



Legislative Testimony
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**Written Testimony Supporting House Bill 6474, An Act Concerning
Collateral Employment Consequences of a Criminal Record**

Senator Kushner, Representative Porter, Ranking Members Sampson and Arora, and distinguished members of the Labor and Public Employees 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 here to testify in support of House Bill 6474, An Act Concerning Collateral Employment Consequences of a Criminal Record.

The ACLU-CT believes in a society where all people, including those who have been convicted or accused 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.

Instead of enabling people living with records, Connecticut law makes life much harder for them. Of the over 550 barriers to full civic participation that are written into our state's law,¹ the large majority are related to employment. These barriers are not relics from the distant past. New barriers are passed out of this legislature nearly every year – this year, collateral consequences running the gamut from prohibiting people with convictions from serving in certain governmental offices² to

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/>.

² Connecticut House Bill 6529 (2021).

making it harder for people with records to access business opportunities,³ have been proposed. This is how collateral consequences build up to an impenetrable barrier – slowly, one idea at a time.

This accretion of collateral employment consequences can create a daily nightmare for people with records just trying to find work. Because of legal barriers to employment and persistent stereotypes, in 2018, the unemployment rate among formerly incarcerated people nationwide is 27 percent⁴ – more than 6.5 times the overall unemployment rate in Connecticut at the same time.⁵ Economists estimate that the U.S. gross national product is reduced by between \$78 billion and \$87 billion because so many formerly incarcerated job seekers are kept out of the workforce.⁶ This creates significant hardships: 45% of men released from incarceration do not have any earnings at all in the first calendar year after their release.⁷ Of those with earnings, the median income is just over \$10,000 in their first year out of incarceration.⁸ Wages never recover for most people, since incarceration is linked to decreases in subsequent annual earnings of, on average, 52%.⁹

The employment barriers faced by people with criminal records have only worsened during the COVID-19 pandemic. Agencies that help find employment for people with records report that, compared to 2019, only half as many job seekers with records were able to find placements.¹⁰ People living with criminal records are less likely to have access to unemployment insurance, sick leave, health insurance, and rainy-day

³ Connecticut House Bill 5761 (2021).

⁴ Lucius Couloute & Daniel Kopf, “Out of Prison & Out of Work: Unemployment among Formerly Incarcerated People.” Prison Policy Initiative (Jul. 2018), *available at* <https://www.prisonpolicy.org/reports/outofwork.html>.

⁵ “Labor Market Information,” Connecticut Department of Labor, *available at* <http://www1.ctdol.state.ct.us/lmi/unempratectus.asp>.

⁶ Cherrie Bucknor & Alan Barber, “The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies,” at 1. Center for Economic and Policy Research (Jun. 2016), *available at* <https://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>.

⁷ Adam Looney & Nicholas Turner, “Work and opportunity before and after incarceration.” Brookings Institute, Mar. 14, 2018, *available at* <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>.

⁸ *Id.*

⁹ Terry-Ann Craigie, Ames Grawert, Cameron Kimble, and Joseph E. Stiglitz, “Conviction, imprisonment, and lost earnings: How involvement with the criminal justice system deepens inequality.” Brennan Center for Justice, Sept. 15, 2020, *available at* <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

¹⁰ Charisse Jones, “You just want to . . . have a chance;: Ex-offenders struggle to find jobs amid COVID-19.” USA Today, Feb. 3, 2021, *available at* <https://www.usatoday.com/story/money/2021/02/03/unemployment-ex-offenders-among-many-struggling-find-work/6656724002/>.

savings to weather the health crisis.¹¹ Experts estimate that once jobs start coming back after the COVID-19 pandemic abates, people with criminal records will likely be the last to see their unemployment rates lower.¹²

These harmful employment effects are not distributed equally across society. Racial disparities in Connecticut's criminal justice system¹³ are also replicated when people return home from incarceration. Because Black and Latino men are disproportionately incarcerated,¹⁴ they are likewise disproportionately rejected when they return to the community and seek to build a life worth living. Poor chances of employment or stable housing likely have a resulting outsized impact on Black and brown people.

When people with records cannot find work, it hurts more than just those individuals. More than half of incarcerated people in Connecticut are parents¹⁵ – meaning these barriers to reentry also harm Connecticut children when their parents return to society and cannot find jobs to support their families. A criminal conviction often is a conviction for an entire family. Familial problems become community problems. When someone who is formerly incarcerated has a fair chance at earning a job, they are less likely to commit another crime.¹⁶ Mass incarceration and its collateral consequences hurt each and every one of us by limiting the potential of our communities. We should also remember that more than half of adults in the U.S. have a family member who has been incarcerated.¹⁷ The people that the state of

¹¹ Rebecca Vallas and Sharon Dietrich, "A clean slate in the age of coronavirus." *Newsday*, May 25, 2020, *available at* <https://www.newsday.com/opinion/coronavirus/prisoners-clean-slate-coronavirus-covid-19-1.44824963>.

¹² Akua Amaning, "Advancing Clean Slate: the Need for Automatic Record Clearance During the Coronavirus Pandemic." Center for American Progress, Jun. 25, 2020, *available at* <https://www.americanprogress.org/issues/criminal-justice/news/2020/06/25/486857/advancing-clean-slate-need-automatic-record-clearance-coronavirus-pandemic/>.

