

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.

205 ORANGE STREET
NEW HAVEN, CONNECTICUT 06510-2018
TELEPHONE (203) 946-4811
FAX (203) 497-8357

March 9, 2021

Judiciary Committee
Connecticut General Assembly
Hartford CT 06106

RE: Support for Proposed Substitute Language for S.B. 1019 AAC the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor and Felony Offenses, Prohibiting Discrimination Based on Erased Criminal History Record Information and Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Misdemeanor Sentences.

Dear Members of the Judiciary Committee:

I am submitting this testimony in support of proposed additional language to SB 1019. My name is Ellen Messali and I am an immigration staff attorney for the New Haven Legal Assistance Association, Inc., a statewide nonprofit organization dedicated to providing high-quality legal services to individuals and groups unable to obtain legal services because of limited income, age, disability, discrimination and other barriers. Collectively, its programs aim to secure justice for and to protect the rights of those residents of New Haven County unable to engage legal counsel.

As advocates who represent the most vulnerable members of our community, my colleagues and I view this legislation as a necessary, positive step in the right direction. We support its goal of breaking down the barriers to a successful re-entry for those in our community who have experienced incarceration.

We do, however, believe that it is critical for this legislation to include a provision that addresses the need for access to erased records by domestic violence survivors and their advocates, as well as immigrants facing removal proceedings or attempting to legalize their status. The language we propose is as follows:

“Notwithstanding erasure of any criminal history, record information pursuant to this act, the record of any conviction, including but not limited to any family violence or sexual offense, shall, to the extent that an otherwise erased or undisclosed record is retained by the holder of the information, be made available by such holder (a) to the State’s Attorney or the Family Relations Office, as appropriate, and to the victim or the victim’s attorney, representative or agent, in the investigation or prosecution of a person for a family violence offense for the issuance of an order of protection or for use in an immigration matter, and (b) to the individual, the individual’s attorney, and the individual’s representative or agent, in regard to any immigration matter in which disclosure of the full criminal history record of such individual may be required under federal law.”

As an attorney who has, for ten years, represented immigrants both in removal proceedings and in affirmative applications for status, I believe that this language is vital to ensuring that our Connecticut immigrant community is not unintentionally harmed by this legislation. Those unfamiliar with immigration removal proceedings may not realize how often an undocumented individual's criminal record affects what options for relief are available to that person, and is almost always a discretionary factor for the Immigration Judge to consider when rendering his decision. It would be fair to assume that erasing or limiting access to these records would benefit someone in this position. However, the Department of Homeland Security ("DHS") will always be able to access these records, regardless of erasure, and even worse, has absolutely no discovery obligation to the individual facing removal or his or her attorney. Today, with records often subject to lengthy FOIA and other request processes, immigration attorneys are frequently the last ones to see copies of their client's records, leaving them much less time (sometimes no time at all) to prepare their client's defense. Taking into account language barriers and lack of familiarity with our legal system, not to mention the amount of time that may have passed since an encounter with law enforcement occurred, many individuals are unable to accurately recount for their counsel specific details that may be important to their claims for relief. Passing this legislation without this proposed language would leave immigration attorneys completely without access to their clients' records, further widening the power differential between DHS and undocumented individuals.

Similar problems exist for our undocumented neighbors who seek to acquire lawful status affirmatively. Many such applications require one to prove "good moral character," and mandate that those who have a criminal record provide documentation demonstrating the disposition of previous criminal charges. Without access to these records, many individuals will not be able to satisfy the good moral character requirement, leading to the denial of these applications.

Additionally, without the proposed substitute language, U Visa applications for crime victims who have cooperated with law enforcement officials (often domestic violence survivors), would be made much more challenging for applicants and their counsel who need law enforcement to certify that a crime occurred. We have already observed police departments in this state express unwillingness to provide that certification where records of these crimes have been erased and are unable to be accessed. Without the proposed language, this practice will only get worse.

On behalf of the New Haven Legal Assistance Association and the many people we serve each year, I thank you for your time and for your efforts to ensure that this legislation is passed with the best interests of all members of our Connecticut community in mind.

Respectfully Submitted,



Ellen M. Messali, Esq.
Immigration Staff Attorney
New Haven Legal Assistance Assoc.