



Thursday, May 6, 2021

**STATEMENT OF RODNEY HARRISON
CHIEF OF DEPARTMENT
NEW YORK CITY POLICE DEPARTMENT**

**NEW YORK STATE SENATE CODES COMMITTEE
JOINT LEGISLATIVE HEARING ON THE "CLEAN SLATE" BILL – S.1553-A
ONLINE HEARING
MAY 6, 2021**

Good morning Chair Bailey, Sen Myrie and members of the Senate. I am Rodney Harrison, Chief of Department for the New York City Police Department (NYPD). I am joined today by Chauncey Parker, Deputy Commissioner for Community Partnerships and Oleg Chernyavsky, Assistant Deputy Commissioner for Legal Matters. On behalf of Police Commissioner Dermot Shea, I would like to start off by thanking you for inviting us today to testify before the Senate Codes Committee regarding the "Clean Slate" bill.

I would like to start off by making clear that the NYPD agrees that a person that completes their sentence and demonstrates that they have moved on from criminal behavior should not have their past used to forever negatively impact their ability to acquire housing, employment, benefits, education, or other services. The Senate has correctly identified inequities in this area and we appreciate a move toward a more rehabilitative sealing and expungement system.

But we must also acknowledge a truth. The deck is stacked against individuals being released from prison. If our goal is to ensure that they will become a productive member of society and leave the life of crime, it is mind boggling to me that we are not addressing the systemic flaws that allow these individuals to be released from prison after serving their sentence, with a bus ticket, a small amount of money, and an identification that says "parolee", as their sole form of identification. Many individuals are released into homeless shelters, as there is no plan devised in contemplation of their release to ensure stable housing. Many are simply dropped off and expected to make do and not fall back into the life of crime – clearly against all odds.

The bill being heard today focuses on cleaning the slate for individuals that have stayed out of trouble for a period of time so their potential will not be undermined by the stigma of their conviction. That is a good step. What I'm suggesting is a focus be placed on a post-release plan, so they are given a fair chance to get to the place where they can be rid of the stigma. Provide a NYS non-driver ID without charge upon release – one that does not label them a convict. Ensure that no one gets released from prison and delivered into a shelter. Those would certainly be two fair initial steps that would start them on the right path.

Turning back to the legislation being heard today. While the NYPD agrees in creating equity for individuals that have paid their debt to society and are now maintaining a life free of crime, the Department urges the Senate to consider crafting improvements to the sealing and expungement system in a way that does not negatively impact public safety and ensures that victims of crime are not left paying the price in our collective journey to better the criminal justice system. In order

to strike this balance, the Department recommends that none of these records be destroyed and that law enforcement agencies be permitted to access these records for legitimate law enforcement purposes while blinding the outside world to previous convictions that meet the criteria the final version of this legislation will set out. This will enable people to move on in their lives while at the same time maintaining public safety in communities around the state.

As an example, this bill, as currently written, will have an adverse effect on law enforcement's use of photographic identifications. In 2017, you amended the Criminal Procedure Law to permit the introduction of photographic identifications at trial in criminal and juvenile proceedings as part of the prosecutor's case-in-chief, provided they are conducted using a blind or blinded procedure. In order to help avoid wrongful convictions, that same year, the NYPD undertook a series of reforms designed to improve the quality and reliability of photographic identifications. These reforms included a complete overhaul and re-design of the Photo Manager System and the adoption of "best practices" developed by the Department in conjunction with the District Attorneys Association of the State of New York and other New York State law enforcement and criminal justice agencies.

The "Clean Slate" bill would seal and subsequently expunge any photograph of a convicted defendant taken for the eligible conviction, prohibiting the NYPD from maintaining those photographs in the Photo Manager System, and thereby preventing their use in any of the four types of photographic identifications: photo arrays, mugshot viewings, set book viewings, and confirmatory photographic viewings, despite properly conducted identification procedures.

