



Greater Hartford Legal Aid

**Testimony of Alexis N. Highsmith, Greater Hartford Legal Aid, Inc.**

**In Opposition to Section 2 of HB 6701, AAC Court-Appointed Trustees, Nolle Erasure Procedures and Temporary Detention**

**March 26, 2009**

Good morning Chairman Lawlor and Chairman McDonald and members of the Committee. My name is Alexis Highsmith. I am an attorney at Greater Hartford Legal Aid.

I am here to testify in opposition to Section 2 of HB 6701, which requires a defendant to affirmatively file a motion to erase a record regarded as nolle, when a case has been continued at the request of the prosecutor, for at least thirteen months with no activity.

As way of background: Most nolle are formal docket entries showing that the prosecution will not pursue a particular charge. The prosecution makes this decision at its discretion. Currently, state statute mandates that a nolle be erased from one's record after 13 months. Erasing a nolle is an operation of law, conducted by the courts. However, there are also situations where a prosecutor may ask for a continuance and the case will be continued without any activity for 13 months. These cases are also eligible for a nolle and therefore should also be erased.

It is unfair to require a defendant to motion for the nolle charge to be erased from their record. If the prosecution determines that the evidence fails, then it should bear the responsibility of erasing the record. The decision of whether or not to go forward with a case lies only with the prosecution.

In a time when the legislature is making an effort to remove barriers to erasing criminal records, HB 6701 impedes that goal. The proposed bill places an unfair burden on defendants. At Legal Aid, we represent clients applying for pardons from the Board of Pardons and Paroles. We began representing these clients after discovering that many applicants experienced numerous problems navigating the pardons process. This proposal would impose yet another hurdle for someone to erase their record.

The Committee should especially consider individuals with a single offense charged. If this charge is nolle, but remains on one's record, it may have a significant impact on one's ability to obtain housing, employment, or other benefits. A defendant may face adverse action if the record remains available to an inquiring party.

We would suggest that a system be developed that will flag cases that have been continued at the request of the prosecutor, similar to the process currently used to flag cases that have been formally nolleed by the prosecution at the plea stage. Both types of cases need to be tracked for 13 months and can then be erased as an operation of law.

I ask that you reject Section 2 of HB 6701, as it will hinder CT's longstanding efforts to encourage the appropriate erasure of criminal records.