



Legislative Testimony
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Written Testimony Supporting Senate Bill 1019, An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor & Felony Offenses, Prohibiting Discrimination Based on Erased Criminal History Record Information and Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein and distinguished members of the Judiciary Committee:

My name is Kelly McConney Moore, and I am the interim senior policy counsel for the ACLU of Connecticut (ACLU-CT). I am here to testify in support of Senate Bill 1019, An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor & Felony Offenses, Prohibiting Discrimination Based on Erased Criminal History Record Information and Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences. We urge this Committee to pass this bill, which will benefit not just people with records, but all the people of Connecticut.

The ACLU-CT believes in a society where all people, including those who have been convicted of a crime, have equal opportunity to contribute to society and build successful and fulfilling lives. Unfortunately, the mere fact that a Connecticut resident has a criminal conviction in their history puts more than 550 legal barriers in their path.¹ Moreover, it creates innumerable barriers to full civic participation. People with a criminal record are more likely to face unemployment,² homelessness,³ poverty,⁴ and

¹ National Inventory of Collateral Consequences of Conviction, *available at* https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1; *see also* Kelan Lyons, "Council Begins Study of Discrimination against People with Criminal Records." CT Mirror (Aug. 22, 2019), *available at* <https://ctmirror.org/2019/08/22/council-begins-study-of-discrimination-against-people-with-criminal-records/>.

² Lucius Couloute & Daniel Kopf, "Out of Prison & Out of Work: Unemployment among Formerly Incarcerated People." Prison Policy Initiative (Jul. 2018), *available at* <https://www.prisonpolicy.org/reports/outofwork.html>.

³ Lucius Couloute, "Nowhere to Go: Homelessness among Formerly Incarcerated People." Prison Policy Initiative (Aug. 2018), *available at* <https://www.prisonpolicy.org/reports/housing.html>.

⁴ *See* Rebecca Vallas and Sharon Dietrich, "One Strike and You're Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records." Center for American Progress (Dec. 2014), *available at* <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

untimely death.⁵ These outcomes are the result of policy choices Connecticut has made that allow and encourage people with criminal records to be treated like second-class citizens, forever required to perform penance for past crimes. These policy choices also most harm Black and Latinx people, families, and communities – in a state that disproportionately incarcerates Black and Latinx people, those same groups are disproportionately haunted by the barriers of records. It does not have to be like this. We see a future where all people in Connecticut are allowed to reach their full potential, enriching our society.

Indeed, the evidence shows that when people are given a real, fair chance at putting their skills and talents to use after conviction, they can and will succeed. One of the nation’s largest employers, the United States military, has found that enlistees with felony records are more likely to be promoted to sergeant than those with no conviction history, even controlling for other factors.⁶ Another survey found that 82% of managers believe that workers with criminal records are equally high or higher quality hires than people without criminal records.⁷ A recent research study found that most criminal offenses have little to no impact on housing outcomes.⁸ When New York City piloted a program allowing people with felony convictions to move back in with their families in public housing, not a single participant was convicted of a new crime or went back to prison.⁹

One way to help people with criminal records to flourish is by passing a bill that automatically erases criminal records after a defined conviction-free period – a concept known as “Clean Slate.” We support the most expansive version of Clean Slate possible, one that helps the largest possible number of people in a meaningful way. The current process of seeking a pardon from the Board of Pardons and Paroles does not provide that relief. To the contrary, the pardon process is difficult to navigate,¹⁰ often adversarial, and,

⁵ Ivan Kuzyk, Kyle Baudoin, & Kendall Bobula, “Mortality among Ex-Prisoners.” CT Office of Policy & Mgmt., Criminal Justice Policy & Planning Division (Mar. 2018), *available at* https://www.ct.gov/opm/lib/opm/cjppd/cjresearch/mainnav/prisoner_mortality_final_03232018.pdf.

⁶ Jennifer Hickes Lundquist, Devah Pager, & Eiko Strader, “Does a Criminal Past Predict Worker Performance? Evidence from One of America’s Largest Employers.” 96 *Social Forces* 1039 (Jan. 12, 2018), *available at* <https://academic.oup.com/sf/article/96/3/1039/4802355>.

⁷ Society for Human Resource Management and the Charles Koch Institute, “Workers with Criminal Records.” (2018), *available at* https://www.prisonpolicy.org/scans/cki_shrm/report.pdf.

