



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**TESTIMONY OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON STATE AND FEDERAL
LEGISLATION
MAY 19, 2022**

Good morning,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank Chair Abreu, and members of the Committee on State and Federal Legislation for holding this hearing today.

According to the National Institute of Justice, nearly 1 in 3 American adults has a prior arrest or criminal conviction on their record, including more than 2.3 million New Yorkers. Even a single prior conviction can mean a lifetime of obstacles and barriers to critical employment, licensing, housing, and educational opportunities. The Brennan Center for Justice estimates that some 337,000 New Yorkers have spent time in prison, missing out on \$1.9 billion in earnings every year.¹ This burden is borne disproportionately by low-income Black and Brown New Yorkers, who make up nearly three-quarters of this population. In New York City, for example, 48 percent of those arrested for marijuana possession in 2017 were Black, 38 percent were Latinx, and only 9 percent were white.

New York has a law that allows for conviction records to be permanently sealed under certain conditions; however, too few people know how to apply to have their convictions sealed or have the financial resources to do so. An estimated 600,000 New Yorkers are eligible for their records to be sealed; however, fewer than 2,500—less than one percent—have actually achieved this.²

People who have completed their sentences should not continue to be punished for the rest of their lives. New York must join a growing number of states across the country by passing S.1553-C/A.6399-B, the Clean Slate Act, introduced by New York State Senator Zellnor Myrie and Assembly Member Catalina Cruz. This bill would automatically seal conviction records after someone has completed their sentence, is off of parole or probation, has not incurred any new charges or convictions in New York State during the waiting period, and the conviction to be sealed is not a sex offense. Misdemeanor records would be sealed after three years, and felonies would be sealed after seven, eliminating the need to go to court or hire a lawyer. Multiple other states, including Michigan, Pennsylvania, and Utah, have all passed similar laws.

Today I call on the City Council to pass Resolution 0121-2022, which calls on the New York

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<https://www.brennancenter.org/our-work/research-reports/clean-slate-act-can-build-more-prosperous-new-york#:~:text=More%20than%202.3%20million%20New,1>

² <https://www.cleanslateny.org/facts>

State Legislature to pass the Clean Slate Act. This bill prioritizes public safety: licensing agents and law enforcement could still access sealed records in special cases, such as applications for firearm permits and prosecutions for new alleged offenses, and the three- and seven-year waiting periods ensure that the law benefits people who have both avoided contact with the criminal justice system for a significant period of time and are unlikely to become involved with it again. Passing this bill would create opportunities for hundreds of thousands of New Yorkers overnight: one study by the University of Michigan found that record-sealing laws increase both employment and wages among beneficiaries.³ Further, a March 2022 study found that states with more felony records tend to have lower statewide employment rates⁴; passing the Clean Slate Act would only benefit New York's economy as it continues to recover from the COVID-19 pandemic.

I look forward to working with Chair Abreu and the City Council to ensure that all New Yorkers who have completed their sentences do not continue to be criminalized and punished and to end the cycle of intergenerational trauma and racial and economic inequality.

Thank you.

³ <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3167&context=articles>

⁴ <https://www.sciencedirect.com/science/article/abs/pii/S0049089X21001265>

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Dear Senator Myrie:

TREASURER
DANIEL BRESNAHAN
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Thank you for your ongoing willingness to discuss your “Clean Slate” bill. You are to be commended for your commitment to providing more opportunity to those who have paid their debt to society, in order to allow them to reintegrate and to find housing and employment opportunities. Clean Slate is important legislation that has the potential to transform the lives of many New Yorkers. Because some aspects of the bill might impact victims and public safety, we must also recognize that any Clean Slate legislation should be carefully balanced, and that unintended consequences must be considered.

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The District Attorneys Association of the State of New York (DAASNY) previously supported New York’s newest sealing statute, Criminal Procedure Law Section 160.59, enacted in 2017, and prosecutors remain committed to helping people navigate the process of sealing past convictions. DAASNY supports second chances and understands that many New Yorkers’ lives would be transformed by a carefully thought-out Clean Slate law that expands the universe of convictions that could be sealed. DAASNY has taken a careful look at the most-recent version of the bill, S1553C/A6399B, and I would like to share some of our observations and concerns and offer what I believe to be some common-sense suggestions.

Access to Sealed Records

Your proposed bill rightly acknowledges the need to grant access to sealed records in specific situations to certain individuals and entities, specifically granting access to the defendant and defendant’s attorneys; to any court or prosecutor for the purposes of a pending criminal action; and to entities that are required by state or federal law to request a fingerprint-based check. I ask you to consider additional situations and entities where access to sealed records should be permitted.

- Access to prosecutors and law enforcement where a criminal investigation has not yet resulted in the commencement of a criminal action, for example, during investigative activity and grand jury proceedings. Under the Criminal Procedure Law, the phrase “criminal action” has a specific, narrow definition, and the bill’s use of that phrase would limit the ability of prosecutors and law enforcement agencies to use sealed records in aid of a criminal case before the filing of an accusatory instrument in a court. Access should allow prosecutors and police agencies to use those records for all purposes related to criminal investigations and proceedings. The New York State Bar Association (NYSBA) Sealing Committee

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Working Group has also recommended access to sealed records by any court or prosecutor for the purposes of a criminal investigation.

