AMERICAN CIVIL LIBERTIES UNION of RHODE ISLAND

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COMMENTS IN OPPOSITION TO 17 H 5229 – THE YOUTH PROTECTION ACT
February 15, 2017

The ACLU of Rhode Island remains opposed to the increasing use of background check statutes to stigmatize, solely because of their pasts, individuals looking to give back to their community. The immense breadth of this legislation, coupled with the reliance on DCYF to identify the offenses that may "disqualify" an individual, raise particular concerns that all but ensure confusion among employers, rejection or dismissal of valuable employees, and a chilling effect on volunteerism among the community.

State law already requires employees and volunteers of a number of youth serving agencies to undergo background checks prior to their employment. This legislation provides little to no guidance as to *who* would newly need to undergo background checks. While the legislation speaks to any person who has "supervisory or disciplinary authority over a child or children," those terms are not clarified. As a result, virtually any employee or volunteer in the state who comes into contact with a child – or some adults, even if children are not otherwise present – may be subject to this background check requirement. This appears to include current employees, raising serious concerns that longstanding, dedicated employees may find themselves fired over a distant criminal offense unrelated to their daily employment tasks.

Further, granting DCYF responsibility for identifying the offenses considered disqualifying puts this legislation out of place with virtually every other background check statute in the General Laws. By failing to identify exactly those offenses which the State of Rhode Island believes render an individual unfit for contact with children, this legislation places DCYF in the inappropriate position of governing the hiring of employees and volunteers for agencies they do not oversee, and have no understanding of. This provision additionally makes it difficult for employees and volunteers to know in advance what they may be disqualified for, and greatly increases the risk that disqualifying offenses will change without warning or public input at DCYF's discretion.

This, coupled with the legislation's failure to allow individuals to explain to their employers why their criminal record does not render them unfit to be around children is both an circumvention of the state's "Ban the Box" legislation and runs contrary to guidance by the Equal Employment Opportunity Commission. To ensure background checks comply with Title VII of the Civil Rights Act, the EEOC requires three factors be taken into account in the hiring of individuals with criminal records: the nature and gravity of the offense, the time that has passed since the offense, conduct and/or completion of the sentence, and the nature of the job held or sought. The breadth of this legislation leaves Rhode Island's youth serving agencies open to violations of Title VII, and directly conflicts with the state's "Ban the Box legislation," which

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COMMENTS CONCERNING 17-H 5451 – RELATING TO BUSINESSES AND PROFESSIONS
February 28, 2017

The ACLU of Rhode Island continues to oppose the tremendous expansion of background checks contained within this legislation. The immense breadth of this legislation raises particular concerns as it relates to disqualifying offenses and is devoid of any appeals process or ability for applicants to be evaluated on their individual merit.

Under these proposed regulations, contractors will be denied a license or registration solely because of distant offenses that do not impact their ability to conduct their job duties. This legislation, unlike recommendations from Title VII does not account for factors that should be taken into consideration when hiring an individual with a criminal record such as the time that had passed since the offense, conduct and or completion of the sentence and the nature of the job.

Additionally, the ACLU of Rhode Island continues to oppose requiring individuals to pay for their own background checks. Since the background check is required for employment, it amounts to nothing less than a fee for application, something Rhode Island law expressly prohibits. Background checks are currently provided without cost for a number of the positions covered in this legislation, and we believe should the General Assembly choose to move forward with this legislation it should not be incumbent upon applicants to bear the financial burden of a background check.

In light of these concerns we ask the committee to reject this legislation.

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COMMENTS ON 17-H-5644 –
AN ACT RELATING TO PUBLIC UTILITIES AND CARRIERS
March 20, 2017

The ACLU of Rhode Island remains opposed to the increasing use of background check statutes as a matter of poor policy decision making. These statutes seek to stigmatize and make it more difficult for ex-offenders to reenter the workforce and community.

Last year the General Assembly passed a law to regulate transportation network company (TNC) services, including background checks for drivers through the TNC. If this committee were to consider this new legislation to augment the current statute the ACLU would like to propose some changes:

- Narrow down further the list of disqualifying offenses to those that relate to the skills, capacity, and need of the profession. Disqualifying offenses such as burglary, patient abuse, neglect, mistreatment of patients, and arson just to name a few have no relation to the skills needed for an applicant as it relates to this specific legislation.

- To ensure that background checks comply with the Equal Employment Opportunity Commission (EEOC) requirements, the following language should be added following language on Page 2 Line 30: In making a such a judgment, the agency or employer shall consider such factors such as the seriousness of the crime; whether the crime relates directly to the training and skills needed for the profession; how much time has elapsed since the crime as committed; whether the crime involved violence or abuse of another person; whether the crime involved a minor or a person of diminished capacity; whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public interest.

- The provisions in the existing R.I.G.L 39-14.2-7 relating to background checks and disqualifying information should be removed

Additionally, the ACLU of Rhode Island continues to oppose requiring individuals to pay for their own background checks. Since the background check is required for employment, it amounts to nothing less than a fee for application, something Rhode Island law expressly prohibits. We believe should the General Assembly choose to move forward with this legislation it should not be incumbent upon applicants to bear the financial burden of a background check.

In light of all the concerns discussed above, we respectfully encourage the committee to reject this legislation as written.

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COMMENTS IN OPPOSITION TO 17-H-6059 –
AN ACT RELATING TO CRIMINAL PROCEDURE
May 10, 2017

The ACLU of Rhode Island remains opposed to the increasing use of background check statutes to stigmatize, solely because of their pasts, individuals looking to give back to their community by volunteering. These statutes seek to stigmatize and make it more difficult for ex-offenders to reenter the workforce and community.

