

Testimony Before the Judiciary Committee In Support of Committee Bill 186: An Act Concerning The Release and Sale of Conviction Information After A Pardon Is Granted

April 9, 2007

Good afternoon, my name is Lisa Levy and I am a staff attorney at Greater Hartford Legal Aid, Inc. (GHLA) and a member of the state wide Employment Task Force of the affiliated legal services programs in Connecticut (Connecticut Legal Services, New Haven Legal Assistance, and GHLA). I represent low income individuals and seniors with employment problems. Our clientele at GHLA and the affiliated legal aid organizations throughout the state include individuals who have prior criminal records that severely limit their opportunities to obtain sustainable employment. We represent some individuals who apply for pardons before the Board of Pardons and Paroles. We assist other clients in understanding which portion of their criminal record has been erased by law, and their rights in pursuing employment despite a criminal record.

I am here, with the support of our state wide task force, to testify in favor of Committee Bill No.186, which would require consumer reporting agencies and state agencies that hold criminal record data to take specific action to ensure that only current, complete and publicly available data will be included in a consumer report issued for employment purposes.

Why is this bill needed? Under Connecticut law, only certain criminal history record information may be disclosed to the public. Information on "convictions" of a crime (including guilty pleas) is publicly available. Also, current offender information concerning the current status of persons arrested, under prosecution, incarcerated or who have an appeal pending may be disclosed. However, there is a universe of non-conviction information that is not available to the public. This includes criminal records that have been "erased" by operation of law such as when a person is found not guilty after trial, a criminal charge has been dismissed, a finding that one is a youthful offender, continuances and nolle after a time period, and in addition, expunging a record when a person receives a pardon for a criminal offense. A pardon, or an erased record, whether by a dismissal, nolle charge, or otherwise, effectively negates the underlying criminal history, allowing the individual to state, on an employment application that he or she has never been convicted of or pled guilty to a crime.

Yet, despite the mandated privacy of these criminal records under state law, there is a recurring problem with inadvertent and unwarranted disclosure of such records through inadequate background checks done by some consumer reporting agencies. The need for this bill became more urgent when the recommendations of the Judicial Department Public Access Task Force were announced and, in part, incorporated into Raised Bill No. 126, which would place all superior court criminal docket information on the internet. In addition, Substitute House Bill No. 7266, would require the Department of Public Safety to place its criminal history record information on the Internet for public access.

Through discussions with staff at the Department of Public Safety and the Judicial Department, we have learned of numerous instances where consumers with an erased criminal charge or a conviction that was pardoned, have their prior criminal history "pop up" in a subsequent employment background check by a consumer reporting agency. Why do some individuals who have had criminal records erased or pardons granted still receive consumer reports that contain the same non-public criminal record data that should have been removed? The problem can occur when the consumer reporting agency fails to obtain the most up-to-date criminal record information. One staffer from a state agency shared with us that this problem recurs because the consumer reporting agencies do not always elect to purchase the most reliable, up to date criminal data through a State Police Bureau of Identification criminal record check, which costs \$25.00 per person, opting instead to get a subset of free information, but

perhaps not the most complete and up to date information, from the Judicial Department or some other source.

Also contributing to the problem is the "lag time" between granting the pardon or erasing the record and entering that information electronically in order to have the applicable criminal records removed from the State Police Bureau of Identification data base. According to staff from the State Police Bureau of Identification and the Superior Court records department, the "lag time" between erasure of records by the court and electronic deletion is fairly short once the State Police is notified ( one or two days), and is longer after a pardon is granted ( can be in excess of 2 months ). This time lag underscores the need for consumer reporting agencies to be conscientious in checking that the criminal record data is up to date as of the date a report is issued. When inaccurate, outdated criminal history is included in a consumer report, this can result in rejection of the individual's employment application or termination of existing employment. With a greatly expanded universe of criminal record information soon to be available on line, the problems of ensuring timely and accurate reporting of criminal record information through consumer reports becomes more daunting for all ex-offenders.

Committee Bill No. 186 requires consumer reporting agencies to take reasonable action to ensure that only up to date, complete and publicly available criminal record information will appear in a consumer report issued for employment purposes. Although the bill is modeled somewhat on a similar provisions in the federal Fair Credit Reporting Act 15 U.S.C. §1681k, this bill is even more protective of consumers' rights by requiring that additional safeguards be employed by consumer reporting agencies and any agency that maintains criminal record data. The requirement that the consumer be notified at the time of issuance of the consumer report provides this consumer with some advance notice of an error in his or her criminal record data, hopefully, prior to an adverse employment decision. More importantly, the requirement that the consumer reporting agency have procedures to ensure that the criminal record data is "complete and up to date" when the report is issued – including a requirement of verification from an appropriate state agency that maintains the data, ought to ensure that only accurate, publicly available criminal data is included in the consumer report.

We would urge the Committee to consider whether the bill should require, in section 1, subsection h(2)(B) that a verification of the accuracy of criminal record data be obtained from the State Police Bureau of identification as opposed to the Judicial Department. The State Police Bureau of Identification has had in place for many years a formal, reliable procedure for generating publicly available criminal record information (drawn directly from Judicial Department records) and is the official " go to" agency for individuals and entities to obtain a certified criminal record. In fact, the Board of Pardons and Paroles requires applicants to obtain their certified criminal record directly from the State Police Bureau of Identification prior to applying for a Pardon. By contrast, the Judicial Department lacks such a procedure and could be overwhelmed by the voluminous requests occasioned by the bill's verification requirements. (A proposed re-wording of this provision and other minor proposed re-wording is attached to this testimony).