⁸ Cael Warren, “Success in Housing: How Much Does Criminal Background Matter?” at 17. Wilder Research (Jan. 2019), *available at* https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf.

⁹ Casey Tolán, “NYCHA Stops Discriminating against New Yorkers with Criminal Records.” *The Village Voice* (Dec. 13, 2016), *available at* <https://www.villagevoice.com/2016/12/13/nycha-stops-discriminating-against-new-yorkers-with-criminal-records/>.

¹⁰ *See, e.g.*, Pardon FAQs, CT Board of Pardons and Paroles, *available at* <https://portal.ct.gov/BOPP/Pardon-Division/Pardon/Pardon-FAQs>.

according to many people living with records, debasing. Since a pardon is often based on immutable details, like the characteristics of the offense, rather than the changes made during and after incarceration, this process that ought to provide a light at the end of the tunnel sometimes feels like an oncoming train instead. Nor can people count on getting a pardon. In the period from 2016-2020, 3 out of every 5 pardon applications were denied as ineligible or insufficient.¹¹

Like the ACLU-CT, the people of Connecticut believe that people living with a criminal record deserve a second chance. Eighty-five percent of Connecticut voters, including 72% of Republicans, agree that people who have been convicted of a crime and have served their sentence should have a fair shot at getting their lives back on track without having their prison sentence held against them.¹² Almost two-thirds of Connecticut voters say passing a law that automatically erases criminal records and prevents discrimination is important.¹³

To accomplish this, a strong Clean Slate bill must include five things to be meaningful.

First, a Clean Slate bill must provide for automatic record clearance. Some states provide for record clearance, but only upon petition by the person with the conviction.¹⁴ This is similar to Connecticut's existing pardon process, which requires a person to file an extensive application and submit to a grueling hearing, for a small chance to clear a conviction from their record.¹⁵ Requiring proactive petitions limits access for people lacking resources or information – a phenomenon known as the “second chance gap.” This occurs when only a few people who are meant to benefit from a law actually benefit from it. Even when people have the opportunity to erase their records, they often do not know they can, do not know how, or are discouraged from doing so because of the confusing, lengthy, or costly process. Automatic record clearance would allow all eligible people to benefit.

¹¹ See Board of Pardons and Parole Statistical Information, CT Board of Pardons and Paroles, *available at* <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Historical>.

¹² Benenson Strategy Group “Criminal Justice Poll 2020.” ACLU of Connecticut (Feb. 5, 2020), *available at* https://www.acluct.org/sites/default/files/field_documents/2020-2-19_aclu_ct_smart_justice_polling_release_topline_-_clean_slate.pdf.

¹³ *Id.*

¹⁴ See “50-State Comparison Expungement, Sealing & Other Record Relief.” Restoration of Rights Project (Dec. 2019), *available at* <http://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

¹⁵ See *generally* “Pardon Application Process and Instructions.” Board of Pardons and Paroles, *available at* <https://portal.ct.gov/BOPP/Pardon-Division/Pardon/Pardon-Application-Process>.

Senate Bill 1019 not only creates a process for automatically erasing criminal records, but also goes even further by making record clearance automated. This means that that records will be erased as a matter of course based on eligibility criteria, rather than requiring manual review. In other words, Senate Bill 1019 has developed a highly cost-effective process – something that we should all agree is beneficial. The automatic process in this bill will benefit everyone eligible for Clean Slate, and its automated nature will do so efficiently.

Second, a Clean Slate bill must provide for record erasure, as opposed to record sealing. An erased record essentially ceases to exist and cannot even be accessed by power insiders, like police employees or judges. A sealed record, in contrast, can be accessed by those exact people. Offenses which remain discoverable by law enforcement agencies and courts, because they have not been fully erased, subject a person to discrimination by the criminal legal system. For example, people in New York City filed a lawsuit claiming that, for years, the New York Police Department illegally accessed databases of sealed arrests when stopping, searching, and arresting people.¹⁶ Sealed records run the risk of government and societal abuse. Thus, to truly fulfill the intent of Clean Slate and to truly ensure that people’s past mistakes are not held against them indefinitely, full record erasure is necessary.

