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## **ACLU OF RI POSITION: OPPOSE**

### **TESTIMONY ON 22-H 7123, ARTICLE 12, SECTIONS 1 & 2 March 3, 2022**

The ACLU of Rhode Island is appreciative of the opportunity to provide testimony on this budget article which would require national criminal records checks for personal care attendants and high-risk providers. We recognize that both federal and state law requires such record checks and largely leaves the specifics to the discretion of EOHHS. However, we would like to express opposition to the protocol for these expansive criminal records checks which this Article would set and which, from our perspective, are more stringent than those which EOHHS has implemented. Our organization similarly opposed a standalone piece of legislation, 22-H 7076, which would put in statute these same criminal record check requirements.

The preclusion from employment that a criminal record can enable – especially records which are outdated or irrelevant to the position being sought – may bar otherwise proficient individuals from job placement. It is the perspective of our and many other organizations that such broad background checks can inappropriately perpetuate cycles of discrimination against justice-involved individuals who are otherwise eminently qualified for their chosen professions.

Current EOHHS guidance appears to allow a patient to waive the contents of a criminal record check unless the offense falls under a highly specific list of “Category I” offenses. Yet, the expansive swath of offenses which may serve as the grounds for denial of employment under this legislation goes well beyond those which EOHHS has currently designated as disqualifying.

For example, this EOHHS guidance would allow a patient to decide whether a felony drug offense outside of a certain time frame and other irrelevant offenses are disqualifying. This legislation does not do so, and would remove this decision-making ability for the patient, instead only allowing for EOHHS to hear an appeal from the applicant and “make a judgment regarding the approval of the applicant” should any disqualifying information be found (Article 12 page 3, lines 31-34 and page 4, lines 28-30).

Although these requirements are concerning on their own, we want to particularly emphasize that these provisions could also impact Medicaid patients whose care providers are immediate family members. A son or daughter, for example, who has a twenty-year-old felony conviction could be barred from serving as the care provider for their elderly or disabled parent when they would otherwise be able to currently do so. This Article should, if favorably considered, at least be amended to mirror current EOHHS guidance such that family members who wish to serve as the care provider, and who the individual receiving care wishes to designate as the care provider, are not unfairly disqualified.

Gainful access to employment, and the many support systems which rely on economic stability, are a significant aspect of the rehabilitative process and have been shown to prevent recidivism in justice-involved individuals. Through the prescribing of sweeping criminal records restrictions without strict limitations on the type of offenses which may be considered or challenged, this proposal could bar many competent individuals from accessing employment.

Finally, the ACLU has consistently opposed provisions in state law which require a job applicant to front the cost of their own criminal record check. From our perspective, requiring individuals to pay for record checks upon which their employment is contingent amounts to a fee for the filing of an employment application, an action which is expressly prohibited by Rhode Island state statute, §28-6.3-1. However, this Article contains such a requirement for both personal care aides and high-risk providers. (Article 12 page 3, lines 17-18 and page 5 lines 4-6).

For these reasons, we urge that these sections of Article 12 be stricken from the FY 2023 budget or else be amended to mirror the more limited requirements of state regulation. Thank you for your consideration.

Submitted by: Hannah Stern, Policy Associate