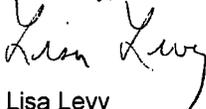
Section 2 of the bill is necessary to protect consumers' rights to the privacy of their non-public criminal record data as well as the accuracy of the public criminal record information. Section 2 requires the Judicial Department, the Department of Public Safety, as well as any other agency that holds criminal history record information to take specific action to safeguard the accuracy of the criminal record data that is released. Due to the volume of current offender information that is now publicly available from the Judicial Department through its published dockets as well as the likely increase in such publicly available data agency internet websites later this year, agencies should be required to update their criminal record information within two business days after a criminal record is erased, modified or corrected or when a pardon is granted. In addition, the "notice" requirement to be posted on the publicly available data is essential to warn consumer reporting agencies that they cannot rely on the accuracy of any criminal record data other than on the date of original disclosure by the agency, and that an update is necessary as of

the data that a consumer report is finalized and issued to the user.

Finally, Section 2 of the bill ensures that the actual data posted on the Internet must be only criminal record data that is available to the public – conviction information or current offender information – with the source of such information, the State Police Bureau of Identification, the agency that provides all formal criminal record checks. The bill prohibits posting of any non-public criminal record data that is available only for law enforcement and similar internal purposes through the Offender Based Tracking System. (We urge the committee to consider the proposed language attached to this testimony, which suggests brief amendatory language to Section 2(b) to ensure that non-public, “nonconviction” information is not posted on the internet).

No. 186 requires that both consumer reporting agencies and state agencies take action to ensure that only publicly available and otherwise accurate criminal record data is included in an individual's consumer report for employment purposes. Requiring all agencies that maintain criminal record data to expediently update its records by erasing, expunging or otherwise correcting criminal records safeguards the accuracy of the data for consumer reporting agencies, ex-offenders and the public in general. By requiring that the consumer reporting agency update criminal record data included in a consumer report by confirming the accuracy and completeness of the data as of the date the consumer report is issued, consumers with a non-public criminal history will no longer have employment opportunities jeopardized by inaccurate, outdated reporting of their criminal history. Rather, with the passage of No. 186, those individuals who have merited a pardon or whose criminal records have been erased should be able to rely on the accuracy of the criminal record data made available to prospective employers and to the public at large.

Sincerely,



Lisa Levy  
Attorney

Greater Hartford Legal Aid, Inc.

Proposed Revisions to Committee Bill No. 186

1. We would urge the Committee to amend Section 1, Conn. Gen. Stat. § 31-51i, (h)(1)(c) to ensure that the definition of “criminal matters of public record” encompasses only publicly available criminal history. Records of erased records or pardons are never publicly available, and therefore should not be a part of this definition. See Conn. Gen. Stat. §§ 54-142g, 54-142k. (Proposed revisions are underlined and proposed deletions are bracketed). Conviction information as defined by Conn. Gen. Stat. 54-142g(c), and current offender information as defined by Conn. Gen. Stat. 54-142g(d) may be disclosed to the public.

Section 1. (h)(1)(C) “criminal matters of public record” means information on the current status and location of persons obtained from the Judicial Department relating to arrests, summons, indictments, convictions, appeals, sentence disposition [erased records, pardons] and outstanding judgments and any other information that may be disclosed to the public as “current offender information as defined by section 54-142g(d) or “conviction information” as defined by section 54-142g(c).

2. To ensure that a criminal record is complete and up to date, we would request that, in Section 1, subsection (h)(2)(B) the consumer reporting agency be required to verify information with the State Police Bureau of Identification (SPBI), rather than the Judicial Branch. The SPBI is the agency that already provides formal criminal records checks on request and generates a certified criminal record history from its statewide database (derived from Judicial Department records) for pardons, consumer reports and other purposes. The Judicial Department does not have this formalized procedure for generating publicly available criminal records. Also, since subsection (B) would be included within the requirements of subsection (h)(2)(C), we would recommend collapsing the two subsections into subsection (h)(2)(B), as follows:

(h)(2) (B) Maintain procedures designed to ensure that any criminal matter of public record reported is complete and up-to-date as of the date the consumer report is issued, including procedures to verify any criminal matters of public record with the State Police Bureau of Identification [Judicial Department] to ensure that information reported is complete and up-to-date as of the date the consumer report is issued;

3. We urge the committee to make the following minor revisions to Section 2 of the bill, which amends Section 54-142k(b), in order to use the correct statutory terms -- “conviction information” and “current offender information” -- to describe criminal record information that is publicly available pursuant to Conn. Gen. Stat. §§ 54-142g, 54-142k. (“Nonconviction information” is not publicly available). “Criminal history record information” denotes the universe of criminal record data, both that which may be disclosed to the public and that which is by law, not to be disclosed. The notice to be posted on publicly available criminal record data should contain the warning that the accuracy of the data cannot be guaranteed other than on the date that the information is “first disclosed,” as opposed to “obtained,” since only disclosure to the public will necessitate the warning on accuracy.

Sec. 2 (b) Each person or agency holding criminal history record [conviction information or nonconviction] information shall (1) update such information not later than two business days after related criminal history record information is erased, modified or corrected or when a pardon is granted; (2) post on any conviction information or current offender information [nonconviction information] available to the public a notice that the criminal history record information may change daily due to erasures, corrections, pardons and other modifications to individual criminal history record information and that the person or agency cannot guarantee the accuracy of the information except with respect to the date the information is first disclosed [or obtained]; and (3) post on any Internet web site maintained by or on behalf of the person or agency only information that is available to the public through the State Police Bureau of Identification and not information available solely through the Offender Based Tracking System [developed by the Office of Policy and Management].