



TESTIMONY OF THE LEGAL ACTION CENTER

Before

**THE SENATE STANDING COMMITTEE ON CRIME VICTIMS,
CRIME AND CORRECTIONS**

THE SENATE STANDING COMMITTEE ON JUDICIARY

THE SENATE STANDING COMMITTEE ON CODES

THE SENATE STANDING COMMITTEE VETERANS AND MILITARY AFFAIRS

PUBLIC HEARING ON

IOLA AND THE FUTURE OF CIVIL LEGAL SERVICES IN NEW YORK STATE

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Submitted by

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My name is Anita Marton. I am Vice President of the Legal Action Center, a not-for-profit law and policy center specializing in issues involving alcohol and drug addiction, HIV/AIDS and the criminal justice system. The Legal Action Center is public interest law and policy organization whose sole mission is to fight discrimination against and protect the privacy of people living with criminal records, drug or alcohol histories and/or HIV/AIDS. I would like to thank the Senate Standing Committee on Crime Victims, Crime and Correction, the Standing Committee on Judiciary, the Standing Committee on Codes, and the Standing Committee Veterans and Military Affairs for this opportunity to testify here today and for holding hearings on the vitally important on IOLA and the future of civil legal services in New York State. Our testimony focuses on the critical need for civil legal assistance funding for individuals throughout the state who are trying to get and keep jobs and contribute to the state's tax bases, but face widespread discrimination because of their criminal records, histories of alcoholism or drug addiction or HIV status.

The Legal Action Center has a multi-faceted approach that involves direct client legal services and impact litigation, technical assistance and training to agencies that serve our clientele, and policy advocacy to create systemic changes that will benefit our clients. We provide free legal assistance to individuals throughout New York State; many of our clients have issues crossing all three of our subject areas. For example, some are in recovery from drug addiction that earlier led them to commit crimes and resulted in their contracting HIV.

Since our founding in 1972, through a comprehensive range of legal services, we have helped tens of thousands of New Yorkers overcome legal barriers to accessing jobs, housing, health care, government benefits, and other services critical to their becoming productive members of society, maintaining their dignity, and getting and staying healthy. In 2009 alone, the Legal Action Center helped 2,965 individuals in 44 of New York's 62 counties resolve civil legal problems: 2,222 related to a criminal record, 462 related to an alcohol/drug problem (that usually led to a criminal record), and 281 related to HIV.

Because the majority of people we assist have criminal histories, I am going to focus my comments on this population's need for our services related to employment, which has risen dramatically in recent times because of the deep economic recession. The recession makes it harder for anyone to find and keep a job, much less those with criminal records, but also because of the dramatically increased incarceration rates of the past decade, the proliferation of criminal background checks post 9/11, and the computerization of criminal records, which are now widely available on the internet for free. When incarcerated individuals return to the community, they are expected to find and maintain gainful employment. However, New York State has a wide and

growing array of laws and policies that make it more difficult for anyone with a criminal record to reenter society successfully, even those who have fully paid their debt to society and have demonstrated that they are not a threat and are capable of becoming productive and tax-paying citizens.

Not only do employers categorically deny jobs to people with conviction histories, in violation of New York State law, but the criminal background reports they rely on are often inaccurate. We consistently find that approximately *40% of our clients' rap sheets had at least one error* that created potentially significant barriers to the individual's ability to obtain employment and other necessities of life, and that, in some cases, imperiled the individual's liberty. These types of errors can result in job denials or terminations for at least two reasons: employers believe that job applicants' criminal records are far worse than they actually are; or job applicants accurately describe their criminal convictions, but employers – relying on inaccurate criminal record data – believe they are lying.

Complicating the matter further, the vast majority of people who approach us for help overcoming criminal record-based discrimination cannot accurately list or explain their criminal convictions. Many, therefore, are denied jobs for giving inaccurate information on employment applications. For example, we ask our clients what they thought was on their rap sheets and compared their answers with the actual rap sheets we obtained for them. In 2009, 91% were wrong about either the number or seriousness of their convictions.

Through our legal service project, we help individuals overcome all of these barriers. We help them obtain and understand the contents of their rap sheets so they can accurately describe their criminal record during the application process. We help them gather evidence of rehabilitation to present to employers, occupational licensing agencies, and public housing authorities. We help them correct errors on their rap sheets. We also help them obtain Certificates of Relief from Disabilities and Good Conduct, which establish a presumption of rehabilitation which employers are required to consider. And we advocate with employers, occupational licensing agencies, and others who would wrongfully deny our clients jobs and housing based on the fact of their criminal convictions without properly considering their rehabilitation, job-relatedness of the convictions, and other factors that New York law requires them to consider. To broaden our impact and empower our clients, we also author and disseminate a wide variety of free publications that help *pro se* individuals (including those who are incarcerated) and their advocates understand and enforce their civil and privacy rights.