Every year several bills are introduced into the General Assembly that seek to expand the use of background checks in professions and or volunteering opportunities that many rather than promote public safety further push ex-offenders outside of a positive community atmosphere. Many religious organizations whose mission includes bringing communities together should reject the intention of this bill, as it will only create a wider gap between the communities.

There are several issues with the language of this bill, such as:

- Page 1, Line 6 states that "all persons over eighteen years of age" would be required to undergo a criminal background check, yet the legislation goes onto say in Page 1, Line 12 that the decision to conduct a background check for any person would be at the discretion of the organization. This contradictory language is problematic because it first implies that every person seeking to work or volunteer for a religious organization would undergo a background check, yet it later implies that the organization may choose to have discretion on who actually undergoes the background check and who does not.
- Page 1, Line 9 states, "whether the prospective employee has been convicted of *any* crime." This broad language may lead to the assumption that a background check that comes back with any crime – even if it's a misdemeanor – would be taken into consideration. Nevertheless, the bill then goes on to specify which information would disqualify an individual. This contradictory language is problematic.
- Language in Page 1, Line 16 mentions that a volunteer or employee who would have routine contact with a minor would undergo the background check at the requirement of the organization. This language however, does not mirror that of similar statutes which state that those "whose work involves routine contact with a child or children without the presence of other employees" would undergo a background check.

In light of all the concerns discussed above, we respectfully encourage the committee to reject this legislation.

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COMMENTS IN OPPOSITION TO 17-H 5677 –
PERSONAL CARE ASSISTANT SERVICES
April 5, 2017

The ACLU of Rhode Island has a number of concerns regarding this legislation's prohibition on individuals with criminal records, particularly for non-violent offenses, serving as personal care assistants. These concerns are particularly exacerbated because this legislation may prohibit individuals from providing such services for their own family and friends.

Under this legislation, individuals possessing one of a number of convictions, including non-violent felony drug and banking offenses, would be automatically disqualified from licensure. An appeals process is unlikely to result in relief. To ensure that background checks comply with the Equal Employment Opportunity Commission (EEOC) requirements, the following language should be added following language on Page 2 Line 12: In making a such a judgment, the agency or employer shall consider such factors such as the seriousness of the crime; whether the crime relates directly to the training and skills needed for the profession; how much time has elapsed since the crime as committed; whether the crime involved violence or abuse of another person; whether the crime involved a minor or a person of diminished capacity; whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public interest. Outside of those in the criminal justice field, few individuals comfortably understand recidivism rates, or how the likelihood to reoffend changes over time. As such, the default reaction to a criminal record is likely to always be a denial of license, even when that individual poses no actual risk to the community.

However, another important provision that should be taken into consideration is that of individuals caring for their own family members who may have a criminal record. Under PersonalChoice, Rhode Island's "cash and counseling" program, elderly or disabled adults can receive Medicaid funds to hire personal care assistance; compensation for family and friends who provide personal care help is expressly permitted. This program helps elderly and disabled adults remain at home and under the care of family members instead of in a facility or with strangers who may make them uncomfortable. If this legislation passes as written, these family members and friends would be considered personal service assistants and subject to the costly and burdensome licensing requirements, and barred from providing care because of their criminal records. An elderly man well aware of the his daughter's struggle with drugs or his nephew's felony banking conviction may find himself without in-home care when the Department of Health determines, over the man's wishes,

that his chosen caretaker is unacceptable. While we are well aware that family members may still abuse or neglect elderly or disabled adults needing care, this remains a decision for the family. It is inappropriate for the Department of Health to overrule the decisions of these families solely because of an individual's distant criminal record.

The ACLU respectfully encourages the committee to take into consideration the language and provisions mentioned above in order to meet EEOC requirements and which would specifically exempt family members from the requirements of the legislation prior to any further consideration.

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COMMENTS ON 17-H-5733 – AN ACT RELATING TO HUMAN SERVICES
March 15, 2017

Currently, court-appointed special advocates are required to pass a background check, participate in a 30-hour pre-service training course and agree to stay with a case until it is closed in order to participate in the CASA program. While this legislation seeks to codify the existing process, it does not sufficiently detail parts of the process.

According to the legislation, a CASA volunteer would need to submit to "satisfactory" clearance by DCYF in addition to a nationwide background check. While DCYF currently has a policy regarding Clearance of Agency Activity, what constitutes satisfactory clearance is not explained in the bill, and we believe it should be.

Further, while CASA policy states that volunteers undergo a background check, fingerprinting, and training, neither the policy nor the bill outline what the standards for disqualification are or explain any appeal process from an adverse determination.

The need to codify into state law the already existing process for CASA volunteers assisting guardians ad litem is understandable. Nevertheless, without detailing more specifically what parts of the legislation mean, such as "satisfactory clearance" or what the disqualifying offenses would be in a criminal background check, this legislation is open to too much interpretation.

The ACLU of Rhode Island remains opposed to the increasing use of background check statutes to stigmatize, solely because of their pasts, individuals looking to give back to their community. But if they are going to be required, the standards should be clear, narrowly focused and offer individuals an opportunity to demonstrate that they can work or volunteer notwithstanding their past record.

aimed to ensure people had the chance to be evaluated on their own merits before they were evaluated on the basis of their criminal record.

In light of all the concerns discussed above, we respectfully encourage the committee to reject this legislation as written.