



Chairperson Krueger; Chairperson Weinstein; other distinguished members of the New York State legislature:

The Community Service Society of New York (CSS) uses a multifaceted approach to attack income inequality in New York. CSS has been at the forefront of this work for 175 years, changing our strategy and focus as the times demand. Today we engage in policy work, legislative advocacy, impactful direct services programs and litigation in order to help create a fairer, stronger New York.

My name is Judy Whiting. I am General Counsel for CSS and direct the work of its Legal Department, and I thank Chairperson Krueger and Chairperson Weinstein for the opportunity to testify concerning cannabis legalization legislation, specifically in support of language creating **automatic expungement** of past criminal convictions for conduct that will be made legal on a prospective basis. Automatic expungement is the right thing to do, both from a fairness and from a systems perspective, and it will work significant positive change for hundreds of thousands of New Yorkers statewide. It will bring New York in line with other states, and provide vital workplace protections so that individuals are no longer stigmatized by past convictions – convictions that in all too many cases resulted from selective arrest and prosecution, and as a result are borne much, much more heavily by people of color.

CSS comes to this work from many years of advocating on behalf of clients facing steep hurdles due to criminal records. Because a conviction history can act as one of the most insurmountable barriers to securing living-wage employment and housing, and to full participation in the life of our City and state, CSS's Legal Department has focused exclusively on working with and for persons with these histories for more than a decade. We litigate on behalf of individuals and groups who have suffered actionable discrimination because of their records, and we engage in policy and legislative advocacy to make systemic change. We also provide direct services to more than 700 New Yorkers each year through the Legal Department's Next Door Project, working with clients from across the City to obtain, correct mistakes in and closely review their New York State rap sheets. Our one-on-one review sessions are confidential and respectful, ensuring that our clients obtain the firm knowledge of their record that is the essential component of Next Door Project work. We provide Next Door Project services at partner agencies' offices in downtown Brooklyn, Bedford Stuyvesant, Harlem, the South Bronx and Manhattan's Lower East Side as well as at CSS's midtown headquarters and have provided services for clients of the NYC Dept. of Probation. A Next Door Project brochure is included with this testimony.

Our clients' experiences and input guide our work in the Legal Department. When clients informed us that their employment applications were being tossed in the trash once they revealed a past criminal conviction or – for larger employers – that they were bounced out of the online

employment application portal once they checked “yes” next to the question about whether they had ever had a criminal conviction, we understood that systemic change was required. We worked closely with VOCAL/NY, Faith in New York and the National Employment Law Project to draft and ensure passage of the New York City Fair Chance Act, among the strongest “ban the box” laws in the nation. CSS acted as chief legal advisor in this effort. We are beyond pleased that the law is indeed working as it was intended to: giving individuals with conviction histories a fair chance to compete for employment on their merits.

But some continue to suffer ongoing discrimination, stigma and exclusion from community based on past criminal convictions. We know this because our clients tell us so. Each Next Door Project rap sheet intake session invariably involves our lowering expectations of clients who believe or at least hope that we can expunge their stale conviction histories. Clients believe – accurately, as studies show – that antidiscrimination legislation is not as useful in combatting these problems as full on expungement would be. For these reasons we decided to create and lead a grassroots statewide Expungement Campaign, moving hearts and minds toward the necessity of enacting laws that will automatically erase stale conviction records so they can no longer be used to keep them from fully engaging with family and community, and supporting themselves and those they love.

The Expungement Campaign, which already has gained supporters across the state, was officially launched on October 11 by way of a three-day conference. “Full Participation is a Human Right: Moving Beyond Punishment” allowed CSS and our audience to explore with faith leaders, directly impacted individuals, labor leaders, elected officials, activists, artists and others the many ways in which a criminal conviction history can hold an individual back from moving forward, and to discuss what could be done to change this reality. A copy of “Getting to Go,” the case statement issued in connection with that conference, is included with this testimony.

October 2017 inaugurated New York’s first criminal records sealing legislation since the Drug Law Reform Act. C.P.L. §160.59, enacted as part of Raise the Age efforts, was intended to help people move past these stale convictions. But the law’s eligibility restrictions – including the requirement that a person not have more than two criminal convictions in their entire lifetime, neither of which can be a violent felony – mean that millions of New Yorkers who could have benefitted from sealing are left in the cold. And while the law contemplated that individuals could proceed to seek sealing without the assistance of a lawyer, it has proven extremely complex, time-consuming and difficult to maneuver. The end result is that hundreds of thousands of New Yorkers are potentially eligible for relief, yet fewer than 700 sealing motions have been granted in the 14 months that the law has been effective. This low rate of sealing is consistent with outcomes in other states with application-based sealing, and illustrates the need for an automatic process.

With **cannabis adult use legislation** almost certain to pass this session, we have the opportunity to work serious, positive change by engaging such a process. Legislators are rightly concerned that individuals with past convictions for conduct that will become legal should not continue to bear the stigma those convictions create. But an applications-based system, which unfairly puts

the work of removing this stigma on the individual who bears it, not on government which *created* the stigma, will suffer the same fate as C.P.L. §160.59: few will benefit. Ensuring that legislation instead include provisions for **automatic expungement** of past convictions for conduct that will be legalized is therefore crucial.

CSS and other advocates – including Drug Policy Alliance, the Legal Action Center, The Legal Aid Society, the Immigrant Defense Project and Brooklyn Defender Services – have worked diligently to draft language that will provide for automatic expungement to happen with relative ease, using systems already in place. The language has been broadly shared with legislators, and can be amended as needed. It includes the following core features:

- importantly, it creates and defines the new term “expunge,” making past convictions a nullity and restoring individuals to the status they occupied pre-conviction
- it mandates that actors in the criminal justice system – from police departments to prosecutors to courts to records repositories – automatically vacate, dismiss and seal – or in some cases destroy – records concerning or related to past convictions for activity now legal. These records will no longer be available, provided or sold to background check companies
- it allows a person whose conviction has been expunged to deny the existence of the conviction, so that they can truly move past it
- it allows for deeper relief to be obtained on motion for individuals in immigration proceedings

Enacting these changes is not only a matter of basic fairness, but it will also permit New Yorkers to take advantage of protections under various federal laws that treat “expunged” cases as nullities, allowing individuals to obtain employment and clearance to work in regulated industries. In addition, doing so will bring New York into line with other states that have passed or are considering criminal records expungement and related “clean slate” laws, including Pennsylvania, Connecticut, Michigan, Colorado and South Carolina.

CSS and our partner groups are very pleased that – with cannabis legalization – New York is poised to make lasting, positive change for families and communities. By ensuring automatic expungement of past convictions for conduct that will now be legalized, we can provide people across New York State with the opportunity to move ahead, while building our state’s workforce and strengthening its economy. We look forward to working with you to achieve this important goal.

jwhiting@cssny.org; (212) 614-5323 direct