

BY ELECTRONIC MAIL

Hon. Kathy C. Hochul
Governor of the State of New York
New York State Capitol
Albany, NY 12224

March 30, 2022

**RE: URGING THE GOVERNOR TO SIGN CLEAN SLATE
LEGISLATION CONSISTENT WITH THE EXISTING
LANGUAGE IN S.1553C (Myrie) / A.6399B (Cruz)**



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President

Dear Governor Hochul,

The New York Civil Liberties Union (NYCLU) thanks you for supporting the Clean Slate Act, which will establish automatic record sealing for eligible offenses after three years for most misdemeanors, and after seven years for eligible felonies. Criminal convictions erect lifelong barriers to employment, housing, professional licenses, childcare, and other necessities that New Yorkers need to thrive. The inability to access these essentials of daily life frustrates successful re-entry and traps New Yorkers in cycles of poverty and reincarceration. The communities most impacted by the pandemic are also the most likely to have criminal convictions. As New Yorkers recover from the pandemic, the state should join Michigan, Utah, Delaware, Pennsylvania, and Washington D.C., by passing a Clean Slate initiative.

However, the existing standalone bill (S.1553C / A.6399B) is preferable in several ways to the language in the proposed executive budget.¹ The standalone bill would enable formerly incarcerated people who have successfully re-entered society to clear their records much sooner; it also provides critical protections for New Yorkers whose records are disclosed.

In tandem with a broad coalition of labor organizations, civil rights groups, racial justice organizations, public defenders, members of law enforcement, and people directly impacted by the criminal legal system, the NYCLU calls upon you to enact a version of Clean Slate that includes the legislature's language.

¹ F.Y. 2023 N.Y.S. Exec. Budget Public Protection & General Government Art. VII Legislation, Part AA.

Five Important Differences Between the Standalone Bill and Language in the Proposed Executive Budget

1. First, the clock for sealing eligibility should begin to run when a person is released from incarceration, rather than at the expiration of their maximum sentence.

Neither proposal permits sealing of records until after the end of parole or probation; however, under the standalone legislation, people would at least receive credit for all of their time in good standing out in the community, whether or not they are still under community supervision. The budget proposal's language instead delays eligibility for sealing: it explicitly excludes time on probation or parole, regardless of good standing, and starts the clock upon the expiration of the maximum sentence a person could have served. For instance, if someone given an indeterminate sentence of 2-6 years were released from custody in two years, and then released early from parole, their clock could not even start running for six full years from the date their sentence began.

The majority of those incarcerated in prisons in New York do not serve the maximum sentence, yet the budget bill "excludes credits or reductions a defendant may be due, may earn, or may have earned." Some incarcerated people are eligible to earn sentence reductions as good time credits for compliance with prison rules; or merit time credits for successful participation in work or treatment programs, by obtaining educational or vocational certificates, or by obtaining substance abuse treatment certificates.² Importantly, when Less Is More is fully enacted, most people on parole will be eligible to earn 30-day reductions from their term of parole supervision for every 30-day period in which they do not violate a condition of supervision. This will significantly reduce the amount of time some people spend on parole; however, for those released early from parole, only the legislature's Clean Slate proposal would reduce the potentially lengthy wait time for sealing.

To demonstrate the variance in eligibility dates under the two proposals, consider a person sentenced to an 8.33-25-year indeterminate sentence for a non-violent felony and then released from prison after 14 years. While on parole, this person earned early release credits, and they were released from parole in 6 years, rather than the full 11 years of parole they would have otherwise served. Under the standalone legislation, this person would attain eligibility for sealing *21 years* after their initial conviction: seven years after their release from prison in year 14.³ Under the budget language, this person would not be eligible for sealing for *32 years* after conviction, as 25 years is their maximum sentence.

² N.Y. Corr. L. § 803.

³ This person's parole would have finished in year 20, posing no bar to sealing.





It plainly does not enhance community safety to toll the clock for 11 years in such a case – a community member who earned early release from both prison and parole is on track for as successful re-entry as is possible, and the state should have no interest in undermining that. Moreover, as people on parole are subjected to extensive surveillance and monitoring from the government, compliance during the period of parole is considered a particularly dispositive indicator of successful re-entry into the community, and there is no reason that this time should not be credited toward eligibility for sealing.

2. Second, the standalone bill allows New Yorkers with prior records of VLT § 1192(1) to seal their records three years post-incarceration, while the executive budget bill would require payment of all fines before the three-year waiting period begins.

Of course, this will have a disproportionate adverse impact on any low-income New Yorker who cannot afford to pay immediately upon release. VLT § 1192(1) is a violation, a lower-level offense than a misdemeanor, and the only violation that never seals under current law. Yet, under the budget proposal, low-income people charged with this violation could have a longer waiting period than those convicted of a misdemeanor. Lengthening the waiting period for this violation solely based on wealth and ability to pay has no legitimate basis and offends principles of equity and fairness.

3. Third, only the standalone bill amends Human Rights Law § 296 to make it an unlawful discriminatory practice for an employer or housing provider to make inquiries about prior convictions that will be subject to sealed under Clean Slate.

Again, the primary benefit of record sealing is that it prevents employment and housing discrimination. If the Human Rights Law does not explicitly prohibit employers and housing providers from inquiring about prior convictions, and from making employment and housing decisions based upon prior convictions, they will likely continue to do so. Many New Yorkers with prior convictions will answer “yes” to prior convictions even if their records are duly sealed under the law and they are not required to do so. This undermines the entire purpose of Clean Slate. It is imperative that this language be included in the version of Clean Slate that is ultimately signed into law.

4. The standalone bill provides for civil enforcement against state agencies that disclose a formerly incarcerated person’s sealed records, but the proposed budget measure does not.

The disclosure of sealed records can have dire consequences for formerly incarcerated people attempting to reenter society and access housing and employment. The primary benefit of Clean Slate is that it shields



people from the adverse housing and employment consequences of a prior conviction; improper disclosure of people’s records robs them of this benefit and will inevitably give rise to injury. The potential for punitive damages helps incentivize compliance, while mitigating the injury that stems from improper disclosure. It is important that individuals be able to enforce their right to have their records sealed.

5. Finally, the standalone legislation’s effective date would make Clean Slate relief a reality more than three years earlier for many New Yorkers with prior convictions.

The standalone bill would take effect 120 days after it is signed; the effective date for the budget measure is 18 months after enactment. The budget bill also defers implementation for two additional years after the effective date for any eligible conviction that occurred prior to sealing. Coupled with an 18-month effective date, this two-year implementation delay would mean that many New Yorkers with prior convictions would not get the benefit of Clean Slate until the end of 2025 or later. Clean Slate will alleviate the burdens of underemployment and the difficulty of finding housing for thousands of formerly incarcerated New Yorkers that have successfully reentered society for years or decades, and for their families. Delaying this impact for years will only hurt the people that the law is designed to help.

The NYCLU respectfully urges you to enact a version of Clean Slate that incorporates these crucial measures. Thank you for your consideration, and please reach out if we can be of any assistance.

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