HOUSING COMMITTEE

PUBLIC HEARING

THURSDAY, FEBRUARY 7, 2019

TESTIMONY OF CONN NAHRO

ON:

Proposed S.B. No. 54 AN ACT CONCERNING A LANDLORD'S ABILITY TO REVIEW CRIMINAL RECORDS RELATING TO A PROSPECTIVE TENANT.

Proposed H.B. No. 5713 AN ACT CONCERNING INQUIRIES ABOUT THE CRIMINAL CONVICTIONS OF A PROSPECTIVE TENANT.

Proposed H.B. No. 5712 AN ACT CONCERNING THE CONNECTICUT CLEAN SLATE LAW.

Senator Bradley, Representative McGee, Senator Hwang, Representative Dauphinais, and members of the Housing Committee:

As a member of the Commission on Equity & Opportunity's Housing Reentry Working Group, Conn NAHRO is pleased to offer the following comments on the bills being considered today.

Conn NAHRO's mission is to advocate for and support public housing authorities in their efforts to provide decent, safe, and affordable housing and to preserve Connecticut's public housing stock for future generations. Our membership represents a strong group of housing professionals, housing providers, and industry partners. Our member housing authorities have the responsibility of managing or administering housing for 150,000 families and individuals in over 62,000 housing units throughout the State of Connecticut.

Our members provide housing for the most vulnerable families and individuals in our society, including individuals with a criminal history. Within this context, there are several federal requirements that Housing Authorities must abide by and that guide our admissions policies.

As noted in the "Hope for Success: Returning Home" report, federal regulations limit the discretion that Housing Authorities can exercise for individuals that have committed certain crimes. Specifically, 24 CFR 960.204 requires that housing authorities must deny housing to any individual (1) on the lifetime sex offender registry and (2) any individual that has manufactured methamphetamine on the premises of a federally assisted housing authority. Additionally, those regulations require housing authorities to establish standards that prohibit admission, unless specific criteria are met, for persons (1) evicted for

drug-related criminal activity, (2) engaging in illegal use of a drug, or (3) abusing or showing a pattern of abusing alcohol.

Rather than arbitrary and discriminatory policies, these rules are in place to ensure the safety of all our residents, which includes the elderly, individuals with disabilities, and families with young children. Where these mandatory exclusions do not apply, we take great pains to screen applicants on an individualized basis and to fully account for the totality of an individual's circumstances. I am unaware of any housing authority in Connecticut that practices a blanket policy of denial for all criminal offenses. Indeed, such an approach would be a violation of the Fair Housing Act.

HUD has adopted a three-step analysis to identify whether a housing denial based on an applicant's criminal history violates the Fair Housing Act under the disparate impact theory. First, it must be shown that a criminal history policy does, in fact, have a discriminatory impact upon a protected class (race or national origin). If this first burden is satisfied, then the housing provider must prove that the challenged policy or practice is justified on the basis of being necessary to achieve a substantial, legitimate, and nondiscriminatory interest. Finally, if a substantial nondiscriminatory interest for the policy is demonstrated, then a party may still prove that such interest could be protected by a less discriminatory alternative.

Housing Authority policies regarding criminal history screening respect and follow this guidance. As an example, attached is the Policy Statement of the Hartford Housing Authority with respect to Denials of Admission related to an applicant's criminal history.

More than most, we are familiar with the challenges that individuals in our society can face, and also witness first-hand the success stories of our tenants that overcome adversity.

With that background, we offer the following specific comments on the bills below.

As written, **Proposed S.B. No. 54 AN ACT CONCERNING A LANDLORD'S ABILITY TO REVIEW CRIMINAL RECORDS RELATING TO A PROSPECTIVE TENANT** would direct the Department of Housing to establish a limited criminal records look-back period that a landlord may use when evaluating the housing application of a prospective tenant.

Conn NAHRO supports this concept and, in fact, our members typically already use a limited look-back period of between 5 and 7 years when screening applicants. Although the bill does not speak to the appropriate length of such a limited look-back period, we feel that a 7-year period would be appropriate. A shorter look-back period may tend to obscure an individual's potential for recidivism as they comply with the terms of parole or other supervised release conditions.

We also recommend that any look-back period needs to factor in any period of incarceration. The look back should allow for up to seven years of time, not including periods of incarceration. For example, if a person applied in 2019 and was in jail for two years, from 2016 & 2017, we would propose the look back period would be 7 years and therefor, based upon a 2019 application date, look back to 2010 (7 years+2 years).

Again, it is important to emphasize that this look-back period would not require a denial, but rather form the factual base upon which the individualized screening would take place, with opportunity for an applicant to present additional information for review.

As written, **Proposed H.B. No. 5713 AN ACT CONCERNING INQUIRIES ABOUT THE CRIMINAL CONVICTIONS OF A PROSPECTIVE TENANT** would prohibit a landlord from inquiring about a prospective tenant's criminal convictions, unless (1) the landlord has made an offer of housing or conditional offer of housing to the prospective tenant, and (2) the landlord's inquiry is limited to criminal **convictions** that occurred during the seven-year period immediately preceding the landlord's offer of housing or conditional offer of housing.

While we agree with the proposal to limit inquiries to seven years, which is in line with most housing authority policies already in place, we would suggest a slight modification to the bill language to tie the lookback period to take into account any period of incarceration, rather than solely be based on the date of conviction. Again, this suggestion is related to being able to properly assess an individual's potential for recidivism as they comply with the terms of parole or other supervised release conditions. To do so requires that an individual's conduct post-release, not just while they were incarcerated, be able to be part of the evaluation.

We respectfully disagree, however, with the proposal to essentially establish a "ban the box" framework for housing applications, at least as such policy would apply to housing authorities. As noted previously, housing authorities already use a formal, individualized screening process for applicants with a criminal history, and this process is effective in identifying individuals who pose a risk to our tenants and/or property while at the same time allowing the vast majority of applicants with some criminal history to qualify for our housing.

Postponing this process until after a blind screening would only serve to delay the approval process. If we wait for a conditional offer of housing it is extremely, unlikely for the criminal background check and review process to be completed in time to house the person (including an opportunity for applicant to meet to review the convictions and provide documentation as to mitigating circumstances or rehabilitation). It would be more beneficial for the applicant to review any criminal history during the wait list waiting period, rather than on backside.

We recognize, however, that in circumstances in which a landlord has not already adopted an individualized screening process for applicants such a post-facto approach may improve the ability of individuals with a criminal history to secure housing. This may be particularly true as the use of automated criminal background screening services by private sector landlords increases.

As written, **Proposed H.B. No. 5712 AN ACT CONCERNING THE CONNECTICUT CLEAN SLATE LAW** would (1) provide for the automatic sealing of a person's criminal record for any misdemeanor offense and certain felony offenses seven years after the date of a final judgment resulting in the person's conviction for such offense, and (2) make any criminal record sealed in accordance with subdivision (1) of this section accessible only by law enforcement agencies.

NAHRO recommends that any such proposal also include language to protect landlords from liability arising from a landlord's inability to access criminal records that have been sealed.

Thank you for your consideration.