The Commission on
Women, Children, Seniors, Equity & Opportunity

CWCSEO

Connecticut General Assembly

Testimony before the Judiciary Committee of the Connecticut General Assembly

Presented by Steven Hernández, Executive Director of the Commission on Women, Children, Seniors, Equity and Opportunity (The Commission)
Monday, March 9, 2020 ~ 10:00 AM in Room 2C of the LOB

Senator Winfield, Representative Stafstrom, ranking & other distinguished members of the Judiciary Committee: My name is Steven Hernández, Executive Director of the Commission on Women, Children, Seniors, Equity and Opportunity (The Commission). The Commission is a nonpartisan legislative agency with a data driven, cross-cultural approach to policy innovation, promoting best practices, breaking barriers, and helping to build a more equitable and accessible state for all Connecticut residents.

Thank you for the opportunity to provide testimony in support of the following bills:

- **HB No. 5019**, "An Act Concerning Fair Futures Following Erasures of Criminal Records;"
- **SB Bill No. 403**, "An Act Concerning the Board of Pardons and Paroles, Erasure of Criminal Records for Certain Misdemeanor and Felony Offenses and Prohibiting Discrimination Based on Erased Criminal History Record Information;"
- **S.B. No. 377** "An Act Concerning Access to Legal Counsel for Children in Immigration Removal Proceedings;" and
- **S.B. No. 74** "An Act Prohibiting Female Genital Mutilation."

Why do we need automatic erasure of criminal records?

People with criminal records in Connecticut face at least 559 legal barriers that limit their ability to secure employment, housing and other post-incarceration opportunity. After conducting a series of community conversations on post-incarceration barriers to success, the Commission offered myriad recommendations on this subject to the legislative Council on Collateral Consequences' Housing Committee based on our report entitled *Hope for Success: Returning Home*.

This report recommended ending housing discrimination against people who have been incarcerated in a number of ways which included passage of automatic erasure of criminal records legislation also referred as "Clean Slate" and explained that 95 percent of people who have been incarcerated in Connecticut would return to society one day and therefore it was imperative for Connecticut to provide meaningful second chances for those willing to participate fully and fruitfully in our communities and by doing so Connecticut

would decrease recidivism rates, improve public safety, and enhance family reunification among other benefits.

Currently, pardons for most offenses, misdemeanors and felonies alike, are determined before the Board of Pardons and Paroles. If the Board of Pardons and Paroles does not grant a pardon, for whatever reason, the offense will not be erased from an offender's criminal record. An enduring stain on a person's record can severely hinder an individual's ability to secure housing, education, occupational licenses, and employment.

The proposed bills on this subject (i.e., HB5019 and SB409) would, if adopted, allow formerly incarcerated individuals seeking a meaningful second chance to participate fully and fruitfully in our communities by receiving an automatic record erasure based on mandatory criteria laid out by statute. The strength of this policy is that it would remove unnecessary collateral barriers for people who have fully completed their sentences and fully paid their debt to society so that they are able to once again be full contributing members of society. This in turn makes recidivism less likely, improves public safety, promotes rehabilitation and enhances family reunification.

H.B. No. 5019 – Under current law, a criminal conviction typically remains on a person's record forever, regardless of how minor the offense was, how long ago it was committed, or how much progress the individual has made toward rehabilitation. As a result, the record of a conviction will prevent a person's ability to get an education, a job, a professional license, and even their ability to access housing and public benefits. Because of well-documented racial and ethnic disparities in the criminal justice system, these collateral consequences of criminal convictions disproportionately affect communities of color

The Governor's bill, as proposed, would erase records of drug possession convictions along with most Class C and Class D misdemeanor convictions, except those involving family violence, sexual violence, DUIs, or bodily harm, after a person has gone seven years without another conviction. This approach would immediately expand access to employment and housing opportunities that in large part affect people with a criminal record. Therefore, we urge that the Judiciary Committee endorse the Governor's recommendation as a start of your work in eliminating barriers to reintegration.

Please note that the Governor's budget included approximately $2 million from the IT Capital Investment Program bond authorization to address technology system costs to facilitate the automatic erasure of criminal records.