¹³ See U.S. Commission on Civil Rights, Briefing on Racial Disparities and Prosecutorial Practices in the Connecticut Criminal Justice System (Apr. 2019), *available at* <https://www.usccr.gov/press/2019/03-25-Flyer-Criminal-Justice.pdf>.

¹⁴ According to the Sentencing Project, Connecticut is the fifth-worst state for Black men, with 1 in 19 incarcerated, making them 9.4 times likelier to be incarcerated than white men. Latino men in Connecticut are 3.9 times more likely to be incarcerated than white men. Ashley Nellis, "The Color of Justice: Racial and Ethnic Disparity in State Prisons." The Sentencing Project (Jun. 14, 2016), *available at* <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

¹⁵ Roger Senserrich, "Our New Report: Children with Incarcerated Parents." CT Ass'n for Human Servs. (Jun. 12, 2016), *available at* http://www.cahts.org/our_new_report_children_with_incarcerated_parents.

¹⁶ The availability of suitable jobs in the labor market a person reenters when leaving incarceration "significantly reduces the risk of returning to prison." Crystal S. Yang, "Local Labor Markets and Criminal Recidivism."

¹⁷ "Half of Americans Have Family Members Who Have Been Incarcerated." Equal Justice Initiative (Dec. 11, 2018), *available at* <https://eji.org/news/half-of-americans-have-family-members-who-have-been-incarcerated/>.

Connecticut is turning into a permanent underclass are not nameless people from parts of the state we never visit – they are our sons and daughters, fathers and mothers, brothers and sisters, family, neighbors, and friends.

Despite repeated efforts by this Committee and other elected officials, Connecticut has failed to eliminate employment barriers altogether. But there is a way forward. One single employment anti-discrimination statute, Section 46a-80, provides that the state, when acting as an employer, cannot preemptively ban all people with a criminal record from seeking a specific position.¹⁸ Rather, the state is required to start from a place of non-discrimination and may only bar a person on the basis of their criminal history if a very specific individualized assessment is conducted. That individualized assessment asks the state, acting as the employer, to consider (1) the nature of the crime and its relationship to the job, (2) the applicant's degree of rehabilitation, and (3) the time elapsed since either conviction or release. An employer is only justified in denying a person a job if the answers to this individualized assessment show a clear, individualized reason why the applicant's criminal record makes them a poor fit for the specific job. The Commission on Human Rights and Opportunities (CHRO) has and does take complaints about employment discrimination by the state under Section 46a-80.¹⁹ The protections offered by Section 46a-80 offer an excellent model for helping break down the barriers faced by people living with a criminal record.

House Bill 6474 would mandate that all employers, not just the state, use this individualized assessment process when evaluating applicants with criminal records. Rather than using a whack-a-mole approach toward ending 550-plus collateral consequences one at a time, Connecticut should take a proactive, bold step by passing this individual assessment anti-discrimination bill. House Bill 6474 is the opportunity for Connecticut to require employers to make an employment determination based on a person, not on a background check result. We will all benefit

¹⁸ Conn. Gen. Stats. § 46a-80 (2019).

¹⁹ See "Who Is Protected," Commission on Human Rights and Opportunities, *available at* <https://www.ct.gov/chro/cwp/view.asp?a=2524&q=315896>.

if we stop blocking people's access to employment based solely on that person's criminal record.

Passing a bill that reduces collateral employment consequences for people with criminal records is the right thing to do, and the vast majority of Connecticut voters support it. Eighty-five percent of Connecticut voters, including 72% of Republicans, agree that people who have been convicted of a crime and have served their sentence should have a fair shot at getting their lives back on track without having their conviction held against them. What's more, 57% of Connecticut voters explicitly support the legislature passing a law like House Bill 5389 that prohibits discrimination on a person's record of arrest or conviction in employment, housing, education, insurance, credit, and other public programs and penalizes those who have discriminated against them.²⁰ Connecticut residents know that a person's record of arrest or conviction alone does not tell you whether they will be a good employee.

The evidence shows that when people who are living with a criminal record are given a fair chance to earn a job, find housing, get insurance, and reintegrate into society, we all 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.²¹ 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.²²

Every person living with a criminal record, who has served out their sentence and reentered society should have an equal opportunity to build a successful and fulfilling life. This is true for people who are just beginning their reentry process and people who have been back in their communities for decades, regardless of whether they

²⁰ Benenson Strategy Group "Criminal Justice Poll 2020." ACLU of Connecticut (Feb. 5, 2020), *available at* https://www.acluct.org/sites/default/files/field_documents/2020-2-19_aclu_ct_smart_justice_polling_release_topline_-_clean_slate.pdf.

²¹ Jennifer Hickes 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>.

²² 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.

have been convicted of a misdemeanor or a felony and irrespective of whether they have been convicted of a violent or non-violent offense.

All people in Connecticut have paid the price of mass incarceration, yet we cannot afford the cost. Let's work to build stronger individuals and stronger communities by eliminating barriers to employment for people living with a criminal record. The ACLU-CT strongly urges you to pass House Bill 6474, a critical bill to create a more just and equitable Connecticut.