



Legislative Testimony
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**Written Testimony Supporting House Bill 6445, An Act Expanding
Economic Opportunity in Occupations Licensed by the Department of
Consumer Protection**

Senator Maroney, Representative D'Agostino, Ranking Members Witkos and Cheeseman, and distinguished members of the General Law Committee:

My name is Kelly McConney Moore, and I am the interim senior policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in support of House Bill 6445, An Act Expanding Economic Opportunity in Occupations Licensed by the Department of Consumer Protection.

The ACLU-CT believes in a society where all people, including those who have been convicted of a crime, have equal opportunity to contribute to society and build successful and fulfilling lives. People involved in our criminal justice system who finish their sentences have paid their debt to society. They deserve to live their lives in Connecticut's communities without barriers to being happy, productive, law-abiding residents. This bill represents a step towards that goal, although much more should be done to ensure that this vision becomes a reality.

A key component of an equal opportunity is the ability to earn a living in a profession. In Connecticut, though, barriers to obtaining professional licenses constitute a significant portion of the 550+ legal obstacles a person with a criminal record faces.¹ This is incredibly counterproductive, because the evidence shows that when people who are living with a criminal record are given a fair chance to earn a job, we all

¹ National Inventory of Collateral Consequences of Conviction, *available at* https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1; *see also* Kelan Lyons, "Council Begins Study of Discrimination against People with Criminal Records." CT Mirror (Aug. 22, 2019), *available at* <https://ctmirror.org/2019/08/22/council-begins-study-of-discrimination-against-people-with-criminal-records/>.

succeed. One of the nation's largest employers, the United States military, has found that enlistees with felony records are more likely to be promoted to sergeant than those with no conviction history, even controlling for other factors.² Another survey found that 82% of managers believe that workers with criminal records are equally high or higher quality hires than people without criminal records.³

Existing Connecticut law seems to provide a clear path for granting licenses to individuals with criminal records. Section 46a-80 of the General Statutes provides that the state, when issuing licenses, cannot preemptively ban all people with a criminal record from obtaining a specific license.⁴ Rather, the state is required to start from a place of non-discrimination and may only refuse to license a person on the basis of their criminal history if a very specific individualized assessment is conducted. That individualized assessment asks the state to consider (1) the nature of the crime and its relationship to the licensed occupation, (2) the applicant's degree of rehabilitation, and (3) the time elapsed since either conviction or release. The state is only justified in denying a license when the answers to the individualized assessment show a clear, individualized reason why the applicant should not be granted a license. The Commission on Human Rights and Opportunities (CHRO) has and does take complaints about discrimination by the state under Section 46a-80.⁵

Parts of House Bill 6445 expand upon the existing protections provided in Section 46a-80 for people living with a criminal record. For example, Section 2(a) of the bill eliminates the requirement that an applicant for a license demonstrate good moral character to the Commissioner of Consumer Protection or the licensing board. This is an excellent change to the existing law. The "good moral character" requirement is subjective and can be exercised in ways that perpetuate a decisionmaker's biases. It also serves as a chill upon people with criminal records who are otherwise qualified

² Jennifer Hickey Lundquist, Devah Pager, & Eiko Strader, "Does a Criminal Past Predict Worker Performance? Evidence from One of America's Largest Employers." 96 *Social Forces* 1039 (Jan. 12, 2018), *available at* <https://academic.oup.com/sf/article/96/3/1039/4802355>.

³ Society for Human Resource Management and the Charles Koch Institute, "Workers with Criminal Records." (2018), *available at* https://www.prisonpolicy.org/scans/cki_shrm/report.pdf.

⁴ Conn. Gen. Stats. § 46a-80 (2019).

⁵ See "Who Is Protected," Commission on Human Rights and Opportunities, *available at* <https://www.ct.gov/chro/cwp/view.asp?a=2524&q=315896>.

to apply for and receive professional licenses. We have heard numerous anecdotes of people living with criminal records who put off or avoid applying for professional licenses despite their skills and experience. Removing the vague criterion of “good moral character” creates clarity for applicants and for licensure decisionmakers alike. We fully support this change to statute.

We also support Section 3 of the bill, which directs various agencies with responsibility for issuing licenses to take stock of the current background check process in their agency and the agencies’ recommendations on the feasibility of establishing a preclearance assessment of criminal history. This assessment could be used by people living with criminal records to determine if it is worthwhile for them to undertake the training they seek, or if their record would pose a barrier to employment in this industry. While we firmly believe that criminal records should not pose a barrier unless an individualized assessment per Section 46a-80 of the statutes has been conducted, we also recognize the lived reality for people with records. We have heard many times that people either have experiences and educations they cannot use, because they cannot get licensed in those fields or the opposite: that people are afraid to sink money into training and education because they fear being unable to eventually obtain a license. The preclearance assessment would meet people where they are, giving people living with criminal records confidence to seek training and pursue careers. This is a good intermediate step until changes to statutes that permit criminal record discrimination in licensure can be fully implemented.

Section 2(c) of House Bill 6445 is less straightforward, though. It provides that the Commissioner of Consumer Protection should apply the factors set forth in Section 46a-80 when issuing licenses – a requirement already imposed by the statute. This section then appears to allow the Commissioner to determine whether to grant or deny a license, as provided in Section 46a-80, but also offers a third option – issuing a consent order. This seems to be a way for the Commissioner to issue a license subject to conditions on the applicant. Seemingly, this option would only be available to the

Commissioner when considering applicants with felony convictions in their past. If this is indeed what is intended by Section 2(c), the ACLU-CT urges this committee to adopt an amendment clarifying what a consent order is, under what authority it is issued, and what conditions may be imposed thereby. These details are lacking in the bill, and in the underlying statute Section 2(c) amends, though they are critical to determining if the Commissioner will be imposing burdensome, irrational conditions that do not benefit public safety and well-being. Unless Section 2(c) can be amended to limit the types of conditions the Commissioner can apply, and the circumstances in which the Commissioner can do so, Section 2(c) provides less clarity and more confusion for formerly incarcerated people looking to make a living.

Providing a clear process for licensing agencies to follow when issuing licenses to people with criminal records is a good idea. But due to the confusion around what conditions the Department of Consumer Protection can apparently unilaterally impose on license applicants, this bill could pose an additional barrier to people living with a criminal record, rather than a path forward. For this reason, the ACLU-CT urges this Committee to clarify Section 2(c) of the bill and to limit the power of the Commissioner to impose conditions on license-seekers. With that change, we urge the Committee to support House Bill 6445 as but one step towards eliminating collateral consequences so that people living with criminal records can have a real chance at full participation in our communities.