



House Regulatory Reform Committee

May 21, 2019

RE: HB 4489-4493

Position: Support

The ACLU of Michigan has long supported removing barriers for reintegration and rehabilitation for individuals post-incarceration. Employment is critical to the success of these returning citizens. Unfortunately, government-imposed regulations like occupational licensing requirements are among the most prevalent and burdensome obstacles faced by returning citizens seeking to enter the workforce. As nearly one third of the population has a criminal record of some kind, and roughly 19 million Americans have felony convictions,¹ the impact of policies like this is significant. The ACLU of Michigan supports this bill package as a means to create appropriate and effective licensing procedures that provide fair opportunities for people with criminal histories, while positively impacting public safety and the economy.

Blanket Prohibitions Run Afoul to Due Process and Equal Protection

The denial of an occupational license *should* be individualized to protect due process. Unfortunately, many occupational licensing statutes in Michigan have blanket prohibitions on the mere awarding of licenses to those with a criminal record regardless of how much time has passed since the conviction or the relation of the crime to the type of employment. For those without the prohibitions, there are minimal restrictions on the ability of the licensing board to reject a license application based largely or mainly on the criminal history of an applicant. As a result, under our current law, hundreds of thousands of individuals could potentially be excluded because of their criminal history—without consideration of how long ago their offense was committed, its relevance, or a true opportunity to demonstrate rehabilitation. This concept runs afoul to the principles of due process that is so fundamental to the functioning of our society. Though the state and licensing boards are not supposed to consider a criminal record that is unrelated to an individual's ability to serve the public fairly, in practice regulators can deny anyone if they fail to meet to the subjective and overly broad "good moral character" standard. This legislation properly tailors the definition to only include directly relate crimes and provides a procedure to adequately require the consideration of rehabilitative factors/evidence.

In addition, criminal history inquiries and blanket felony prohibitions have a disparate impact on communities of color. It is well established that black men are six times more likely to be incarcerated than white men, Hispanic men are 2.5 times more likely to be incarcerated than white men,² and an

¹ Shannon, S., Uggan, C., Schnikker, J., et. al., "The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010," *Demography* (2017) 54: 1795. (<https://doi.org/10.1007/s13524-017-0611-1>).

² The Sentencing Project. "Americans With Criminal Records" (<https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>).



Michigan

estimated 25% of African American adults have felony records compared to only 6% of whites.³ The impact of this racial disparity on employment has also been widely studied and critiqued for implicating potential equal protection issues. In 2012, the Equal Employment Opportunity Commission (“EEOC”) analyzed the use of criminal record inquiries in employment making decisions and noted that “criminal record exclusions have a disparate impact based on race and national origin.”⁴ Citing the FBI’s Uniform Crime Reporting Program and the U.S. Census, the EEOC noted that in 2010, 28% of all arrests were of African Americans, even though African Americans only comprised approximately 14% of the general population. Based on these statistics, the EEOC concluded that, a disparate impact was evidenced warranting further investigation by the Commission. Similarly, the disparate impact of felony record exclusions in licensing on minority communities is equally problematic and must be addressed. While, these policies certainly will not eliminate all racial disparities, the procedure set forth specifically in HB 6110 aligns with EEOC recommendations and national best practices.

Extensive Licensing Requirements and Blanket Criminal Record Exclusions Contribute to Higher Unemployment Rates

Having a criminal record—even one from several decades past—makes obtaining employment exceptionally difficult. Men with criminal records account for about 34 percent of all non-working men ages 25 to 54⁵. Again, it is important to note the correlation of race, criminal records, and employment opportunities. Unemployment among blacks in Michigan in 2014 was at an astonishing 15.8% -- three times higher than the state and the national rate.⁶ The true jobless number for individuals with criminal records is probably much larger, as these unemployment rates fail to account for discouraged job-seekers who have stopped looking for work.

According to the Bureau of Justice Statistics, approximately 68% of State prisoners have not achieved not even completed a high school education. This makes vocational skills, which often require licensure to be legally and professionally practiced, particularly critical for this population.⁷ Unfortunately, prior to the Governor’s executive directive, many of the vocational skills that MDOC prisons provided, such as an electrician, plumber, carpenter, etc., were the precise occupations that have felony conviction exclusions for their licensure. As a result, a prisoner could invest time learning a trade to assist in their rehabilitation, only to be released and informed that they would not be eligible to be licensed in that trade because of their record.

³ Shannon, S., Uggen, C., Thompson, M., Schnittker, J., & Massoglia, M. (2011). “Growth in the U.S. ex-felon and ex-prisoner population, 1948–2010” Washington, DC: Population Association of America. (<http://paa2011.princeton.edu/papers/111687>).

