BRENNAN CENTER FOR JUSTICE

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Concerning Public Protection and General Government

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The Brennan Center for Justice at New York University School of Law welcomes the chance to testify about the economic impact of mass incarceration, its ramifications for the State budget, and the Clean Slate Act as one possible solution to these hardships. Rigorous economic research by the Center's Justice Program underscores the urgent need for policies that break the link between poverty and mass incarceration.

Legislation that automatically clears old criminal records — so-called "clean slate" laws — are powerful tools for creating economic opportunity for New Yorkers who have interacted with the criminal justice system. Such laws work by regularly "sealing" old criminal records after a set period of time, effectively removing them as potential barriers to employment, housing, and other aspects of civic life. We thank the Legislature and the Governor for their work on this issue, and ask that both commit to ensuring that clean slate legislation passes this session, and that such legislation benefits as many people as possible.

I.   Experience with the Criminal Justice System Reduces Earnings for Decades, Impacting People, Communities, and the State's Overall Economic Health.

Research by Brennan Center experts, described last session in testimony before the Senate Standing Committee on Codes, shows that conviction and imprisonment can impact someone's ability to earn a living wage for years and even decades after a legal sentence has technically expired.[2] While imprisonment has the most profound effect on economic security — reducing annual earnings, according to our research, by roughly 50 percent, and lifetime earnings by

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[1] The Brennan Center is a nonpartisan public policy and law institute that focuses on the fundamental issues of democracy and justice, and conducts rigorous research to better understand — and identify policy solutions that will help overcome — the collateral consequences of mass incarceration. The opinions expressed in this testimony are only those of the Brennan Center, and do not necessarily reflect the opinions of NYU School of Law.

[2] Hearing on S. 1553A (Automatic Expungement), Before the Standing Committee on Codes, N.Y. Senate 2021–22 Sess. (May 6, 2021) (statement of Ames C. Grawert, Senior Counsel, Justice Program, Brennan Center for Justice), https://www.brennancenter.org/our-work/research-reports/testimony-new-york-joint-legislative-budget-hearing.

nearly $500,000 — even lower-level criminal records can have far-reaching consequences.[3] Indeed, we estimate that misdemeanor convictions cut annual earnings by roughly 16 percent.[4] There is no such thing, we believe, as a "minor" criminal record.

These effects are felt first and most profoundly at the personal level, by people who often face other hardships as well.[5] But the ramifications for the State's economy are also profound. The Brennan Center estimates that roughly 337,400 New Yorkers alive today have spent time in prison. Reduced earnings experienced by this group of people may reach as high as $1.9 billion every year, with communities of color disproportionately impacted.[6] New research by other scholars also shows that as the share of a state's population with a felony conviction increases, its non-employment rate also rises.[7] Taken together, this research demonstrates that the long-term consequences of criminal records are an economic issue in every sense of the word, and a problem that the Legislature must consider while setting its budget priorities.

II. An Automatic Record-Sealing Law Would Ease These Burdens and Create Real Second Chances for New Yorkers.

There are many reasons that criminal justice involvement may impede economic opportunity at the individual and state level. For one, incarceration removes people from their communities and local economies, causing them to miss opportunities for income growth. And, criminal records are all too often public and permanent, causing people to be denied jobs or leases based on offenses committed years or even decades prior.[8] The resulting ripple effects are profound.

Record-sealing laws help address these problems by permitting people to "seal" an old criminal record, in many cases effectively removing it from public view and enabling them to better compete for jobs and other benefits. Research shows that record-sealing laws increase both employment *and* wages among beneficiaries.[9] However, petition-based systems, like the one

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[3] Terry-Ann Craigie, Ames Grawert, and Cameron Kimble, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Brennan Center for Justice, 2020, 14–20, https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf.

[4] Craigie et al., *Conviction, Imprisonment, and Lost Earnings*, 14–15.

[5] See Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned*, Prison Policy Initiative, 2015, https://www.prisonpolicy.org/reports/income.html.

[6] Ames Grawert, Cameron Kimble, and Jackie Fielding, *Poverty and Mass Incarceration in New York: An Agenda for Change*, Brennan Center for Justice, 2021, 9, https://www.brennancenter.org/our-work/policy-solutions/poverty-and-mass-incarceration-new-york-agenda-change. For notes on this estimate, see *id*. at 9 n.24.

[7] Ryan Larson et al., "Felony History and Change in U.S. Employment Rates," *Social Science Research* (forthcoming): https://www.sciencedirect.com/science/article/abs/pii/S0049089X21001265?via%3Dihub.

[8] Craigie et al, *Conviction, Imprisonment, and Lost Earnings*, 13.

