

# The Council on the Collateral Consequences of a Criminal Record

## Meeting Minutes

Tuesday, February 11, 2020

Room 1A of the Legislative Office Building

Sen. J. Kushner, Committee Co-Chair  
Sen. C. Miner, Labor Committee Ranking Member  
Rep. Robyn Porter  
Rep. Craig Fishbein, Labor Committee House Ranking Member  
Marc Pelka, Undersecretary, Office of Policy and Management  
Michelle Keuler (for Darcy Strand)  
Andrew Clark, Institute for Municipal & Regional Policy  
Steven Hernandez, Executive Director, Commission on Equity & Opportunity  
Subira Gorden, CT Coalition for Achievement  
Richard Cho, CT Coalition to End Homelessness  
Kelly Moore (for Melvin Medina)  
Carlton Giles, Board of Pardons & Parole  
Lorenzo Jones  
Kenyatta Thompson, Katal Center for Health, Equity & Justice  
Sara Fox, CT Coalition to End Homelessness  
Tiheba Bain, Women Against Mass Incarceration  
William Murphy, Department of Corrections  
Arunan Arulampalam, Department of Consumer Protection  
Amy Eppler-Epstein, New Haven Legal Assistance Association Reentry Clinic  
Andrea James, National Council for Incarcerated and Formerly Incarcerated Women and Girls  
Diane Lewis, Voices of Women of Color  
Melvin Medina, The American Civil Liberties Union – CT  
Rochelle Palache, Services Employees' International Union, Local 32BJ  
Lisa Sementilli, Department of Labor  
Cheryl Sharp, Commission on Human Rights & Opportunities  
Robert Hebert, Bridgeport Reentry Collaborative  
Amber Vlangas, Advocate for Criminal Justice Reform  
Mark Soycher/Eric Gjede, Connecticut Business & Industry Association  
Isabel Blank, Yankee Institute for Public Policy  
Andrew Markowski, National Federation of Independent Business

The meeting was called to order at 10:10 AM by Sen. Kushner.

### **1. WELCOME BY CO-CHAIRS:**

**Sen. Kushner welcomed those in attendance. The emergency procedure announcements were read by Rep. Porter.**

SUBCOMMITTEE FINAL REPORTS FROM THE Council on the Collateral Consequences of a Criminal Record

RESEARCH SUBCOMMITTEE REPORT:

Andrew Clark, Institute for Municipal & Regional Policy: In his final report of the Research Subcommittee, Mr. Clark said collateral consequences are arbitrary and often long-lasting. They restrict the rights/privileges of people with criminal convictions to participate in society and deny access to many benefits. Some are enacted for valid public safety reasons, but many are unrelated to the crime for which a person has been convicted. There is very little evidence that harsh collateral consequences are a deterrent, but evidence shows they do increase recidivism which decreases public safety. They often impose restrictions on professional licensing and serve as an anti-competitive function, hindering the likelihood of rehabilitation. Sex offense registries carry a variety of exclusions and barriers that often are not directly related to public safety. Voting restrictions vary by State, Connecticut's being the most restrictive in New England. In many states, voting rights are restored automatically when people are released from incarceration. Around the world, many countries don't restrict voting rights. Federal courts and some states permanently bar anyone with a felony conviction for sitting on a criminal jury because they believe they would be biased toward criminal defendants. Studies show, however, that formerly incarcerated individuals are no more biased than other potential jurors. Restrictions on public housing and benefits make former prisoners vulnerable. They often have no money or resources for basic living expenses, which can lead toward unlawful means to earn subsistence funds. Even though convictions are unrelated to driving violations or offenses, many former prisoners have their driver's licenses suspended. This limits employment opportunities. Access to federal financial aid for higher education is suspended for people with drug convictions, but not for other criminal convictions. Preliminary research indicates this is not done pursuant to any written policy but is based on the practice of specific departments or specific individuals. Although employers in some states are not allowed to inquire about criminal history on applications, many delay background checks until finalists are selected. Many employers use a blanket ban in hiring any person with a prior criminal conviction, regardless of the offense. In Connecticut, to receive an Absolute Pardon, petitioners are required to fill out applications providing life activities for 3 years after the date of disposition and appear before the Board of Pardons and Paroles. If on probation/parole, they are not eligible to even apply. There is an expedited process where an applicant convicted of non-violent offenses could be reviewed administratively and not required to physically appear before the board. Decisions to grant pardons are based, among other things, on the severity of the offense, the impact on the victim and their input, criminal history and how much time has passed since the most recent offense as well as whether the public interest is served by pardoning. Also considered are what has been accomplished since the offense, work history, subsequent contact with the criminal

justice system, character references and community service. In Connecticut, a granted Absolute Pardon results in the erasure of the adult criminal record.

