

**ACLU OF RI POSITION: AMEND**

**TESTIMONY ON 24-S 2625,  
AN ACT RELATING TO HEALTH AND SAFETY –  
LICENSING OF MASSAGE THERAPISTS  
May 9, 2024**

The ACLU of Rhode Island has no position on the overall intent of this legislation, which generally relocates the chapter concerning massage therapy licensure from one section of the General Laws to another. However, the introduction of this legislation provides a necessary opportunity to make several amendments to the law to ensure the inclusion of appropriate due process considerations that have been independently enacted into law since this licensure statute was adopted. We refer specifically to the state’s passage four years ago of the Fair Chance Licensing Act, which the massage therapist law does not comport with. We encourage the addition of amendments to this bill to correct that.

As the General Assembly acknowledged four years ago when it passed Fair Chance Licensing (FCL) legislation, the preclusion from licensure that a criminal record can have – especially those records which are outdated or irrelevant to the position being sought – can inappropriately bar otherwise qualified individuals from seeking or obtaining occupational and professional licenses. The FCL law, codified at R.I.G.L. §28-5.1-14, ensures that an individual cannot be disqualified from an occupation solely or in part because of their criminal record unless the crime relates *directly* to the occupation being sought. Such protections are critical to ensure that cycles of discrimination are not being perpetuated against ex-offenders who are otherwise eminently qualified for their chosen professions.

Below are a number of ways the massage licensing statute fails to comport with FCL:

- The law being reenacted by this bill provides a process for the review of the results of a national criminal record check [page 16, lines 16-28]. But it does not include many of the central provisions of the FCL law, including the ability for an individual to appeal the decision of licensure and provide evidence of rehabilitation for any criminal record found to be potentially disqualifying.
- Another section of the bill [Page 16, lines 10-13] makes a past conviction for any “sexual offense” automatic grounds for disqualifying a person from obtaining a license. This too is in conflict with FCL and should be repealed.

- In another section, “disqualifying information” is described as offenses “including but not limited to” those contained in a number of chapters, and includes irrelevant offenses such as “felony banking law violations.” (Page 16, lines 29-30.) In accordance with Fair Chance Licensing, this list of disqualifying information should be narrower in scope and specify a lookback period, so that applicants are not needlessly barred from licensure based on old and unrelated criminal records.
- In line with these comments, we urge that this legislation change “shall” to “may” in considering grounds for disciplinary action based on a criminal record. (Page 18, line 26.)

There are two other issues unrelated to FCL that we think it would be appropriate for the committee to address in relocating the statute:

- This legislation transfers language from the current statute which addresses procedures for the suspension and revocation of licenses, and allows the Department to, “pending an investigation and hearing, suspend, for a period not exceeding ninety (90) days, any license issued under the authority of this chapter and may, after due notice and hearing, revoke the license...” (Page 19, lines 31-33.) This ninety day period of suspension strikes us as far too long and inconsistent with due process protections, especially because this language is unclear as to whether the referenced “due notice and hearing” occurs within this ninety day suspension or only once the ninety day suspension has concluded.<sup>1</sup>
- Finally, this language carries over penalties from the current statute which make the practicing of massage therapy without a license a misdemeanor, and the knowing employment of individuals who are not licensed as a massage therapist a misdemeanor. In the past, this criminal offense has been used for “charge stacking” individuals who are also charged under the state’s laws banning commercial sexual activity. We believe charge stacking should be prohibited and the penalties in this bill be limited to individuals who have sought to evade the educational and other requirements of the statute.

Thank you for your consideration of our comments.

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<sup>1</sup> We note similar concerns regarding the language on page 15, lines 11-19 which additionally references a ninety-day suspension period and a requirement for “due notice and hearing.”