- Access to records for any proceeding pursuant to the Sex Offender Registration Act.
- Access to probation departments for the purpose of preparing pre-sentence investigation reports.
- Access to prospective employers who may have a bona fide interest in knowing whether a potential employee has been convicted of certain offenses that are directly related to the scope of their prospective employment. A non-exhaustive list: Child-care and education agencies and elder care services should have access to applicants' convictions related to child abuse or elder abuse, respectively; transportation agencies and bus companies should have access to convictions related to impaired driving and other traffic offenses; and financial-institution employers should have access to convictions for theft or fraud. The NYSBA Sealing Committee Working Group agrees, in principle, and has recommended a provision to ensure access to sealed records by bus companies, child and elder care providers, and others with special duties towards children or those who may need special care.
- Access to victims seeking to enforce court-ordered restitution. As written, the bill would prevent victims from getting access to the records that they need in order to initiate court proceedings for the enforcement of judgments of restitution.
- Access to prosecutors and police agencies for the purpose of processing federal UVvisa certifications. The U-Visa process allows non-US citizens to apply for permission to remain in the country if they have assisted in the investigation or prosecution of certain types of domestic criminal activity. For an individual to be eligible for a U-visa, a police agency or prosecutor's office must certify to the federal government that the individual assisted in such a case. As written, the proposed Clean Slate bill would preclude the review of records necessary to complete those certifications.

Exclusions for Pending Cases

Your proposal would exclude sealing of prior convictions if a defendant has pending cases. That is good policy and makes sense. As currently drafted, however, the exclusion would only account for cases pending in New York. A defendant could have unlimited cases pending in, for example, New Jersey or Connecticut, or in the federal system, and still have cases sealed in New York. Sealing should not be permitted when a defendant has cases pending in another jurisdiction. That exclusion would go to the heart of the reason behind a Clean Slate law, namely, to remove barriers for those who have paid their debt to society.

New York State's Existing Sealing Law and the List of Crimes Eligible for Sealing

In order to balance fairness with public safety, practical public policy dictates that some of the most-serious crimes should not be eligible for sealing, or in the alternative, should only be sealed after judicial review. Your bill does exclude from sealing any conviction that would make an offender eligible for classification under the Sex Offender Registration Act. New York's recently enacted sealing law, however, excludes certain crimes deemed significantly dangerous to the public, including sex crimes, murder, manslaughter, arson, kidnapping, and some weapons offenses. I suggest that you consider other exclusions that the Legislature just recently listed in the 2017 sealing legislation, exclusions that are set forth in current Criminal Procedure Law Section 160.59(1)(a). The law could then allow the possible sealing of some of those more-serious charges through judicial intervention, so that victims, prosecutors, and judges could have input into whether those defendants should have their records sealed, rather than automatic sealing under the proposed law being considered. In cases of that judicial intervention, adding the right to assigned counsel would help individuals navigate the process.

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Number of Convictions Eligible for Sealing

As noted, the admirable purpose of Clean Slate legislation is to remove obstacles facing those who have paid their debt to society. As written, however, the bill would allow sealing of an unlimited number of prior convictions. In effect, then, an offender could be convicted of a misdemeanor every three years and a felony every seven years and appear to the public like he had no criminal record at all. As a matter of sound public policy and public safety, to avoid that result there should be some limit on the number of convictions eligible for sealing.

Sealing Process

The proposed bill sets forth a “sealing process” for records to be sealed and requires prosecutors’ offices to undergo the onerous task of placing a “mark” on all photographs and all “official records and papers and duplicates and copies” related to a sealed conviction. That task seems burdensome and irrelevant, because prosecutors would be allowed to utilize sealed records for proper prosecutorial purposes. The proposed language specifically carves out the Department of Motor Vehicles, but not District Attorney’s offices. Prosecutor’s offices should be allowed the same exemption as DMV from this unnecessary and burdensome task.

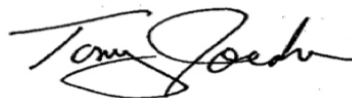
In addition, the proposed bill requires agencies holding sealed records to provide written notification of a sealing to federal or other-state agencies to which records have been transferred, so that those agencies may seal the records. That provision imposes a burdensome and unfunded procedure on prosecution and police agencies, to keep track of the disposition of records when a case was not sealed, and then to make those notifications after sealing. In any event, such a provision would be unenforceable across state lines.

Right to Private Cause of Action

The proposed Clean Slate bill creates a very broad private cause of action for “any defendant claiming to be aggrieved by a violation of this section,” “for damages, including punitive damages, and other such remedies as may be appropriate.” That provision would allow those convicted of crimes to sue government officials, as well as third parties, claiming that their sealed criminal records were obtained in violation of the Clean Slate law. That provision could only encourage a flood of litigation. I recommend that this provision be omitted from the proposed legislation.

I urge you to consider some of our concerns with the bill and hope to have more detailed conversations with you about how we can help to strike a balance by allowing more people to benefit from sealing, while also not unintentionally benefitting career criminals, sex offenders, or chronic drunk drivers.

Thank you,



J. Anthony Jordan
Washington County District Attorney
President, DAASNY