[9] See J. J. Prescott and Sonja B. Starr, "Expungement of Criminal Convictions: An Empirical Study," *Harvard Law Review* 133, no. 8 (2020): 2527–29, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3167&context=articles.

currently in effect in New York, have proven inaccessible to those who need them most.[10] A better solution — clean slate laws that fully automate the process of sealing old criminal records — has gained popularity across the country, in states as diverse as Utah and Pennsylvania.[11]

Drawing on those examples, last session, the Brennan Center endorsed S. 1553C / A. 6399B. This bill would provide for the automatic sealing of most misdemeanors after three years, and most felonies after seven. Critically, the bill also makes clear that in most cases, people cannot be turned away from a job or other important aspect of civic life based on a sealed record.[12] The Brennan Center continues to support this important legislation.[13]

III.   The Legislature and Governor Should Prioritize Enacting Clean Slate Legislation, and Ensure that Automatic Sealing is Timely and its Benefits Clear.

We were greatly encouraged to see the Governor prioritize clean slate legislation as part of the executive budget.[14] We ask that the Legislature and Governor work together to ensure that a clean slate law passes the Assembly and Senate this session, ideally during the budgeting process, thus recognizing the impact that the criminal justice system has on the state's economic wellbeing. We also ask that the final law provide for sealing that is both prompt and effectively addresses the root causes of economic hardship among people with a criminal record.

People returning to their communities from prison face many immediate needs, from housing to — as especially relevant here — work that will support them and their families.[15] That means that record-sealing relief should be available as soon as possible to ensure that people can obtain a good job, and enjoy a true "second chance" in their communities.

Ensuring that criminal records are promptly and automatically sealed also aligns with public safety. According to a recent study by the New York State Department of Corrections and Community Supervision, people released from prison are most likely to return — if at all

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[10] See Aaron Morrison, "Nearly 600,000 New Yorkers Are Eligible to Have Their Records Sealed. Fewer than 1,800 Have Succeeded.," *The Appeal*, October 8, 2019, https://theappeal.org/nearly-600000-new-yorkers-are-eligible-to-have-their-records-sealed-fewer-than-1800-of-them-have-succeeded/.

[11] See Ames Grawert, "Parole Reform and 'Clean Slate' in New York," Brennan Center for Justice (April 21, 2021), https://www.brennancenter.org/our-work/research-reports/parole-reform-and-clean-slate-new-york.

[12] S. 1553C, §§ 1, 4, 2021–2022 Sess. (N.Y. 2021), https://www.nysenate.gov/legislation/bills/2021/s1553/amendment/c.

[13] "The Clean Slate Act Can Build a More Prosperous New York," Brennan Center for Justice (January 14, 2022), https://www.brennancenter.org/our-work/research-reports/clean-slate-act-can-build-more-prosperous-new-york.

[14] Governor Kathy Hochul, "Governor Hochul Announces 'Jails to Jobs' — A New Initiative to Improve Re-Entry into the Workforce and Reduce Recidivism," press release, January 5, 2022, https://www.governor.ny.gov/news/governor-hochul-announces-jails-jobs-new-initiative-improve-re-entry-workforce-and-reduce.

[15] See Adiah Price-Tucker et al., *Successful Reentry: A Community-Level Analysis*, Harvard University Institute of Politics (2019), https://iop.harvard.edu/sites/default/files/sources/program/IOP_Policy_Program_2019_Reentry_Policy.pdf.

— within the first *two* years after release.[16] National research confirms that re-arrest rates peak early, and level off after around five years.[17] Making sealing available within the first few years after conviction or release from prison thus aligns with our understanding of recidivism, as even relatively short waiting periods ensure that people who receive this relief are unlikely to commit another offense.

Separately, "clean slate" relief must provide a real second chance, by protecting people from being discriminated against based on a prior, sealed criminal record. New York law already provides this protection for records sealed through existing processes.[18] Any final clean slate bill must ensure that records sealed through the new, automatic, clean slate process receive the same protection. For the benefit of directly impacted people, employers, and attorneys working on behalf of both, those protections must also be clear on the face of the law.

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The Brennan Center applauds the Legislature and Governor for their commitment to passing a comprehensive clean slate law this session. Please do not hesitate to reach out with any questions concerning the crafting or implementation of such transformational legislation.

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[16] *2014 Inmate Releases: Three Year Post-Release Follow-Up*, New York State Department of Corrections and Community Supervision, 2021, 5, https://doccs.ny.gov/system/files/documents/2021/03/inmate-releases-three-year-out-post-release-follow-up-2014.pdf.

[17] See Mariel Alper, Matthew R. Durose, and Joshua Markman, *2018 Update on Prisoner Recidivism: A 9-Year Follow-Up Period (2005–2014)*, Bureau of Justice Statistics, 2018, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6266. For a discussion of research on recidivism rates, see Dana Goldstein, "The Misleading Math of 'Recidivism,'" *The Marshall Project*, December 4, 2014, https://www.themarshallproject.org/2014/12/04/the-misleading-math-of-recidivism.

[18] N.Y. Exec. Law § 296(16).