pabar.org.