#### RECOMMENATIONS:

Collateral consequences should be tailored to serve public safety and punitive mandatory consequences avoided. People should not be impeded from reentering and becoming contributing members of society. Laws should be reviewed periodically to evaluate if they are necessary. A comprehensive analysis of collateral consequences should be publicly available and analyzed as to the relationship to public safety. Consequences not serving the public interest should be repealed. Arrest alone should never be enough justification to limit rights and privileges, except as set forth by the court in which the charges are pending.

A permanent statutory commission should review this report and make recommendations accordingly. The Connecticut General Assembly should consider adoption of a 'collateral consequences impact statement' into either the joint rules or CT general statutes. This should be made accessible to the public.

A Judicial Bench Book should be adopted. The National Inventory of Collateral Consequences of Conviction (NICCC) would make sanctions and disqualifications that result from a criminal conviction and are not part of the judgment filed in a criminal case available to be reviewed with the defendant.

Prosecutors should be required to disclose (in writing) all consequences of the plea agreement offered by the prosecutor before accepting a plea agreement from a defendant.

Connecticut should end felony disenfranchisement entirely. Denying the right to vote does not serve in the interest of public safety. However, if these restrictions remain, the felon should be notified if their right to vote is restored automatically and/or what steps are required to complete the process.

Blanket restrictions on jury service because of a criminal conviction do not safeguard the jury process.

Connecticut should enact policies that enhance employment opportunities for people with convictions and enforce prohibitions on racial discrimination. Employers should not automatically disqualify a candidate with a criminal record, except in circumstances where the record directly conflicts with the scope of employment.

Connecticut should set monitored standards for licensing boards/professional licensing entities and ban mandatory denial for any criminal convictions.

Connecticut should prohibit discrimination in access to financial products, including life/car insurance and bank/credit union accounts.

Policies should be enacted prohibiting discrimination in higher education admissions for people with criminal convictions.

#### EMPLOYMENT SUBCOMMITTEE REPORT:

Mark Pelka, Office of Policy & Management: His final report of the Employment Subcommittee focused on methods to improve employment opportunities for people with criminal records to ease the transition back into the community. Development programs, both pre and post release, should be made available through adult education. These should prioritize people in the criminal justice system through federally funded programs, the Governor's Workforce Council, and the Connecticut Education and Training Commission. This would include customized entrepreneurial training programs, Prison Industry Enhancement Certification programs through the Bureau of Justice Assistance (funding may be available for these programs) and the development of universal/digital job readiness assessments and career inventories.

To fill gaps in available workforce services, private and federal funding should be investigated. During reentry, there is a need for more coordination to connect people to job training and placement and better access to behavioral health treatment through agencies and post-release service providers. Pell funding for juvenile pre-release services needs to be expanded.

It is important employers have connections with DOC's Industry Business Advisory Group (under the ARES grant) to engage and drive program development. Growth businesses should be identified in order to prioritize available training to help fill in-demand occupations. Employers must be made aware of the Workforce Opportunity Tax Credit (WOTC) for hiring people with barriers to include those with felony records. Employers and human resource personnel should also be notified about the vocational, education and training services for people in the criminal justice system. They should be told about access to fidelity insurance bonds that indemnify employers for loss of money or property through dishonest acts of employees. Second-chance hiring forums with business leaders and associations should be encouraged as well as job fairs and preparation services through in-reach programs in correctional facilities.

Employers' parts in this process are important. Employment barriers must be lowered, and discrimination based on criminal records prohibited. To assure accuracy, quality, consistency and efficiency, centralized background checks should be performed by state agencies. Employers should be offered these preliminary background checks on people pursuing apprenticeships and certifications.

