

**Testimony of Satcha Robinson
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**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

Public Hearing Regarding:

Bill 23-0440

“Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019”

January 29, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony in support of Bill 23-0440, the Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019, because it expands important employment opportunities for individuals with criminal justice involvement. However, we recommend that the Committee consider two amendments before it approves the bill.

The Bill’s Pre-Petition Review Process is an Important Step Toward Reducing Barriers to Employment for Returning Citizens

In the 1950’s, approximately 5% of Americans needed an occupational license to work in their occupation of choice. Over the past decades, this figure has increased to between 12-25%.²

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

² See Yesim Sayin Taylor, D.C. Policy Center, *The Impact of Occupational Licensing Requirements in D.C.* (2019) (available at https://www.dcpolicycenter.org/publications/occupational-licensing-2019/?mc_cid=8a4dfa2084&mc_eid=d15ce59029); Dick M. Carpenter II, Lisa Knepper, Lyle Sweetland & Jennifer McDonald, Institute for Justice, *License to Work: A National Study of*

Possession of an occupational license is linked to higher wages, lower rates of unemployment, and a greater likelihood of employer-sponsored health insurance.³ Licensed occupations represent a path toward economic stability for middle- and low-income District residents. For example, most of the occupations regulated by the Department of Consumer and Regulatory Affairs focus on middle- or low-wage jobs that are attractive to low-skilled District residents who do not have high levels of education or formal training.⁴ Unfortunately, occupational licensing requirements can frustrate upward mobility for low-income District residents due to costliness and procedural complexity.⁵

One component of receiving and maintaining an occupational license is the disclosure and consideration of one's criminal history. Legal Aid applauds the Committee's efforts to provide clarification about what constitutes a disqualifying criminal history. To qualify for an occupational license under current law, an individual must not have been *convicted* of an offense which bears directly on the fitness of the person to be licensed. The proposed bill will permit individuals to petition the licensing board — at any time — for a decision regarding whether their criminal history would disqualify them for a license. This proposal will save individuals from investing valuable time and money into obtaining the required education and experience for a license, only to find out their criminal history bears directly on the fitness of the license sought. On average, it takes 261 days to obtain the education and training required for an occupational license in the District.⁶ The pre-petition process is integral to increasing returning citizens'

Burdens from Occupational Licensing p. 8 (2d ed. 2017) (available at https://ij.org/wp-content/themes/ijorg/images/ltw2/License_to_Work_2nd_Edition.pdf)

³ Dep't of the Treasury Office of Economic Policy, Council of Economic Advisers & Dep't of Labor, Occupation Licensing: A Framework for Policy Makers p. 14 (2015) (available at https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf); Maury B. Gittleman, U.S. Bureau of Labor Statistics, The Effects of Occupational Licensing on Labor Market Outcomes (2018) (available at <https://www.bls.gov/opub/mlr/2018/beyond-bls/the-effects-of-occupational-licensing-on-labor-market-outcomes.htm>); Ryan Nunn, The Hamilton Project, How Occupational Licensing Matters for Wages and Careers p. 2 (2018) (available at https://www.brookings.edu/wp-content/uploads/2018/03/es_3152018_how_occupational_licensing_matters_for_wages_and_careers.pdf); *supra*, Yasim.

⁴ *Supra*, Yasim.

⁵ *See id.*

⁶ *Supra*, Carpenter at 24

access to occupational licenses.⁷ With the passage of this bill, the District will join other states, such as Texas, in achieving a fairer licensing process.⁸

The pre-petition process is essential to a fair licensing scheme due to the large population of District residents with criminal justice involvement. Approximately one in eight residents have been convicted of a criminal offense.⁹ Over a ten-year period, more than 100,000 unique residents were arrested by the Metropolitan Police Department and 40,000 unique District residents were convicted in the Superior Court of the District of Columbia.¹⁰ Of the individuals sentenced, over 92% were African-American.¹¹ Due to the racial disparities in the criminal justice system, occupational licensing disqualifications based on criminal history will harm people of color, locking them out of higher wage opportunities and closing off the path to improving financial stability to thousands of District residents. The pre-petition process, in tandem with greater guidance provided by the proposed totality of the factors test, will incorporate much needed transparency, clarity, and fairness into the occupational licensing scheme.

Legal Aid suggests the following amendments to further reduce barriers to occupational licensing experienced by returning citizens.

