

Labor and Public Employees Committee

Bill No.: HB-6474

AN ACT CONCERNING COLLATERAL EMPLOYMENT CONSEQUENCES OF A

Title: CRIMINAL RECORD.

Vote Date: 3/23/2021

Vote Action: Joint Favorable Substitute

PH Date: 3/4/2021

File No.:

JOINT FAVORABLE REPORT

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

Labor and Public Employees Committee

REASONS FOR BILL:

After completing their sentences and being released back into society, former inmates are unable to obtain jobs, admission to schools, or housing.

RESPONSE FROM ADMINISTRATION/AGENCY:

STATE OF CONNECTICUT, EXTERNAL AFFAIRS DIVISION, JUDICIAL BRANCH

As currently drafted, Section 3 conflicts with CT General Statutes (section 3 (b)) with respect to private employers. Section 31-51 prohibits employers from denying employment solely on the basis of a prior conviction for which the prospective employee has received a certification of rehabilitation. This proposal would now allow employers to base a hiring decision solely on prior convictions, regardless of whether the applicant has gotten a certificate of rehabilitation. This would remove much of the protection a certification of rehabilitation provides.

NATURE AND SOURCES OF SUPPORT:

KATHLEEN FLAHERTY, ESQ, EXECUTIVE DIRECTOR, CT LEGAL RIGHTS PROJECT, INC.

Too often, people with mental health conditions end up interacting with the criminal legal system when they engage in disability-related behavior after not getting access to voluntary services and supports. If we want people who have been arrested and/or convicted to successfully re-enter society, we need to provide them the opportunity to do so. When employers rely on criminal records to screen out potential employees, there is a

disproportionate impact on people who are Black and Hispanic. If we are going to address long-standing systemic inequities, we need to change our existing practice.

CARLOTTA J. GILES, CHAIRPERSON, STATE OF CT. BOARD OF PARDONS AND PAROLES

Although they support efforts to address the collateral employment and licensing consequences of a criminal record, they would like to flag some concerns. They share the concerns raised by the Judicial Branch. There are sections in the language that distribute authority, but there are also sections that cause conflict. As drafted, there are sections that remove much of the protection certification of employment would provide and this could frustrate the purpose of the bill. The term "criminal history record information" is narrower than that used by CT Gen. Statutes. As now written in this bill, this applies only to the records of the Judicial Department and doesn't include records maintained by the state's criminal justice agencies. This allows the use of these records to be used by other agencies to make licensing decisions. They suggest clarification of whether the "criminal history record information" applies to the records of arrest or records of conviction which have been erased. As the agency with exclusive jurisdiction over pardons and shared jurisdictions over certificates of employability, they request the language in Section 9 (b) be amended to include the Chairperson of the Board of Pardons and Paroles, or the Chairperson's designee, as a member of the Council on the Elimination of Occupational License Collateral Consequences established by the bill.

TANYA HUGHES, EXECUTIVE DIRECTOR

CHERYL SHARP, DEPUTY DIRECTOR, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Barriers faced by individuals with a criminal record as they re-enter the community following release from incarceration negatively affects their success in going back to daily events many of us take for granted such as living in a home/apartment, going to work/school, or training for professional licenses. They support expanding Section 3 to give opportunities to all employers both public and private. This encourages potential employees to consider submitting applications for positions they may not otherwise have considered given their criminal history. Expanding the balancing test to all licensing agencies would provide a wider degree of professional opportunities for jobseekers to enhance their skill set and position themselves for higher paying jobs.

KELLY McCONNAY MOORE, INTERIM SENIOR POLICY COUNCIL, AMERICAN CIVIL LIBERTIES UNION OF CT.

They believe in a society where all people, including those who have been convicted of or accused of a crime, have equal opportunity to contribute to society and build successful and fulfilling lives. People who finish their sentences have paid their debt to society and deserve to live their lives in CT's communities without barriers to being happy, productive law-abiding residents. The unemployment rate among formerly incarcerated people nationwide is 27%, more than 6.5 times the overall employment rate in CT. Because so many formerly incarcerated job seekers are kept out of the workforce, the gross national product is greatly reduced. Over 45% of men do not have any earnings for the first year after being released. Wages do not recover for most people since incarceration is linked to decreases in subsequent annual earnings, an average of 52%. This situation worsened after COVID-19. People living with criminal records are less likely to have access to unemployment insurance, sick leave, health insurance, and rainy-day savings. After the pandemic ends, these people will be the

last to see their unemployment rates lower. These effects are not distributed equally across society with racial disparities among Black and Latino men being disproportionately incarcerated. Every person with a criminal record who has served their sentence and re-entered society should have an equal opportunity to build a successful and fulfilling life. The barriers to employment should be eliminated for people living with a criminal record.

MICHELE MURDICK, LEGISLATIVE ADVOCATE, SOUTHERN NEW ENGLAND CONFERENCE UNITED CHURCH OF CHRIST

CT residents with criminal records, including those returning home from incarceration, on parole, and on probation, face challenges as they search for jobs and housing, apply for insurance and credit, and attempt to participate in public programs. There are hundreds of legal barriers to supporting themselves and their families. They have paid their debt to society and should be able to build a productive life and get gainful employment. Because of systemic racism, the collateral consequences disproportionately harm Black and Latinx people and their families and communities. All God's children deserve a second chance to get their lives on track.

