



# STATE OF CONNECTICUT

## OFFICE OF POLICY AND MANAGEMENT

### **WRITTEN TESTIMONY PRESENTED TO THE JUDICIARY COMMITTEE** **MARCH 10, 2021**

*Marc Pelka*  
*Undersecretary, Criminal Justice Policy and Planning*  
*Office of Policy and Management*

#### **RAISED BILL 1019: AN ACT CONCERNING 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**

---

---

Chair Winfield, Chair Stafstrom, Ranking Member Kissel, Ranking Member Fishbein, and distinguished members of the Judiciary Committee:

Thank you for the opportunity to submit written testimony on Raised Bill 1019, An Act Concerning 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.

First, I extend my appreciation to the committee chairs and several members for their leadership on the topic of record erasure. While working with the chairs and other state lawmakers on this topic, we have continually been moved by their principled commitment to reducing barriers facing people with criminal convictions in their districts and across Connecticut.

The administration is united in support of the clean-slate concept and has deeply engaged with stakeholders to ensure that concept can be executed successfully. We look forward to continuing to work collaboratively through the legislative process with all three branches of government and stakeholders to find the appropriate path forward on this topic.

The Governor's proposed budget and legislation reflect the administration's commitment to using information technology to lower barriers that result from a criminal record. Specifically, to support the creation of an automated erasure process, approximately \$2 million has been included in the IT Capital Investment Program bond authorization to address system costs at the implementing agencies: the Department of Emergency Services and Public Protection (DESPP), the Criminal Justice Information System (CJIS), and the Judicial Branch. Additionally, Section 5 in Governor Lamont's An Act Responsibility and Equitably Regulating Adult-use Cannabis (SB 888)

establishes an automated erasure process for certain convictions involving possession of controlled substances.

In most cases, a criminal conviction in Connecticut remains permanently on a person's record regardless of the seriousness of the offense, the age of the conviction, or the individual's progress toward rehabilitation. Because of well-documented racial and ethnic disparities in the criminal justice system, the permanence of most criminal convictions disproportionately affects communities of color.<sup>1</sup> As a result, an individual's criminal record can hinder his or her ability, long after completing a sentence, to obtain an education, employment, professional licensure, public benefits and housing.<sup>2</sup> These statutory and regulatory barriers are called "collateral consequences" of a criminal conviction, of which there are 558 cited in Connecticut statutes.<sup>3</sup>

Under current law, there are two methods by which an individual can get his or her criminal record erased by the Board of Pardons and Paroles (BOPP). The first method, for which people with virtually all types of convictions are eligible, requires the individual to submit a pardons application and have a full, in-person hearing before BOPP.

The second option, for which people with non-violent convictions are eligible, provided there is no victim interest in the case, is an expedited process, and requires the individual to submit a pardons application but not to appear for an in-person hearing before BOPP.

Raised Bill 1019 creates a third way for people with criminal convictions to get their records erased, using an automatic erasure process following a 7-, 10-, or 12-year waiting period, based on the class of conviction the person received, with the time period measured from the most recent conviction. Crucially, there is no requirement that the individual appear in person before the BOPP or even submit a pardons application at all. This extends relief to people who haven't availed themselves of the pardons process for a variety of reasons, including challenges navigating the petition process, a lack of awareness that the option exists, or concern about reengaging with the criminal justice system.

While this bill creates a new option for relief for individuals with criminal records, it does not remove any of the existing erasure options. Instead, this legislation aims to add another layer to the current system – a backstop of sorts – that will automatically erase an individual's conviction if they were not able to avail themselves of the pardons process prior to the automatic erasure kicking in.

Existing law already provides automated erasure of criminal charges that result in acquittal, dismissal, or nolle. Under current law, erasure generally means that information, while remaining physically present in electronic records system, is unsearchable and, thus, wouldn't appear in a background check. The record may still be accessed by criminal justice agencies, such as law enforcement, under special circumstances. When a record is erased currently, such as after a nolle, notification is provided across criminal justice agencies through a largely automated process. By applying this automated framework to criminal convictions that, due to their being low-level, do not warrant a full BOPP review, BOPP can focus on investigation, analysis, and review of more complicated cases.

