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**Statement of
of the Council for Court Excellence
before the
Committee on Judiciary & Public Safety
and the
Committee of the Whole
Council of the District of Columbia**

B23-0440

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

January 29, 2020

Good morning Chairman Mendelson, Councilmember Allen and members of the committees. My name is Emily Tatro, I am the Deputy Director of the Council for Court Excellence (CCE), a local non-partisan, non-profit civic organization that has worked for 38 years to improve the administration of justice in the District of Columbia. No judicial member of CCE participated in the formulation of this testimony.

CCE retained the Community Justice Project (CJP) clinic at Georgetown University Law Center in January 2017 to develop a plan to address collateral consequences of a criminal record in the District, focusing specifically on returning citizens' access to occupational and professional licenses. The resulting report, "From Prisons to Professions: Increasing Access to Occupational Licenses for D.C.'s Returning Citizens," has been submitted for the record. Over the last three years, CCE has continued to focus on the issues that impact returning citizens by publishing resources related to the barriers faced by people with criminal records, and serving as a technical assistance advisor to the D.C. Reentry Action Network (RAN), a coalition of 25 community-based re-entry service providers working to ensure all people returning to D.C. from prison and jail have the support they

need to stay home successfully. Through this work, we see each day the ways in which peoples' criminal records are a barrier to their employment.

Professional licenses are used to ensure public safety or improve the quality of products or services and are required to practice over 70 occupations in the District of Columbia.¹ However, licensing also has the unfortunate consequence of keeping people of limited financial means and people with criminal records out of the workforce. A multi-year study by Princeton University found that time served in prison lowered a person's wages by as much as 20 percent.² Professional licenses are a way out of the cycle of poverty for some returning citizens, but obtaining a license can be difficult.

Right now, returning citizens in D.C. are not connected to the employment that they desperately seek. Among employable returning citizens entering CSOSA supervision during 2015, 71% were still unemployed after 90 days.³ Without income, returning citizens are unable to meet their basic needs. Employment is a foundational requirement for successful re-entry⁴. Unfortunately, we do not know how many people with criminal records have applied for and been granted or denied occupational licenses because boards have never before been required to track or report those data.

We are grateful that Councilmember Allen has taken up this important issue and appreciate the support of Council members Grosso, Nadeau, Bonds, Cheh, McDuffie, and R. White, who co-introduced the Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019. We enthusiastically support this legislation; in the three years since CCE's report was released, 20 states,

¹ D.C. CODE ANN. §§ 3-1205.01(a)(1) and 47-2853.04.

² Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 AM. SOC. REV. 526, 535 (2002), available at http://scholar.harvard.edu/brucewestern/files/western_asr.pdf.

³ Council for Court Excellence, "Beyond Second Chances: Returning Citizens' Struggles and Successes in the District of Columbia," (2016), available at <http://www.courtexcellence.org/uploads/File/BSC-FINAL-web.pdf>.

⁴ See, e.g., CHRISTY VISHER ET AL., URBAN INST. JUSTICE POLICY CTR., EMPLOYMENT AFTER PRISON 8 (2008), available at <http://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.pdf>.

including Maryland, Mississippi, and Texas,⁵ have passed occupational licensing reform, and D.C. residents deserve the same opportunity.

Today we offer five suggestions to ensure that this reform has its intended effect – increasing access to employment for people with criminal records. First, the bill should include a clear standard of review for decisions; second, the pre-licensing petition process can be strengthened; third, the bill should prohibit boards from considering old convictions; fourth, it should also cover all health occupation licenses; and finally, it should provide for education about the new law for boards and applicants.

I. Add a Standard of Review

The bill creates a new rule: to consider a conviction, a licensing board must find that the conviction is “directly related to the occupation for which a license is sought.” The boards should also be given a standard to use in making that decision. We recommend “clear and convincing evidence,” a standard often used in administrative proceedings. This will also give clear direction to the District of Columbia Court of Appeals, which is tasked with hearing any appeals from final decisions by Department of Consumer and Regulatory Affairs (DCRA) licensing boards.⁶

II. Add Time-Limit and Reporting Requirements to Pre-Petition Review

CCE was excited to see an opportunity for pre-licensing petition included in this bill, as recommended in our “Prisons to Professions” report. This process will allow people to ask licensing boards whether their specific criminal record would be deemed “directly related” and disqualify them from licensure before spending time and money pursuing the education and training necessary for the

⁵ National Employment Law Project, “Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions,” (December 2019), *available at* <https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-v4-2019.pdf>.

⁶ D.C. Code Ann. § 47-2853.23 (1999).

occupation. We have two recommendations to strengthen this provision: first, add a 60-day time limit for the boards to respond to the pre-licensing petition so that potential applicants will have a timely decision upon which to base their future plans. Second, add data about the pre-licensing petition applications and decisions to the new reporting required by boards in this bill.