After a designated waiting period, certain criminal records should be automatically cleared. The sex offender registry should be revised to make it more risk than offense based. These

recommendations would benefit both employers and former prisoners reentering the work force and society.

#### HOUSING SUBCOMMITTEE REPORT

Richard Cho, CT Coalition to End Homelessness: This subcommittee included people and family members who had firsthand knowledge in the criminal justice system, criminal justice advocates, legal service organizations, housing advocates, state and local housing agencies and private landlords. This diverse group took care to achieve a consensus among the various perspectives.

After a Texas Supreme Court ruling, the Department of Housing and Urban Development (HUD) was found to be in violation of the Fair Housing Act since it includes a blanket denial of persons with criminal records. It constitutes discrimination based on race given the disparities in the criminal justice system. As an alternative, HUD's guidance states landlords and housing owners must use individualized assessments in conducting criminal background screening as part of tenant selection. The subcommittee feels the rulings fall short in providing landlords with a specific approach to conduct individualized assessments. They drew heavily from a policy adopted by New York State.

The policy applies to all rental housing including landlords, housing owners, housing authorities, third-party property management organizations and state/federal financed housing.

No blanket denials should be made based on a criminal record, ("Ban the Box"). Although they may not include a question asking if they have a criminal conviction in applications, they may still conduct criminal background screening. Landlords and housing owners may only consider a denial based on a conviction involving physical violence to persons or property that adversely affects healthy, safety or welfare.

Criminal background checks must only review and consider prior convictions within 10 years of the time of application. Convictions/charges occurring before the age of 17, technical violations not leading to conviction or convictions excused by pardon, overturned on appeal or otherwise vacated may not be used.

If denying admission to housing on the basis of criminal convictions that involved physical violence to persons or property or health/safety/welfare of others, the landlord or owner must conduct a written individualized assessment that considers the time passed since the offense, the age at the time of the offense, the time spent in the community following incarceration, treatment completion when offenses involve drugs/alcohol that led to criminal behavior, rehabilitative programming, employment statutes, rental history, volunteering/community activities or other relative factors.

Each landlord or housing owner must provide applicants with a form explaining the procedures/policies regarding background checks and their right to submit evidence of rehabilitation. Applicants are given a chance to review/explain any conviction records before any decision regarding rental is made. When denied, the applicant must receive documentation of why

within 5 days and given a chance to explain. CHRO (CT Commission on Human Rights Opportunities) personnel will enforce any adopted policies. The subcommittee submitted a copy of New York's Anti-Discrimination Policy (attached) for review.

#### MINORITY RECOMMENDATIONS

Sen. Craig Miner said the committee had undertaken a monumental task. It is unanimous that more must be done to open doors to housing and employment for those with criminal records. It is agreed that social reintegration is more successful and recidivism lower if an offender quickly establishes a residence and enters the labor force. However, the extreme course of action, so-called "clean slate" legislation, automatically erases criminal records after a designated period with no examination of the circumstances of the conviction or risk factors involved. He said there is a more prudent path.

Before discussing policy, he noted that the deadline was not met for submitting the findings. (Feb. 1, 2020). They were required (PA 19-142) to hold no less than three public forums to allow public comment/input. None were held. The public was effectively shut out of the process.

They firmly support the mission of the Council, to help more people and their families gain stable, long-term housing and employment, and wholeheartedly agree with the majority recommendations to:

Enhance efforts to train incarcerated individuals in various industries

Create partnerships between USD #1 and the CTT Technical Education System

Analyze any potential problems/consequences of post-release requirements on employment and job retention

Hold second-chance hiring forums

Encourage more training for human resources professionals who consider criminal records

Provide greater information to employers on the access for vocational training and education

Centralize accurate, consistent and efficient criminal background checks

Protect privacy for pardon petitioners

Create a model rental application (such as New York's) to provide guidelines to conduct individualized assessments.

However, they can't fully endorse revision of the sex offender registry without first seeing further details after examinations from experts dealing in the details of each individual crime, offender and criminal record.

Regarding the Housing Subcommittee report, he said HUD has fallen short in providing landlords with specific guidance conducting individualized assessments. The NY model is a sensible path.