The administration has worked intensively with staff from DESPP, the Judicial Branch, CJIS, and other agencies to plan an automated process to erase electronic criminal records for eligible convictions and disseminate record-erasure notifications to all relevant criminal justice agencies. With the greater clarity provided under release of this legislation, we will resume implementation planning efforts with the Branch and agencies.

Offenses in SB 1019 include Class C, D, and E felonies as well as all misdemeanors, along with unclassified offenses, with exceptions for violently sexual and nonviolent sexual offenses as well as convictions designated as family violence crimes. I appreciate the effort to include a wide range of offenses in the bill, recognizing that types of convictions may lead to different impacts on pursuits people with these records may experience in the community. Although the administration cannot support the entire scope of the bill in its current form, we appreciate the chairs' willingness to have ongoing policy discussions and will continue to provide input.

Additional comments are provided below.

The October 1, 2021 effective date would leave only a matter of months to implement a complex automated process in Connecticut involving a substantial investment in information technology infrastructure. Meeting this deadline would not be possible. We therefore would ask for a January 1, 2023 effective date.

The Department of Motor Vehicles has identified a potential conflict between this bill and federal requirements surrounding holders of commercial drivers' licenses. Federal Motor Carrier Safety Administration (FMCSA) regulations place limits on the degree to which convictions can be "masked"—in this case, erased—for CDL holders, per 49 CFR §384.226. If unresolved, this conflict would imperil the state's eligibility for millions of dollars annually in federal highway funding. OPM, the Governor's Office, and DMV are in active conversation internally and with FMCSA to determine the best path forward regarding this issue, and we stand ready to work with the proponents to resolve it.

Subdivision (e)(1) of section 3 of the bill includes "any inmate record held by the Department of Correction arising from such conviction" in the list of records that would be erased under the automated process. This subsection would seem to apply to DOC-maintained paper records, which would require personnel to apply erasure notations to files. We would suggest the policy focus on applying the automated erasure process to electronic case management systems, which can be accomplished efficiently using technology, and avoid staff-intensive, manual erasure of paper files. The largest impact of this bill will be the removal of newly erased convictions from background checks run by DESPP and third-party providers when people with those convictions are seeking jobs, education, and housing. DOC inmate records do not factor into these checks, and so the substantial fiscal cost associated with their erasure would achieve only minimal benefits with respect to the collateral consequences this bill seems to address.

Subdivision (e)(4) of section 3 specifies that decriminalized offenses "shall not be considered when evaluating [a] person's criminal history record information for the purposes of this subsection." We would suggest clarification to this section, which we understand to mean that decriminalized

offenses should not restart the 7-, 10-, or 12-year clock for erasure when reviewing a person’s record. We would also respectfully suggest that this section will be difficult to implement without an explicit list of offenses that have been decriminalized.”

Subdivision (f)(3) of section 3 creates a process for automatic erasure of records of persons convicted of misdemeanors while under the age of 18 years old. We believe that these records would already be automatically erased pursuant to the methodology established in the earlier sections of the bill.

Sections 12 through 37 of the bill would create a new statutory scheme to prohibit discrimination on the basis of an erased criminal record. While we support a dialogue about this important policy proposal, we view this as a distinct conversation from the one regarding creation of an automated records clearance process, and therefore would request that these provisions be placed in a separate vehicle. If this section is to remain in the bill, the administration will need to work with the proponents to resolve several technical concerns.

Finally, our Executive Branch agencies are continuing to review the provisions of Raised Bill 1019 and calculate any potential cost and technology implications. We look forward to continuing our work with the proponents to ensure automated erasure can be implemented successfully.

Thank you for your consideration.

---

<sup>1</sup> The Sentencing Project. “Racial Disparity.” <https://www.sentencingproject.org/issues/racial-disparity/>

<sup>2</sup> National Inventory of Collateral Consequences of a Conviction. “Searchable Database.” <https://niccc.csgjusticecenter.org/database/>.

<sup>3</sup> Ibid.