⁷ See generally Institute for Justice, *Collateral Consequences in Occupational Licensing (CCOLA) Model Legislation* (2019) (available at <https://ij.org/wp-content/uploads/2019/11/10-31-2019-Model-Collateral-Consequences-in-Occupational-Licensing-Act-2.pdf>); Michelle Natividad Rodriguez & Beth Avery, National Employment Law Project, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* Appendix 1 (2016) (available at <https://s27147.pcdn.co/wp-content/uploads/Unlicensed-Untapped-Removing-Barriers-State-Occupational-Licenses.pdf>).

⁸ See *supra*, Natividad Rodriguez at 27.

⁹ Brian Cognato, Daniel Greene, Jeff Raderstrong & Josh Sagers, The George Washington University, *A Data Needs Assessment for the Mayor's Office on Returning Citizen Affairs (MORCA)* p. 21 (2015) (available at <https://orca.dc.gov/sites/default/files/dc/sites/orca/publication/attachments/GW%20Report%20%281%29.pdf>).

¹⁰ Ellen McCann, Criminal Justice Coordinating Council, *Ten-Year Estimate of Justice-Involved Individuals in the District of Columbia* p. 17 (2018) (available at <https://www.jrsa.org/pubs/sac-digest/vol-29/dc-est-just-involved.pdf>).

¹¹ Washington Lawyers' Committee for Civil Rights & Urban Affairs, *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law* p. 5 (2014) (available at https://www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf).

Pending Criminal Accusations Should Not Be Considered in Licensing Decisions

In spite of the benefit of the pre-petition process, however, the bill, as introduced, creates additional barriers for returning citizens accessing and maintaining occupational licenses. Current law provides that a license shall not be issued, or a license may be revoked or suspended, if an individual has been *convicted* of an offense which bears directly on the fitness of the person. Rather than removing barriers, this bill would expand existing barriers to reach not only convictions, but *pending* criminal accusations. Should a criminal accusation terminate in a non-conviction, the case could not be considered in any licensing decision. Approximately 60% of District residents arrested will not be convicted.¹² The Council should be reducing, not exacerbating, the collateral consequences that stem from accusations, rather than convictions.

Legal Aid opposes the expansion of restrictions to include pending criminal accusations in both the application and suspension/revocation stage. However, it is particularly egregious for licensed workers in the suspension/revocation context. Not only would accused individuals have to undergo the strain of defending themselves in a criminal case, but additionally, a licensed worker might lose their income source before any determination has been made as to guilt. Should a pending criminal accusation involve an allegation of conduct by the licensee that presents an imminent danger to the health and safety of the people in the District, there is an expedited process under DC Code § 47-2853.18 to permit boards to take immediate action. In this situation, the licensee is entitled to a hearing within 72 hours of the suspension or revocation. This mechanism is more appropriate to address any public safety concerns related to a pending criminal case because it balances protecting the public with the due process rights of the licensee. Permitting consideration of pending criminal accusations in §§ 47-28.53.12 and 47-2853.17 needlessly places financial hardship on individuals without any relationship to public safety.

Convictions Set Aside Under the Youth Rehabilitation Act Should Not Be Considered in Licensing Decisions

Legal Aid supports the prohibition on consideration of convictions that have been, among others, sealed or expunged. In sealing and expungement cases, there is a fulsome process of presenting evidence, mitigating factors, and indicators of rehabilitation. After considering information from the individual and the prosecutor, a judge on the Superior Court decides whether to seal or expunge the record.

We encourage the Committee to expand the list proposed in § 47-2853.17(c-3)(3)(B) to include convictions that have been set aside under the Youth Rehabilitation Act. In 2018, the Council amended the Youth Rehabilitation Act to permit individuals who were convicted of certain criminal offenses that occurred prior to age 25 to file to set aside a conviction in Superior Court. The decision to set aside a conviction is discretionary, after an individual demonstrates “sufficient evidence of rehabilitation to the court.”¹³ The totality of the factors test put forth in the proposed bill is very similar to the factual analysis undertaken by judges when convictions

¹² *See supra*, McCann at 17.

¹³ B-22-0451 Committee Report, p. 22.

are sealed, expunged, or set aside. As such, licensing boards should defer to judicial decisions regarding rehabilitation, all of which occur in sealing, expungement, and set aside cases.

Conclusion

Legal Aid is very encouraged by the Council's desire to reduce the collateral consequences experienced by returning citizens. Overall, the proposed bill marks significant improvement upon the occupational licensing scheme. Legal Aid's suggested amendments reflect minor changes that would have a significant impact on returning citizens' employment prospects. We also hope this bill sparks an interest in future legislation regarding criminal history in health-related occupational licensing schemes, as the Council should continue to review and consider ways it can break down barriers to employment for returning citizens. Thank you for this opportunity to provide testimony and we are happy to answer any additional questions.