⁴ U.S. Equal Employment Opportunity Commission, “Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964,” No. 915.002 (Apr. 25, 2012) (http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm#VII).

⁵ National Employment Law Project (citing Binyamin Appelbaum, “The Vanishing Male Worker: How America Fell Behind,” New York Times, Dec. 11, 2014).

⁶ Wilson, Valerie, Economic Policy Institute, *Projected Decline in Unemployment in 2015 Won’t Lift Blacks out of Recession-carved Crater*, Mar. 26, 2015 (available at: <http://www.epi.org/publication/projected-decline-in-unemployment-in-2015-wont-lift-blacks-out-of-the-recession-carved-crater/> and <http://www.epi.org/files/pdf/81754.pdf>).

⁷ Bureau of Justice Statistics, “Education and Correctional Populations,” Rev. Apr. 15, 2003 (<https://www.bjs.gov/content/pub/pdf/ecp.pdf>).



Creating a Fair Licensing Process Positively Impacts Public Safety and the Economy

Felony exclusions and extensive regulations exacerbate income inequality and increase recidivism. More than 60% of formerly incarcerated individuals are unemployed one year after being released; those who do find jobs take home 40% less pay annually.⁸ Numerous studies consistently show that successful entry into the labor force greatly decreases recidivism chances:

- A 2011 study of the formerly incarcerated found that employment was the single most important influence on decreasing recidivism, and that two years after release nearly twice as many employed people with records had avoided another brush with the law than their unemployed counterparts.⁹
- A three-year recidivism study found that formerly incarcerated persons with one year of employment had a 16% recidivism rate over three years as compared to a 52.3% recidivism rate for all Department of Correction releases. Even just 30 days of employment lowered the three-year recidivism rate to 20%.¹⁰
- An examination of a national experimental public work program for the formerly incarcerated found that even marginal employment opportunities were effective in reducing illegal activity and arrest for those over 27 years of age.¹¹
- A study of state-level data concluded that a 1 percent drop in the unemployment rate causes a 2 percent decline in burglary, a 1.5% decrease in larceny, and a 1% decrease in auto theft.¹²
- States with the heaviest occupational licensing burden saw an average increase in the three year, new crime recidivism rate of over 9%; conversely state that had the lowest burdens and no such character provisions saw an average decline in that recidivism rate of nearly 2.5%.¹³

Reform to our occupational licensing laws is an important step towards reducing crime and enhancing public safety. But it not only benefits our community, it benefits the economy. Employers and consumers are given a wider pool of qualified, willing, and able workers to choose from. Studies have shown that returning citizens who are committed to changing their lives and are given a fair chance at employment are found to be some of the hardest working and most reliable employees with longevity at a single employer.

Given the recent directive from Governor Snyder, this legislature is poised to make significant change. Individuals are released from our criminal justice system under the notion that they have served their

⁸ The Sentencing Project. "Americans With Criminal Records" (<https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>).

⁹ Mark T. Berg and Beth M. Huebner, "Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism," *Justice Quarterly* (28), 2011: 382-410. (www.tandfonline.com/doi/abs/10.1080/07418825.2010.498383?journalCode=rjqv20#preview)

¹⁰ "Safer Foundation Three-Year Recidivism Study, 2008," Chicago, IL: 2008. (<http://saferfoundation.org/files/documents/Safer%20Recidivism%20Study%202008%20Summary.pdf>).

¹¹ Christopher Uggen, "Work as a Turning Point in the Life Course of Criminals: a Duration Model of Age, Employment, and Recidivism," *American Sociological Review* (67), 2000: 529-546. (www.socsci.umn.edu/~uggen/Uggen_asr_00.pdf).

¹² Steven Raphael and Rudolf Winter-Ebmer, "Identifying the Effect of Unemployment on Crime," *The Journal of Law and Economics* (University of Chicago Law School) (44), 2001: no page numbers available. (www.jstor.org/stable/10.1086/320275).

¹³ The Mackinac Center for Public Policy (<https://www.mackinac.org/licensure>, pg 13).



Michigan

time and are on a path to become productive members of society, but our policies strip them of the resources to do so. These policies result in individuals with decades old convictions being completely unable to find employment, and in some cases forcing them to resort to extreme measures to make ends meet and help support their families. We have enabled a culture that rejects people before they can be judged on their merits, creating a social and economic prison. It is time to fix it.

Respectfully submitted,

Kimberly S. Buddin

Policy Counsel

American Civil Liberties Union of Michigan

Kbuddin@aclumich.org

(734) 945-2636