July 5, 2011

The Hon. Lincoln Chafee
Governor
State House
Providence, RI 02903

RE: 11-S 656A/H-5441A
11-S 690/H-5461
11-S 236 as amended/H-5222A

Dear Governor Chafee:

On behalf of the Rhode Island ACLU, I am writing to urge you to veto certain bills passed by the General Assembly on the last day of the session that deal with criminal record checks. Although the ACLU has numerous concerns, for a variety of reasons, about the increased use of such checks in employment, our focus here is not on philosophical objections to expanded criminal record checks, but rather on very particular flaws contained in these specific bills.

1. **H-5441A and S-656A** require that all persons seeking employment as a nurse undergo a national and statewide criminal record check, and further require the BCI to notify employers when "disqualifying information" has been found in the job applicant's record. The problem with these bills is that they utterly fail to define what constitutes "disqualifying information," thus essentially leaving it up to law enforcement officials to decide on their own whether a nurse can be employed in his or her chosen profession based on any past criminal history they may have. We believe this is totally inappropriate.

It is unclear to us why the bills do not define disqualifying information or establish a procedure for doing so. The process otherwise established in the legislation – requiring BCI to notify an employer that disqualifying information has been found without revealing the nature of the information, and giving the applicant an opportunity to provide the information to employers so that they can make an independent judgment whether to hire the person notwithstanding his/her criminal record – is contained in a number of other statutes. But all those statutes specify the offenses that are deemed "disqualifying" or, in a few instances, charge the licensing agency with designating those offenses by regulation. See, e.g., R.I.G.L. §16-2-18.1(e) (teachers); § 23-17.4-27(b) (assisted living residence employees); §23-17-34(b) (nursing home facility employees); §23-20.8-3(b) (massage therapists); §39-18-4.1(g)(1) (RIde bus drivers); §40.1-25.1-6 (requiring BHDDH to adopt regulations defining "disqualifying information" for persons working in facilities licensed by the agency). None leaves it up to law enforcement to make that determination. All of the current statutes also limit disqualifying information to criminal **convictions**; under these bills, a person's mere arrest record could be considered disqualifying.

The Bureau of Criminal Identification serves an important purpose – it identifies and tracks the criminal history that individuals may have. However, it simply should not be in the business of determining who qualifies or does not qualify for a job based on its views of the relevance and significance of a person's past criminal record.

2. **H-5461 and S-690** are only one sentence long, but that broadly-worded sentence manages to raise a lot more questions and concerns than answers. In full, it reads:

45-2-3.3. Background checks. – Notwithstanding any law to the contrary, any municipal recreation department may request a background check from their local police department for any employee or volunteer serving their community.

As worded, the scope of the power given to municipal recreation departments is extraordinary. It allows these departments to obtain BCI checks on people without either their knowledge or consent. Further, this power is not limited to employees or volunteers working for the recreation department; the department can obtain this information on **any** person "serving their community," whether a town librarian, a volunteer at a municipal animal shelter or a parent seeking to volunteer at her child's school. It allows the department to receive **all** the BCI information regarding employees, including information about arrests not followed by conviction, something that Rhode Island's Fair Employment Practices Act otherwise explicitly prohibits because of its potentially discriminatory impact on racial minorities. R.I.G.L. §28-5-7(7). Finally, there are absolutely no restrictions or standards on what the department can do with the information once it is obtained, with whom it gets shared, or who decides its relevance in making employment decisions.

The RI ACLU is presently in court on behalf of a mother who has been barred from volunteering at her child's school because of her past criminal history of drug addiction. I have enclosed a copy of a news release announcing the lawsuit to give you an idea of the effect that enactment of this bill could have on others like her who are merely seeking to be good citizens and volunteers. Municipal recreation departments simply should not have the powers that this legislation gives them.

3. **H-5222A and S-236am** would require criminal record checks for DCYF employees. Unlike all the other criminal record check laws currently in force, this one would give DCYF direct access to the person's entire criminal record history, including arrests not followed by conviction. As with the two bills cited above, this is in direct conflict with the state's Fair Employment Practices Act, and inappropriately gives DCYF access to information to which it should not be privy.

For all these reasons, we respectfully urge your veto of these bills. Thank you in advance for your attention to our views.

Sincerely,

Steven Brown
Executive Director

cc: Patrick Rogers
Stephen Hourahan
Christine Hunsinger