AMY EPIER-EPSTEIN, NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, RE-ENTRY CLINIC

Prospective employees across the state should be given fair consideration based on their qualifications and not judged solely on the basis of past criminal convictions. They have suggestions to offer. The definition of "criminal history record information" must be fully inclusive of all possible past experiences with the justice system by including any information from state/local police, consumer reporting agencies relating to arrests, releases, detentions, indictments, or other formal criminal charges. This bill as written does not offer strong enough protection to individuals with pending charges. The process of court hearings is long, and individuals are precluded from employment during this time. This can cause severe economic stress. "Innocent until proven guilty" serves as the bedrock of this nation's criminal justice system. They frequently see the devastating impacts that collateral consequences related to employment can have on someone's efforts to re-enter society and successfully pursue a happy and fulfilling future. They have already paid a heavy price for their actions and deserve the ability to build a productive life through gainful employment.

ANDREW OSMUN, NEW HAVEN RESIDENT

He is the parent of an individual with a criminal record and is aware of the impact of collateral consequences resulting from the labyrinth of restrictions in various statutes. His testimony said the best outcome is when the worst thing an individual did does not govern every aspect of their life. When they demonstrate their growth and rehabilitation, they should be able to become productive members of society. Everyone wins. They contribute taxes, productivity, reduce dependency and thereby reduce costs to the state and their municipality. It is time for society to make the effort to enable all persons to live successful lives, no longer erecting or leaving barriers in place.

PROFESSIONAL CERTIFICATION COALITION

While they appreciate this bill's goal to reduce recidivism by making it easier for an ex-offender to earn a living in certain occupations, in its current form this bill intrudes on the rights of private associations and organizations to enforce ethics codes or eligibility requirements and weakens important protections for the public in licensure decisions. They

ask the bill to be amended to address these issues. The objectives must be balanced against the need to protect the public and the ability of both state licensing bars and private organizations to consider relevant conduct for which the individuals have been provided full due process. They ask Section 4 be amended to add a fourth basis on which a licensing agency may determine that denial of an occupational license is consistent with business necessity: "The offense reflects that the person poses a threat to the health, safety, or welfare of members of the public the individual would encounter in the practice of the occupation".

JASON WASSERMAN, PRESIDENT, RESTORATIVE ACTION ALLIANCE

This bill is needed to help remove countless obstacles that people face, sometimes long after completing their sentences. He has an MBA and years of experience, and yet securing employment was extremely difficult after a conviction in 2010. His skills, obtained long before his conviction, allowed him to reinvent himself and recreate a successful career. Collateral consequences are tricky because they can last for decades and appear at any time. Last year, an investment firm fired him as a client after 20 years because of his conviction even though his financial advisor vouched for him. When he attempted to replace a term life insurance policy to protect his loved ones, he was denied. The state granted his request for a pardon hearing and the Pardon and Paroles Board voted unanimously to grant him a pardon in recognition of the contributions he made to his community. He recognized that he comes from a place of privilege and the collateral consequences that he and his family encountered pale in comparison to the issues faced by most people with convictions. He urges passage to provide much-needed relief to many.

NATURE AND SOURCES OF OPPOSITION:

ZACH McKEOWN, SENIOR LEGISLATIVE ASSOCIATE, CCM

Past mistakes, particularly those made during youth, should not be a barrier for employment. However, there are positions, particularly within municipal government where a person's criminal history or background is important and should be accessible prior to making employment decisions. They ask that municipalities be able to consider prior criminal records for certain sensitive positions and special exclusions be provided for jobs requiring employees to interact with youth, vulnerable populations, or deal with finance.

ERIC GJEDE, VICE PRESIDENT OF GOVERNMENT AFFAIRS, CBIA

They support the intent of the bill but oppose it as drafted. Such constructive re-entry initiatives need to be balanced with reasonable protections that address the valid concerns of employers. They feel it will make the expensive process of hiring longer and less certain. It will impose vague standards on employers in making hiring decisions and make people with a criminal background a protected class. It also fails to provide adequate protections for employers from certain liabilities. The bill provides for an individual assessment of a job applicant based on a variety of factors related to their criminal history. After doing the assessment, they can determine denial if it is "consistent with business necessity". The test used is vague. They suggest more concrete criteria be considered. The language does not provide guidance on how to establish a "substantial nexus" between a job and a past criminal history, what information should be used to substantiate successful rehabilitation and what amount of time is required to have elapsed since the underlying criminal act. This guidance

is critical. These questions must be answered to defend a discrimination claim. Other jurisdictions have passed bi-partisan legislation intended to help people with criminal records access employment and have included language protection for employers for liabilities associated with such hires.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

They have concerns with aspects of the bill as drafted and urge rejection. They believe this is both too broad and vague in key places and could put small employers in untenable positions from both liability and compliance standpoints. It is important to note that existing federal and state laws and rules, including the most recent EEOC Criminal Check guidance for employers, are applicable, serve to protect individuals from discriminatory selection procedures, and employers are familiar with their obligations under such. Employers should be able to consider the seriousness of an offense, the time elapsed since a particular offense, and the relevance of a particular offense to a job being sought. This bill also creates a new protected class of job applicants under the CHRO statutes. Employers are also concerned about potential liabilities that may arise during or after the hiring process despite the language. The Governor's Bill 6445 is a positive and common-sense approach to removing barriers to workforce entry.

Reported by: Marie Knudsen, Assistant Clerk

Date: March 30, 2021