Since all photographs used must be of similar size, quality, style and appearance in order to prevent the photographic identification procedure from being unduly suggestive, the NYPD relies on the use of arrest photographs as fillers in our identification procedures. Limiting or eliminating law enforcement's ability to continue to use arrest photographs in order to conduct viable identification procedures that may be used as evidence in criminal cases would undeniably hinder the ability of witnesses to identify assailants.

The same is true for the New York State DNA databank. Pursuant to the NYS Executive Law, the state DNA databank contains DNA profiles of individuals who have been convicted of a felony or Penal Law misdemeanor. This bill would require the removal of tens of thousands of DNA samples from the Index. The DNA database was created specifically to help police solve serious crimes like sexual assault and murder, and provide evidence that has seen the exoneration of people who have been wrongfully convicted. This bill, as written, would severely undermine these important goals that help achieve justice and promote public safety.

These records are also invaluable to officers in the field. Officers responding to domestic violence incidents need to be aware of previous convictions of a similar nature that occurred in that home. If officers are blinded to what has gone on previously, the Department would be prevented from dispatching Domestic Violence Officers to perform outreach, wellness checks, and to offer services to families that have had multiple instances of domestic violence.

Likewise, officers executing search warrants or answering radio runs cannot be blind to the fact that individuals behind the door have had previous convictions for weapons possession. I don't

think any of us would disagree that police officers are forced to place themselves in danger every time they put on their uniform. It is incumbent upon us to ensure that every effort is made to minimize that risk, and access by law enforcement to the types of records this bill seeks to expunge is vital.

Moreover, eliminating access to such records by law enforcement would hamper officers patrolling the subways in identifying forcible touching offenders or subway grinders, and those lurking under stairwells and using hidden cameras to record under subway riders' dresses. Preventing officers from being aware of the identities of these individuals, identifying them, and interdicting these offenders will undoubtedly result in subway riders paying the price with their safety.

These are just a few examples where law enforcement having access to a person's criminal history promotes public safety. At its core, any attempt to deprive law enforcement of information that can help solve a case, or solve a case more expeditiously, only stands to ensure the real potential of more members of our community being victimized by an assailant that remains uncaptured. A balanced approach towards achieving the goals of this bill cannot permit the destruction of records and must permit continued access to these records by law enforcement. Most important is that the access to such records that I am advocating for, by law enforcement, will not undermine our collective goals and the goals of this legislation, which is to help people who are no longer involved in crime move on by applying for employment, housing, education or benefits.

In addition to the above concerns, I would like to highlight a few additional and specific drafting issues. The bill requires that, upon expungement, police departments notify any third party who was supplied a record that now qualifies for expungement, in writing, to destroy such record. This is logistically impractical. For example, the NYPD can supply a surveillance photograph of a suspect wanted for a felony that we believe may be living in another state. If that suspect is subsequently convicted and his/her record becomes expunged 7 years after incarceration, it would then, years later, trigger the Department's requirement to reach out to each state that received our notice in writing. If the NYPD fails to contact just one party, we risk being sued for punitive damages. This requirement places too great of a burden on all police departments and prosecutorial agencies.

Furthermore, the bill only tolls the waiting period due to incarceration for expungement, not for sealing. Without tolling for sealing, convicted defendants can still be incarcerated and their records will be automatically sealed while they remain in the system. The NYPD recommends that tolling for incarceration apply equally to both the sealing and expungement of records.

Finally, the Department would urge the Legislature to take a close look at the amount of time that individuals must remain free of crime before being afforded these benefits and whether this benefit should be extended to the wide breadth of crimes proposed. For instance, should a school bus company know that an applicant for a driving position has had DWI convictions in the past or should a company that provides services to seniors be entitled to know that a home health aide applicant has been convicted for elder abuse?

The NYPD favors laws that are both fair to the communities we serve as well as those accused and convicted of committing crimes. This law should be calibrated to ensure that people are not



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adversely impacted in their job search or obtaining housing while allowing law enforcement to utilize records that promote public safety. We are ready and willing to work with the Senate, Assembly and the Governor in an effort to create a fairer criminal justice system that maintains public safety for all New Yorkers.

Thank you for the opportunity to appear before you today.