

**ACLU OF RI POSITION: OPPOSE**

**TESTIMONY ON 21 – H 5845  
AN ACT RELATING TO HUMAN SERVICES – PROFESSIONAL RESPONSIBILITY –  
CRIMINAL RECORDS REVIEW  
March 16, 2021**

The ACLU of Rhode Island is appreciative of the opportunity to provide testimony on this legislation which would require national criminal records checks for patient contact employees, personal care attendants and high-risk providers. We recognize that both federal and state law requires such record checks and leaves the specifics largely to the discretion of EOHHS. However, we would like to express opposition to the protocol for these expansive criminal records checks which this legislation would set which, from our perspective, are even more stringent than those which EOHHS has implemented.

The preclusion from employment that a criminal record can enable – especially for those records which are outdated or irrelevant to the position being sought – may inappropriately bar otherwise proficient individuals from seeking employment. 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 for 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 swath of offenses which may serve as the grounds of denial of employment under this legislation is expansive beyond those which EOHHS has currently designated as disqualifying, and there is no similar ability for a consumer to make a personal judgement as to the personal care aid’s qualifications aside from the results of their criminal record check. The EOHHS guidance, for example, would allow a patient to decide whether a felony drug offense and other irrelevant offenses such as felony banking violations are disqualifying. This legislation does not do so, and would remove this decision-making ability for the patient.

Although these requirements are alone concerning, these provisions could also impact Medicaid patients whose care providers are immediate family members. A child, 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. The bill should, if favorably considered by the committee, 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 inappropriately disqualified.

Gainful access to employment, and the many support systems which rely on economic stability, is a significant aspect of the rehabilitative process and has been shown to prevent recidivism in justice-involved individuals. For this legislation to prescribe such sweeping criminal records restrictions without strict limitations on the type of offenses which may be provided to EOHHS and without a substantive appeals process, this legislation could inappropriately bar entirely competent individuals from accessing employment.

For these reasons, we urge rejection of this legislation. Thank you for your consideration.

Submitted by: Hannah Stern, Policy Associate