



Memorandum in Support

February 28, 2023

S. 1646
A. 2184

By: Senator Hoylman-Sigal

By: M of A Dinowitz

Senate Committee: Judiciary

Assembly Committee: Judiciary

Effective Date: 60 days after passage

AN ACT to amend the civil practice law and rules, in relation to making technical corrections to ensure gender neutrality for the admission to practice law and preventing any required disclosure of prior interaction with law enforcement or the criminal justice system under certain circumstances.

THE NEW YORK STATE BAR ASSOCIATION **SUPPORTS THIS LEGISLATION**

The New York State Bar Association strongly supports S.1646/A.2184, legislation that if enacted, would eliminate overly broad and burdensome criminal record screenings as a barrier to aspiring lawyers from poor and under-represented communities.

The four departments of the Appellate Division of the New York Supreme Court, pursuant to the authority granted in C.P.L.R. 9404, use questionnaires to screen the character and fitness of applicants seeking admission to practice law in New York State. Criminal justice involvement must be disclosed in response to several questions, including Question 26, which currently asks:

“Have you ever, either as an adult or a juvenile, been cited, ticketed, arrested, taken into custody, charged with, indicted, convicted or tried for, or pleaded guilty to, the commission of any felony or misdemeanor or the violation of any law, or been the subject of any juvenile delinquency or youthful offender proceeding? Traffic violations that occurred more than ten years before the filing of this application need not be reported, except alcohol or drug-related traffic violations, which must be reported in all cases, irrespective of when they occurred. Do not report parking violations.”

These questions are inconsistent with Section 296(16) of the New York Human Rights Law, which provides, “It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute . . . for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof . . . to make any inquiry about, whether in any form of application or otherwise, . . . any arrest or criminal accusation of such individual not then pending against that individual which was

followed by a termination ... in favor of such individual . . . or by a youthful offender adjudication . . .” The bar application questions are also improper under Section 380.1 of the New York Family Court Act which provides, “Except where specifically required by statute, no person shall be required to divulge information pertaining to the arrest of the [juvenile] respondent or any subsequent proceeding under this article.” Neither the Human Rights Law nor the Family Court Act exempts from the prohibition against criminal record inquiries any of the administrative agents of the New York Supreme Court who handle the licensing of attorneys.

Requiring disclosure of criminal justice involvement on the bar application has an adverse impact on the representation of people of color in New York law schools, which require disclosure on their application forms to conform to the bar application’s required disclosure. Criminal record screening has a chilling effect on college and law school applicants from communities of color due to the greater likelihood that they will be arrested, and if arrested convicted, than their similarly situated white counterparts. According to a report issued by NYSBA’s Working Group on Question 26 of the New York Bar Application, of the 4,500 students admitted in 2021 to the 15 law schools in New York, fewer than 400 identified as African American, Native American, Alaskan or Pacific Islander.¹ This disturbing under-representation of students of color in law schools is reflected in the well-documented under-representation of people of color among lawyers admitted to practice in New York.

This bill would mitigate the adverse impacts on the representation of people of color in the New York legal bar. It would also ensure the bar application process conforms to the requirements of current New York law by eliminating questions that require disclosure of arrests that are not pending at the time of application which had terminated in the arrestee’s favor, adjournments in contemplation of dismissal (which are tantamount to dismissals), sealed convictions, juvenile delinquency proceedings, and youthful offender adjudications.

If adopted, New York would become a leader, along with California, in eliminating overly broad and burdensome criminal record screening as a barrier to practicing in the legal profession.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this legislation.

¹ <https://nysba.org/app/uploads/2021/11/H6.-Working-Group-on-Question-26-NYS-Bar-Exam-Admission-App-APPROVED-HOD-1.22.2022.pdf>