III. Exclude Old Convictions from Consideration

In “Prisons to Professions,” CCE recommended prohibiting boards from considering older convictions: felony convictions older than seven years, and misdemeanor convictions older than three years, measured from the time of completion of sentence.⁷ The bill requires boards to consider “the length of time that has elapsed since the offense was committed” as a factor in whether the conviction is “directly related,” but does not give boards guidance as to how to weigh this factor. The bill does not sufficiently account for the fact that rates of recidivism drastically diminish over time. Most new offenses committed by people with previous criminal records are committed within the first year of release from prison. Once two to four years have passed after a misdemeanor conviction,⁸ and four to seven after a felony,⁹ a person with a previous criminal record is no more likely to commit a new offense than a person who has no record. The inclusion of three- and seven-year time limits in the bill will set a firm, uniform, evidence-based standard, protecting returning citizen applicants and expanding their chances of obtaining occupational licenses.

⁷ Council for Court Excellence and Georgetown University Law Center Community Justice Project, *From Prisons to Professions* (2017). Available at www.courtexcellence.org/Uploads/Publications/FromPrisonsToProfessions.pdf.

⁸ STEPHEN SLIVINSKI, CTR. FOR STUDY OF ECON. LIBERTY AT ARIZ. STATE UNIV., *TURNING SHACKLES INTO BOOTSTRAPS* 7 (2016), available at <https://research.wpcarey.asu.edu/economic-liberty/wp-content/uploads/2016/11/CSEL-Policy-Report-2016-01-Turning-Shackles-into-Bootstraps.pdf>.

⁹ Kurlychek, Megan C., Robert Brame, and Shawn D. Bushway. "Scarlet Letters And Recidivism: Does An Old Criminal Record Predict Future Offending?" *Criminology Public Policy* (2006): 483-504.

IV. Cover Licensed Health Occupations

As written, this bill only covers occupational licenses governed by DCRA, leaving out dozens of professions governed by one of nineteen Health Occupation Boards.¹⁰ The same standard for criminal records should apply to any type of occupational licensure in the District. By adopting the “directly related” standard, the Health Occupation Boards could continue to screen for people who might be at greater risk of recidivism in one of their professions, and could, for instance, deny a pharmacy technician license to a person with a drug distribution conviction, without needlessly blocking others from the field.

Healthcare is one of the District’s top five high-demand workforce sectors, as designated by the Workforce Investment Council.¹¹ For instance, there are nearly 3,700 certified nursing assistant positions in D.C., positions that can be held by entry-level workers without a college education,¹² if they are licensed by the Board of Nursing. With an associate degree, and licensure from the Board of Dentistry, a person could be one of the 530 dental hygienists needed in the District, earning \$49 per hour.¹³ Returning citizens must have the opportunity access to these occupations if we are to both fill the high demand for healthcare work and address unemployment among people with criminal records.

V. Mandate Education About New Law

Finally, CCE recommends including provisions mandating education on the new law for both applicants and boards. The bill will not have its intended effect if the people who might benefit most are not aware of the new law, or if the boards are unsure of its application. We have unfortunately seen the

¹⁰ See D.C. Code Ann. § 3-1202.

¹¹ D.C. Workforce Investment Council, “Demand Occupation List,” *available at* <https://dcworks.dc.gov/page/demand-occupation-list>.

¹² D.C. Workforce Investment Council, “District of Columbia High-Demand Sectors and Occupations List - Tables by Sector and Occupations,” *available at* <https://dcworks.dc.gov/sites/default/files/dc/sites/dcworks/publication/attachments/NEW%20-%20Demand%20Occupations%20List%20Update%20-%202002-2017%20-%20Sectors%20and%20Occupations%20List%20.pdf>.

¹³ *Id.*

effects of the lack of an educational campaign with D.C.'s ban the box law – only 40% of employers surveyed reported knowing that the law protecting applicants with criminal records existed.¹⁴

To ensure that both boards and applicants are familiar with the new standards, educating both sets of parties is necessary. Programming should provide information including new standards and factors, how to present evidence in support of rehabilitation, applicants' right to representation, and the availability of free attorneys at legal services organizations for licensure hearings and appeals. Such an education program can help returning citizen applicants avoid possible risks and maximize their opportunity to obtain occupational licensing and ensure that boards are making informed, consistent decisions.

Conclusion

CCE wholly supports the goals of the Removing Barriers to Occupational Licensing for Returning Citizens Amendment Act of 2019. We appreciate the Council's efforts to improve the accessibility of occupational licenses to D.C.'s returning citizens and move the District one step further in creating the opportunity for employment for all. Thank you for your time.

¹⁴ Juffras, Jason, Matt Separa, Colenn Berracasa, Alexis Estevez, Charlotte Nugent, Kelly Roesing, and Jerry Wei. June 10, 2016. "The Impact of "Ban the Box" in the District of Columbia." Available at www.dcauditor.org/sites/default/files/FCRSA%20-%20Ban%20the%20Box%20Report_0.pdf.