An example of an individual who is now a tax-paying employee thanks to the Legal Action Center's civil legal services program is MM, who contacted the Center when her application to renew her cosmetology license was denied due to a 2008 misdemeanor conviction for forgery. MM was 20 years old at the time of the conviction, which she incurred due to signing her former employer's name on checks. MM says she believed her employer had given her verbal check-signing authority, but she had nothing in writing to prove it, and therefore, accepted a guilty plea, paid restitution, and incurred a three-year sentence of probation. She was not sentenced to any incarceration. Subsequent to the conviction, MM began working at a different hair salon, but had to stop due to the denial of her license renewal application. She was very keen on working, had excellent references from the new employer, who had even given her additional responsibility, and understood that she had been foolish to rely on verbal check-writing authority in her prior job. She was very concerned that this conviction would thwart the career path she had enthusiastically sought. The Center represented MM at an administrative hearing at the New York State Department of State, presented evidence of MM's rehabilitation, and convinced the Department to reverse its decision and reinstate MM's license. Consequently, MM is now working as a cosmetologist.

Another example of how the Center's legal services program gets people jobs and thereby reduces recidivism is AM, who contacted us because she was looking for a job, but was concerned that her 27 year-old misdemeanor conviction for writing bad checks would be an obstacle. She, therefore, decided to apply for a Certificate of Relief from Disabilities at the New Paltz Town Court. Employers are required to take into consideration whether a job applicant has a Certificate of Relief before denying them a job due to a criminal record. AM contacted the Legal Action Center after the court clerk told her that the judge wanted her to get an attorney to apply for the certificate, even though nothing in the law requires that an applicant have an attorney. We sent AM the application, described the procedure for filing the application, and sent her our brochure about certificates. The court then granted her the certificate, which was terrific timing because she had just applied for a job and been asked by the employer whether she had a Certificate of Relief from Disabilities, which she now did. She ultimately got the job.

By providing services like these, the Legal Action Center saves New York State money and protects public safety by helping people stay in their homes, earn a living and become productive, tax-paying, and law-abiding citizens.

The Legal Action Center has benefited from IOLA funding under its Administration of Justice program. Even with our current funding levels, the demand for our services is so great that in order to be able to address our clients' criminal record-related legal problems, we funnel

these calls into two days a month unless the caller has HIV or an alcohol/drug addiction history, in which case additional funding sources cover some of those cases. It is not unusual to receive 60 criminal record-related calls on each of those two days. The rest of the month, as we address the legal problems of the people who were able to reach us, callers try desperately to get through, but we simply do not have the staffing capacity to help. Unfortunately, we have insufficient referrals to give clients whom we lack capacity to serve, and end up turning hundreds of people away.

We are well aware of the extraordinary financial challenges faced by the State of New York at this time. But civil legal services providers are facing the potential loss of staggering amounts of money due to the catastrophic drop in IOLA funding looming in 2010. The IOLA Board allocates legal services funding on a calendar year basis. In December 2008, IOLA made statewide grants covering a 15-month period to “administration of justice” providers such as the Legal Action Center totally approximately \$7.3 million and another \$31 million to civil legal service providers. However, primarily as a result of the drop in interest rates as well as the economic downturn, the IOLA Fund’s program revenue is projected to drop to approximately \$6.5 million for the period April 1, 2010 through December 31, 2020, significant decrease from the \$18.6 million previously allocated for the proportionate 9-month period. These substantial losses are expected to continue into the April 1, 2011 – March 31, 2012 fiscal year. Clearly this will have a big impact on the Legal Action Center’s IOLA funding and our ability to provide desperately needed services to thousands of struggling New Yorkers. .

In light of this gloomy forecast, we are so grateful for the Senate’s strong support for a bailout of the IOLA Fund in the April 1, 2010 – March 31, 2011 fiscal year budget. We are also extremely appreciative of the Senate’s leadership on this issue, and together with the Assembly, your longstanding support for civil legal services. We know that this leadership has led to Chief Judge Jonathan Lippman’s inclusion of \$15 million in the Judiciary’s proposed budget in order to make the IOLA Fund whole for one year and preserve current levels of civil legal services in New York. In these tough economic times, we will need your continued strong support to ensure that the funding is included in the State’s final 2010 – 2011 budget. As grateful as we are for the bailout, it is not a permanent remedy, and thus does not address the need to find a stabilized source of funding after the budget is passed. Nor does it address the huge and growing unmet need for additional civil legal services.

Thank you for your consideration of these matters which are so critical in order for New Yorkers with criminal records, addiction histories or HIV to become and remain productive, tax-paying members of our society. We welcome the opportunity to work with you to eliminate the

gap in access to justice in New York State that results from lack of adequate funding for civil legal services.