S.B. No 403 – The Commission strongly supports SB 403, which builds upon the Governor's recommendation and provides automatic "**provisional erasure**" of Class C, D, & E felonies 12 years after the date of conviction. "Provisional erasure" would only permit law enforcement access to a criminal record; if no new crimes are committed or criminal cases opened during 2 years of "provisional erasure," full erasure would follow automatically; individuals can petition for erasure sooner if they have shorter sentences (3 years after completion of sentence for misdemeanor and 5 years after completion of sentence for C, D, & E felonies); Sex crimes and domestic/family violence crimes excluded; HB 403 also contain strong anti-discrimination protections to guard against discrimination against people discovered to have an erased record; and juvenile records prior to 2012 "raise the age law" will be erased automatically back to 1999, and prior to 1999 would be erased by petition.

Scope of the Problem

At the national level there are approximately 77 million Americans or 1 in 3 living with a criminal record (i.e., arrest records, court records, convictions, etc.) In Connecticut approximately 5,000 Connecticut residents complete their prison sentences and are released from prison each year. This means that there are tens of thousands of Connecticut residents trying to return to their communities, rebuild their lives and reunite with their families. Too often, their criminal record is a barrier to moving forward with their lives.

In Connecticut progress has been made to reduce the number of people incarcerated and while our state has made strides in reducing racial and ethnic disparities within the criminal justice system, the fact is that African-Americans, Latinos and Puerto Ricans are still disproportionately incarcerated relative to whites in Connecticut. The latest data available indicate that African-Americans in Connecticut are 9.4 times and Hispanics 3.9 times more likely to be incarcerated relative to whites adjusting for population size.

As a result of this and ongoing discrimination in housing and employment, people of color in Connecticut – especially in urban settings – experience high rates of homelessness and housing instability. To make things worse, Connecticut does not track the percentage of the reentry population who end up homeless in the two to three years post incarceration (when the risk is highest), which makes it very difficult to assess the full scope of this problem.

The Commission through our engagement in the *Council on the Collateral Consequences of a Criminal Record* noted that African Americans and Latinos are arrested and incarcerated at rates disproportionate to their representation in the general population and further discrimination based on a criminal history exacerbates those disparities.

Clearing a Criminal Record by petition is not always Easy

Currently, people with criminal records can apply to the Board of Pardons and Paroles to have them expunged three years after the disposition of a misdemeanor, and five years after a felony. The current process of applying is costly, complex and intimidating, making it inaccessible to most. In 2019 the State of Connecticut received 1,857 pardon applications. Only half were deemed eligible for application, according to state data. Of those, 77% were granted. It is important to note that not all offenses are eligible for record clearing and some record clearing requires an attorney or expensive filing fees. Furthermore, some records may only clear on petition from the person with the records and courts and prosecutors can have wide discretion on record clearing.

In a widely acclaimed University of Michigan Study (*Expungement of Criminal Convictions: An Empirical Study* by J.J. Prescott & Sonja B. Starr) basically found that only 6% of people who are eligible actually go through the petition process — researchers looked at the Uptake Rate ("aka" the rate at which those who are legally eligible for set-asides actually receive them (set-aside is the term for expunging in Michigan). They found that only about 6% of eligible individuals receive them within 5 years of the date at which they first qualify. Follow-up inquiries with the Michigan State Police suggest that the low rate can be primarily attributed to individuals' failure to apply, rather than to denials of applications by judges.

The study also looked at "Recidivism Rates" of set-aside recipients' and found that just 6% of all set-aside recipients are rearrested within five years of receiving their set-aside. **This data somewhat diffuses the most common policy argument against record clearing laws: that the public has a safety interest in knowing about the prior records of those with whom they interact**. The study also looked at employment and record clearing and found that a year after a record is cleared, people are 11 percent more likely to be employed and are earning 22 percent higher wages. Other studies have shown that even when a person is eligible to get their records expunged—only about 10% do. And this has caused policymakers and those in the criminal justice field to look ways to help people get their records cleared.

Therefore, an automatic pardon or erasure system as described here would ensure all who are eligible benefit in several positive ways, which also may have some great economic benefits to our national and state coffers. A 2016 study estimated barriers to employment for formerly incarcerated people cost the U.S. GDP between $78 to $97 billion annually. Based on Connecticut's percentage of the GDP, that's a loss of up to $1.2 billion in economic activity each year.

Utah (HB431 in 2019) and Pennsylvania (HB1419 in 2017) have already passed automatic expungement of criminal records and both states did so with strong bipartisan support. California (AB1076 in 2019) and New Jersey (SB4154 in 2018/2019) have also passed "Clean Slate" proposals and there is currently pending legislation in Michigan, and Washington.

