

S.B. 1019 – Erasure of criminal records
Testimony of Raphael L. Podolsky
Judiciary Committee public hearing – March 10, 2021

Recommended Committee action: AMENDMENT

I ask that the Committee, in approving this bill, make a small but important addition to its language. The purpose is to deal with two unintended impacts – one regarding domestic violence cases and one related to immigration proceedings. There are probably a number of places in Section 3 where it would fit, but our recommendation is that it be inserted as a separate subparagraph at line 173 of the bill. It should read 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 or 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.

Please note that this language would apply only to the extent the erased records still exist and have not been destroyed – it does not prevent destruction of erased records.

- **Access to non-DV records in DV cases:** Part (a) would allow the State’s Attorney, the Family Relations Office, and the victim of domestic violence to have access to a record of non-DV crimes when a protection order is being sought or when needed in an immigration matter. DV cases are already excluded from erasure under the bill, but non-DV records, especially ones revealing violent or abusive past behavior, are highly relevant to the issuance of restraining and protective orders, as well as in some immigration matters.
- **Access to one’s own records in immigration cases:** Part (b) would allow undocumented immigrants to have access to their own criminal records, which is essential to their giving full truthful information in federal immigration proceedings, particularly removal proceedings. Unfortunately, INS insists on applicants disclosing convictions that have been erased and can sanction – or potentially deport – for falsely swearing to an application that omits anything. Applicants sometimes cannot document their own criminal history without access to the records.