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July 31, 2023

The Honorable Kathy Hochul
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Re: NYSBA Support for S7551A/A1029C, the Clean Slate Act

Dear Governor Hochul:

The New York State Bar Association (NYSBA) strongly supports the Clean Slate Act, as proposed in S.211A (Myrie)/A.1029C(Cruz), which would automatically seal conviction records for New Yorkers who have served their sentences. This legislation would allow people with conviction histories to meaningfully rejoin their communities after criminal legal system involvement. Specifically, S.211-A/A.1029-C would automatically seal convictions for most civil purposes after a 3-year waiting period for misdemeanors and traffic offenses and an 8-year period for felonies.

The Clean Slate Act carefully balances the harm of perpetual punishment for people with criminal records against society's legitimate interest in allowing access to prior records where absolutely necessary. Sealed records will only be made available to specified court actors and law enforcement agencies in limited circumstances, such as when the person with the sealed record is subject to a pending criminal action or where they are a witness in a criminal or civil proceeding, among others. Sealed records will also be made available to entities that are required by state or federal law to request a fingerprint-based check of criminal history information, to agencies that issue gun licenses, and to prospective employers of a police officer.

The issue is one of justice, particularly racial justice.

NYSBA membership addresses issues that confront people unable to afford counsel in family and criminal courts. Public defense clients are, often, people of color. As attorneys we have an obligation to confront the pervasive problem of racial injustice head on, and to identify effective measures to eradicate it. Attorneys and their clients confront racism and disparate outcomes at every level of the criminal justice system; that, in turn, is reflected in criminal records and the consequences of those records, which may affect jobs, housing, and all other aspects of a person's life, including Family Court matters, as observed by lawyers providing mandated representation there.

Sealing and/or expungement are critical tools to protect poor people and people of color from a lifetime of collateral consequences.

The devastating effects of a criminal record are well established,¹ and the collateral consequences of a criminal record are seemingly endless. According to the National Reentry Resource Center, New York law imposes more than 1,200 consequences for people with criminal convictions, creating barriers to employment, housing, public assistance, accessing financial aid, serving on a jury, and professional licensing, among others.²

By virtue of New York's ongoing and historical policing and prosecution practices, these collateral consequences are more often imposed on people of color. In New York City, for example, 48 percent of those arrested for marijuana possession in 2017 were Black, 38 percent were Latinx, and only 9 percent were white. When policing and prosecution are skewed towards enforcement in Black and brown communities, and not white communities, it is those communities who bear the brunt of lifelong collateral consequences.

A record provides often-insurmountable barriers to becoming and remaining a self-sufficient, productive member of society after the sentence is served. The State Bar's Task Force on Incarceration, Release Planning and Programs³ has observed:

that decisions about sealing and expungement laws and other rights restoration processes should be informed by research clearly showing that people with convictions that are remote in time are no more likely than people without convictions to engage in criminal activity. With the passage of time, a conviction is no longer indicative of risk of offending and thus is not relevant to decisions about employment, housing, higher education, volunteer work, etc. This is true of all types of convictions, including violent felony and sex offense convictions. This research challenges all of us to ask whether it makes sense to require people to endure the lifetime of stigma associated with a criminal record, and thus forever be denied the essential features of a law-abiding and dignified life.

Without some end-date for the myriad consequences of a criminal conviction, even a short sentence becomes a form of life sentence. And for people already living with the challenges of systemic racism and poverty that, too often, underlie their involvement in the criminal system, the devastating burden of perpetual criminal records can be a final blow.

Additional Considerations

a. Sealing and Expungement Should Be Automatic

When CPL 160.59 was enacted, its proponents expected tens of thousands of people to benefit, yet, as noted above, fewer than 3,000 people have benefited. One of the major barriers to success is the complicated application process. Attempting to clear clients' records via CPL 160.59 has shown NYSBA members that for sealing and expungement to be meaningful, it must be automatic. That means that the state must create an algorithm to ensure that people who qualify for sealing or expungement have their records sealed without filing an application or paying a fee or appearing before a judge.

¹ See, e.g., U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* (2019), available at <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf?eType=EmailBlastContent&eld=d37030a2-bfe6-4784-866a-7db61d64f357>. Website visited on December 15, 2021.

² National Reentry Resource Center, *National Inventory of Collateral Consequence of Conviction*, available at <https://niccc.nationalreentryresourcecenter.org/consequences>. Website visited on December 15, 2021

³ The New York State Bar Association, *Report of the Task Force on Incarceration Release Planning and Programs*, (2019), available at [20210128_Approved-and-Amended-Report-of-Task-Force-on-Incarceration-Release-Planning-and-Programs-4.22.19.pdf](https://www.nysba.org/20210128_Approved-and-Amended-Report-of-Task-Force-on-Incarceration-Release-Planning-and-Programs-4.22.19.pdf) (nysba.org)

b. Town and Village Justice Courts

Legislation governing sealing and expungement should consider these local courts and ensure that any protections for accused or convicted people are extended to people who may appear before them. Similarly, people who work in these courts, including judges, prosecutors, and defenders, should have the same access (or lack of access) to sealed records that people who work in other courts across the state have.

c. Protecting people whose cases are already sealed.

There are many kinds of records that already should be sealed under existing law; yet state agencies fail to properly update the sealed status in their records, and clients suffer as a result. For example, criminal history (RAP sheet) errors are exceedingly common. According to an examination of 3,499 RAP sheets by the Legal Action Center from 2008 to 2011, at least 30 percent of records contained at least one error, and some contained as many as ten or more.⁴ RAP sheets often list dismissed cases that should have been sealed pursuant to CPL 160.50, convictions sealed pursuant to CPL 160.58 or 160.59, or youthful offender adjudications. When sealed cases are improperly listed on a person's RAP sheet, such cases can unduly influence the judge or prosecutor in critical decisions such as setting bail, deciding whether to let a person participate in diversion, or plea negotiations. It is critical that legislation related to sealing and expungement address New York's ongoing failure to properly seal and update records across multiple state and local agencies.

Based on the foregoing, and NYSBA's 2019 Report of the Task Force on Incarceration Release Planning and Programs⁵ (pgs. 27-33), NYSBA strongly supports the Clean Slate Act and urges that the legislation be approved. We welcome the opportunity to discuss S.211A/A.1029C and any questions your office may have for us. Please do not hesitate to contact me or our General Counsel, David Miranda, who can be reached at dmiranda@nysba.org, 518-487-5524.

Respectfully,



Richard C. Lewis
President, NYSBA

⁴ Legal Action Center, "The Problem of RAP Sheet Errors: An Analysis by the Legal Action Center," (2011), available at https://www.lac.org/assets/files/LAC_rap_sheet_report_final_2013.pdf.

⁵ The New York State Bar Association, *Report of the Task Force on Incarceration Release Planning and Programs*, (2019), available at [20210128_Approved-and-Amended-Report-of-Task-Force-on-Incarceration-Release-Planning-and-Programs-4.22.19.pdf](https://www.nysba.org/20210128_Approved-and-Amended-Report-of-Task-Force-on-Incarceration-Release-Planning-and-Programs-4.22.19.pdf) (nysba.org)