



Senate Codes Committee Hearing

S1553-A “Clean Slate”

S1553-A An act to amend the criminal procedure law, the executive law and the correction law, in relation to automatic expungement of certain convictions

Thursday, May 6, 2021

~Joint Testimony~

**New York State Association of PBAs, Inc.
&
Police Conference of New York, Inc.**

The New York State Association of PBAs and the Police Conference of New York are “umbrella” organizations collectively representing the vast majority of professional police and law enforcement unions in New York State.

We write to express our concerns with this proposed legislation as currently written, to mandate the sealing after one year and expungement after five years of all criminal records. We think this is an overly broad expansion of privacy rights that warrants further study.

We do, however, understand that in some very limited circumstances, such as first and/or low-level non-violent offenders, the sealing or expungement of certain criminal records has merit and is worth exploring.

New York State as well as other states and the federal government have worked hard to develop elaborate, intricate, sophisticated and highly effective systems of creating, maintaining and sharing detailed criminal histories on those citizens convicted of crimes. This system is necessary to provide licensing agencies, prospective lenders, prospective employers, law enforcement, and others to gain the information they needed to make intelligent decisions and to prevent oftentimes violent and recidivist criminals from simply moving on after criminal conviction, falsifying the next application that asks “have you ever been convicted of a crime” and repeating or continuing his or her crimes through deceit. This bill allows convicted felons, even those with multiple felony convictions, to hide their past and obtain employment as school teachers, daycare workers, home health aides, bank tellers, accountants, lawyers, etc., where they could do untold damage. Responsible employers in all fields conduct criminal background checks on prospective employees for good and valid reasons, and if they don't they are subject to potential liability for negligent hiring or retention. This bill would make that impossible and it would be a giant step backwards in public safety.

When the subject was disclosure of police personnel records, the supporters of that legislation were not satisfied with mere disclosure of adjudicated disciplinary determinations. This would essentially be the equivalent of a criminal conviction in that context, and proponents insisted that such disclosure include all allegations against police officers, including those that were unadjudicated, those that had been found to be unsubstantiated, and unfounded and even anonymous complaints from the beginning of their careers until the day they retire. Now that the subject is records documenting criminal convictions, this bill would take the exact opposition approach and preclude the disclosure not only of allegations of criminal conduct, but convictions, either by plea or trial and even after appeals.

You can certainly understand our being totally perplexed by the fact that a police officer who had an anonymous complaint lodged against him or her that was found to be unsubstantiated 20 years ago is not being afforded the same “clean slate” as a convicted felon who has not been re-arrested for five years. It is – in the true sense of the words – profoundly unjust.

Reasonable access to records of criminal convictions is vitally important to an orderly society and should not be sacrificed simply because convicted criminals have paid their debt to society. We do not believe that convicted arsonists have a right to become firefighters; convicted embezzlers have a right to seek employment as bank tellers or accountants; convicted perjurers have a right to become lawyers, or that convicted child abusers have a right to become school teachers or daycare workers. The fact that this bill makes an exception at subpart 4(h) to allow the employers of a prospective police or peace officer to obtain records of criminal convictions demonstrates that its supporters realize the importance of this information. We believe that it is equally important that all other prospective employers continue to have that same right.

We believe that all citizens are responsible for their conduct, past and present, and should be held accountable for it. Employers are entitled to and should be encouraged and enabled to make fully informed hiring decisions in deciding who, for example, they will entrust their funds or their client's funds with, their students' safety and welfare with, their elderly patients in need of home care with, etc. This bill would make all of those things impossible.

Finally, we have observed so many legislators saying these words lately: “Everyone deserves a clean slate!” We respectfully disagree because we are listening to those statements through the ears of a police officer. Those ears cannot process the fact that felons, who have either been convicted or pled to their behavior, are being offered a clean slate, while police officers who have been simply accused get no such consideration.

Dated: May 12, 2021

Respectfully submitted,

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