Some states bar felons convicted within the past seven years from obtaining a driver's license. Sen. Miner cited an example where a college student working nights to pay tuition is convicted for possession of alcohol would have his license suspended for 30 days. This negatively impacts his ability to work to earn money for his education.

Another example of divergence with the report is the recommendation that made blanket changes to policies with no consideration of the circumstances unique to each instance. A full repeal of all statutory collateral consequences of criminal records and 'clean slate' proposals that automatically erase convictions could be harmful to employers and job creators. Having a job is an asset to both the employer and employee. The cost of training and other employment perks is high and hiring a qualified individual is an investment for the employer. They should not be forced to take the risk of hiring someone whose background has "thin compliance with the law". This extends to housing as well. Landlords deserve a full accounting of applicant's criminal history, not just the recommended ten-year lookback, before welcoming convicted felons into a rental community where the safety and well-being of all tenants is of concern. Also, the 5-day window response giving automatic placement of an applicant for the next available rental unit may not be enough time.

The major recommendation that they cannot endorse is the elimination of disenfranchisement while incarcerated. They do not feel this is workable.

Over 400 statutory collateral consequences regarding revoking/prohibiting occupational licensure have been identified. This is anticompetitive and works against the public interest. While some of these bans should remain (such as prohibiting a convicted sex offender from working in an occupation where children are involved or a convicted embezzler barred from being licensed as a fiduciary), they endorse removing most of the mandatory consequences from the statute. Some are outdated and should be repealed or limited to convictions reasonably related to the occupation's subject matter. As an example, a dietician or an athletic trainer should not have their license revoked for an unrelated felony. Judging the risks of potential recidivism should be made through the Board of Pardons and Paroles by experienced professionals and not through the Department of Consumer Protection.

Sen. Miner credited all the council members and subcommittees for their hard work. Hearing from the communities solidified their belief that many of the existing collateral consequences of a criminal conviction are outdated. Just as no two individuals are identical, no convictions, records or occupational skills are exactly the same. These individualized assessments are critical to ensure

formerly incarcerated individuals have every opportunity for employment....and employers have the same opportunity to invest in the potential of this labor force. If further work is needed, they are ready to work with all concerned to reach an acceptable conclusion addressing these issues.

Chairman Kushner asked if there were any comments or suggestions on the subcommittee reports.

Tiheba Bain (Women Against Mass Incarceration) said there should be more distinction between "protected classes". Sen. Kushner said the Labor Committee was working on taking a pro-action approach and the subcommittee reports would be instrumental in drafting legislation. The Housing Committee would also be made aware of the findings.

Lorenzo Jones asked what the next action would be and who would follow up on the reports. If there is no punishment, their work was useless. He also noted that gender has not been included in any of the reports.

Rep. Porter said the purpose was to accumulate information. Those closest to the problems were the people closest to the solution. Awareness and evidence will move this forward because now both sides have been heard.

Subira Gorden, CT Coalition for Achievement, said people of color are not given equal treatment and emphasis should be on the collateral impact on families.

Andrew Clark commented on the registry regulations. Each person should be considered as an individual issue. He personally has rented to someone on the list.

Richard Cho, CT Coalition to End Homelessness, said convictions should meet welfare standards and consideration should be given to things such as the age, type of offense, and good behavior.

Sen. Miner said he has a strong working relationship with Rep. Porter and Sen. Walker, who helped him gain insight. He spoke to battered women, tenants and landlords, employers and employees. These issues will serve as a template to move forward. He said the 3 public hearings mandated at the outset of the council's formation, were never held. These hearings would have provided even more information.

Sen. Kushner said this work was done to get a consensus to work toward legislation and common ground was found. She noted that this council did a wonderful job, having little assistance, clerk, or aides. She was hopeful that public forums would be planned.

Andrew Clark, Institute for Municipal & Regional Policy, recommend that the final package be sent to Appropriations since it would have a fiscal impact.

Sen. Kushner and Rep. Porter thanked the Council for their splendid work and said that it would be very helpful in achieving final legislation.



Page 9

The meeting adjourned at 12:10 PM.

Marie Knudsen, Assistant Clerk, Labor Committee

**2. Roundtable**

Summarize the status of each area/department.