

**ACLU OF RI POSITION: SUPPORT/AMEND**

**TESTIMONY ON 22 – S 2641,  
AN ACT RELATING TO PROPERTY – FAIR CHANCE IN HOUSING ACT  
May 10, 2022**

The ACLU of Rhode Island strongly supports the goal of this legislation, which recognizes the enormous barriers that justice-involved individuals often face in obtaining housing. The ability to secure housing is, of course, crucial in and of itself, but it is especially important for formerly incarcerated individuals seeking to reintegrate into their communities. Statistics bear out the difficulties that people in this category have in obtaining stable housing and avoiding homelessness. Therefore, any legislation that helps mitigate this problem is to be commended. By limiting the circumstances under which housing providers can demand information about a tenant's past criminal history, and restricting the scope of the information that can be considered, this bill takes important steps in protecting this vulnerable population.

Having said that, we believe that the bill could be clarified or strengthened in some ways in order to better ensure that its commendable goal is met. A non-exhaustive list of our suggestions – some minor clarifications and some more substantive – briefly follows below:

- We are concerned that the scope of the criminal records that can be considered by a housing provider is too broad and would continue to put unnecessary barriers in the way of deserving applicants. Under the bill, no criminal conviction is off the table for consideration if it is not eligible for expungement. [Page 2, lines 33-34]. However, the expungement law requires a person convicted of any misdemeanor to wait five years before being eligible to have their record expunged. Thus, a housing provider could consider a four-year old shoplifting conviction in deciding whether to rent to a person. While we recognize the bill still requires the provider to balance that conviction with other factors, we question the provider's ability to consider such a minor offense in the first place, particularly for so long a period after the offense was committed. We note that the New Jersey law upon which this bill is based creates a one-year time window for minor offenses such as that. We urge that this bill more closely mirror that state's statute in this regard.
- The bill bars housing providers from making pre-conditional offer inquiries about a prospective tenant's criminal history, but does allow applicants to voluntarily provide such information in advance. The bill further requires that providers must disclose in writing to applicants that they have the right to provide evidence of rehabilitation or inaccuracies in their criminal records, which also appears to apply to pre-offer settings. [Page 2, lines 26-28] This language should be clarified, as we fear that the disclosure notice could

erroneously give some applicants the impression that they should be divulging in advance any criminal record history they have, thereby vitiating the very protection the bill is designed to provide.

- A section of the bill states that housing providers are not precluded, post-conditional offer, from “refusing to provide housing to an applicant based upon the applicant’s criminal record” unless the record has been expunged. [Page 3, lines 28-30]. This extremely broad catch-all language is in tension with the other provisions in the bill that do not allow for the automatic rejection of an applicant, despite the presence of a criminal record, and that limit the offenses that can be considered to specified offenses. This sentence suggests otherwise and should be clarified to avoid any confusion.
- The bill specifies that its protections are not applicable “[i]f a federal law or regulation requires the housing provider to consider an applicant’s criminal records...” [Page 4, lines 5-6]. We would urge that this sentence be amended to read: “If, **and only to the extent**, a federal law or regulation requires the housing provider to consider” the applicant’s record. If federal law allows a person to be denied housing based on particular crimes, that law should not allow the provider to discriminate against the applicant based on other crimes. As currently worded, however, this sentence could be read to allow that.
- Finally, we would urge that the civil remedies under the bill [Page 4, lines 9-15] be strengthened. Specifically, like other discriminatory housing practices, we would urge that, in addition to providing a judicial remedy, the R.I. Commission for Human Rights be given jurisdiction over such matters so that a person need not have to find the wherewithal to hire an attorney in order to file a complaint. The availability of an administrative process, in addition to a judicial remedy, is important in light of the barriers that people can often face finding attorneys to go to court over such matters.
- Similarly, the penalties for violations of the law should be more robust. We recommend that they mirror those contained in the state’s Fair Housing Act. R.I.G.L. § 34-37-5, so that in addition to the small civil penalty specified in the bill for infractions, victims of criminal record discrimination in housing can be made whole by obtaining compensatory and punitive damages and attorneys’ fees. Strong civil remedies like these are, we believe, necessary as a deterrent to improper conduct.

We hope that these suggestions are helpful and will be incorporated as the bill gets considered. We once again express our strong support for the goals of this legislation, and thank you for your consideration of our views.