S.B. No. 377 – The Commission is also supportive of the right to legal representation for children in immigration removal proceedings at the federal Executive Office for Immigration Review; and the creation of a task force to study the unmet legal needs of indigent residents' subject to federal immigration removal hearings.

In Connecticut, according to data released by the ACLU many of State residents facing deportation are not represented by an attorney. In fact, roughly 76 percent of Connecticut residents detained at the beginning of their cases in 2017 were unrepresented. Available data show that 65 percent of Connecticut children whose cases were initiated in 2018 did not have an attorney, an increase from 2017.

Finally, regarding the proposed task force to study (1) the unmet legal needs of indigent state residents subject to a removal proceeding at the Connecticut Executive Office for Immigration Review, and (2) the mechanisms available in the state to deliver and pay for legal representation for such indigent state residents, we recommend that the Executive Director of the Commission, or his or her designee, serve as a member of the task force, given our mandate and expertise on these issues.

S.B. No. 74 "An Act Prohibiting Female Genital Mutilation"[1]

Following the fall 2018 decision by a U.S. District Court judge ruling the federal prohibition of female genital mutilation as unconstitutional, the onus has fallen upon individual states to enact legislation to protect women and girls impacted by this violent practice. As such, the Commission both endorses S.B. No. 74, as well as provides evidence to ensure the legislation fulfills its stated purpose.

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[1] Research and background information provided by Yosha Singh, MPH candidate at the Yale School of Public Health and 2020 Graduate Fellow at the Commission.

Connecticut is one of only fifteen states in the United States to not currently have criminal law on the books addressing female genital mutilation — and this is despite anecdotal and epidemiological evidence available to the legislature reflecting the breadth and depth of the practice. In 2018, a victim of female genital mutilation came forward to the Connecticut legislature to plea her case in support of legislation banning female genital mutilation. Still, no law came to fruition. Moreover, according to a 2012 report by the Center for Disease Control, an estimated 513,000 women and girls were at risk of female genital mutilation in the U.S. This estimate is a three-fold increase from 1990 data. An estimated 2,700 of those at risk live in Connecticut, the CDC research arm suggests. In order to protect young women and girls from the violent practice of female genital mutilation — an act categorized as a human rights violation by the World Health Organization — the Commission stands in support of S.B. No. 74.

To be transparent, it is important to note that the CDC estimate cited is reflective of a "rapid growth of the number of immigrants in the U.S. coming from countries practicing female genital mutilation" and does not reflect an increased in prevalence of the practice of female genital mutilation from within those home countries themselves. It is also not necessarily reflecting an identified increase of the practice within the U.S. but is an estimate.

Similarly, it is important to note the limitations of criminal law to substantively deter behavior or identify perpetrators of violence. The Commission represents the interests of women and girls and thus endorses legislation protecting them, but it also represents the interests of immigrants of color in our communities. Therefore, while there is an imperative to enact legislation deterring violence, there is also nuance to be addressed within the legislation to ensure adequate equal protection for immigrant communities. Notably, Susan Yolen, Vice President of Public Policy & Advocacy at Planned Parenthood Southern New England, has stated that while she opposes the practice of female genital mutilation, she believes harshly criminalizing the ritual may, "only further isolate those who, now that they are in the U.S., can and should become more fully integrated into our way of life." She urges for Connecticut lawmakers to enlist public health professionals to study the practice of female genital mutilation in Connecticut to more precisely identify and eradicate the behavior.

Keeping in mind the various factors involved, the Commission endorses legislation against female genital mutilation in order to fill the void created at the federal level to protect against the violent practice of female genital mutilation, while urging that this Committee (1) ensure criminal penalty within the category of a Class D felony is applied equitably and appropriately, keeping in mind the barriers young immigrant women may bear in coming forward if immigrant

communities feel estranged from the public at large; (2) advocate for other forms of community-building outside of this legislation, again in an effort to not alienate immigrant communities from whom we are extrapolating and assuming and increased level of violence against women and girls in the form of female genital mutation; and (3) suggest the use of public health professionals to further investigate this issue. The Commission would be honored to work with this Committee and this legislature in advancing these issues with the urgency and nuance that they merit.

We urge the Judiciary Committee to vote in support of HB 5019, SB 403, SB 377 and SB 74 and I would be happy to answer any questions you may have on these proposals.