Senate Bill 1019 provides for full erasure of records. Misdemeanor convictions, under the bill, will be erased if they remain conviction-free for seven years after a person’s adjudication of guilt, ensuring that Connecticut law enforcement employees will not be able to illegally access sealed records, as appears to have happened in New York City. Class D and E felonies and unclassified felonies will be automatically erased ten years after the person’s conviction, provided they have no new convictions. And Class C felonies will be erased twelve years after a person’s date of conviction for that offense, if they continue with no new convictions. Thus, all people eligible for a Clean Slate will have the chance for their records to be fully erased.

Third, we believe that every person who has completed their sentence and remained conviction-free should be eligible for Clean Slate, no matter their offense. Someone’s

¹⁶ Eli Hager, “Police Officers Illegally Use Information from Arrests that Have Been Sealed, Lawsuit Says.” ABA Journal (Jul. 19, 2019), *available at* <https://www.abajournal.com/news/article/police-officers-are-illegally-using-information-from-arrests-that-have-been-sealed-lawsuit-says>.

ability to move beyond the past, stay on the right track, and support themselves and their family should not depend on what type of conviction is on a person's record. Someone who has earned the right to return to society has already paid their debt under the law. The law should not impose an additional sentence through perpetual discrimination. Everyone, no matter their offense, deserves the ability to earn a second chance. Although we believe that people convicted of all felonies, including ones currently excluded by this bill, should be eligible for Clean Slate remedies, we nonetheless support this bill as a first step towards that goal.

Fourth, a strong Clean Slate bill must clearly set an endpoint, a light at the end of the tunnel, after which a conviction will be erased if the person remains conviction-free. Currently, people with criminal records face a life sentence for their crimes, even if that is not the sentence they received in court. When people have done their time and remained conviction-free for many years, this bill would provide them with the right to a Clean Slate.

In addition, by creating certainty for people with eligible offenses, Clean Slate will streamline the existing pardons process by allowing the Board of Pardons and Paroles to focus on more complicated cases involving offenses which are not eligible for Clean Slate. In 2018, the Board of Pardons and Paroles only heard 983 requests for pardons, out of 1857 applicants.¹⁷ Creating an automated process for many people with criminal records will seriously reduce the number of applications, clearing out the logjam and allowing the Board of Pardons and Paroles to evaluate a higher percentage of applicants and focus their energy on the cases that require judgment calls and wisdom.

We support Senate Bill 1019 because it provides certainty. It sets a clear date that people with a criminal record can work towards. Under the bill, people with misdemeanor convictions must remain conviction-free for seven years following the date on which they were convicted. After that, they will have earned the right to automatic record erasure. And for people with felony convictions, depending on the level of the offense they will have earned the right to be live free from their record if they either 10 years or 12 years conviction-free following their date of conviction. These time frames provide both a candle

¹⁷ Materials for Collateral Consequences Research Subcommittee: Pardons 5 Year Statistics. Board of Pardons and Paroles (Nov. 20, 2019), *available on request*.

in the darkness to people with criminal records and a reassurance that they will continue to live productive, crime-free lives after their records are erased.

Fifth, any Clean Slate bill must provide for recourse for people who experience discrimination on the basis of their erased criminal record. This is necessary because even if a record is fully erased, memories and internet searches are not. Should an employer or landlord find out that a person has an erased criminal record -- by web searching, by gossip, or through any other mechanism -- that person could face discrimination despite their erased record. If so, the person who experienced the discrimination must have an available remedy. Indeed, the Connecticut General Statutes already recognize this in part, because they prohibit employment discrimination on the basis of an erased criminal record.¹⁸ The legislature should extend that protection to discrimination in the areas of housing, education, public accommodations, and access to financial products as well.

Senate Bill 1019 provides for full protection against discrimination for people with erased criminal records. Under this bill, a person whose erased criminal conviction is the sole reason for a denial of employment, housing, education, or certain financial products can bring a claim before the Commission on Human Rights and Opportunities. People with meritorious claims could then receive some measure of justice. The ACLU-CT is happy to support these robust anti-discrimination protections.

Because it meets the five criteria we believe are necessary in a strong Clean Slate Bill, the ACLU-CT urges you to support Senate Bill 1019. Although we believe that all people living with a record should be eligible for Clean Slate, without having certain offenses carved out, we nonetheless support this bill as a strong first step. We ask the Committee to support Senate Bill 1019 and to provide a true Clean Slate that will make Connecticut safer, stronger, and fairer for everyone.

¹⁸ Conn. Gen. Stats. § 31-51i (2019).