

To: Transition Team for Governor-elect Lamont and Lt. Governor-elect Bysiewicz
From: Reentry/Collateral Consequences Working Groups, Criminal Justice Committee
Re: Supporting Reentry and Addressing the Collateral Consequences of Conviction
Date: December 31, 2018

This memo considers implementation of the Governor-elect's policy goals with respect to welcoming formerly incarcerated people into society and addressing the collateral consequences of criminal convictions. The Governor-elect's statement on Criminal Justice Reform provides that he will:

***Welcome formerly incarcerated people into society.** Equipping people recently released from prison with the tools they need to succeed is a necessary part of our criminal justice system's rehabilitative purpose. It's also the smart thing to do for our communities. That means closing the health care coverage gaps that plague people on reentry, connecting people with educational opportunities, partnering with the business community to hire people into good-paying jobs, and ensuring a transition into accessible and affordable housing.*

***Sign Clean Slate legislation.** People who have earned a second chance should not be subjected to a lifetime of discrimination in housing, employment, voting, and their finances. I will support and sign a bill, modeled on recent bipartisan legislation in Pennsylvania, to automatically seal the criminal records of rehabilitated offenders. I will also strengthen Connecticut's "Ban the Box" legislation to prevent most employers from asking job applicants about their criminal records until a conditional job offer has been extended.*

Connecticut residents returning home after incarceration face more than 600 legal barriers to supporting themselves and their families. These collateral consequences of having a criminal record hurt their ability to reintegrate into society. There are nearly 40,000 people on probation and parole in Connecticut, many of whom will face hurdles due to their criminal records as they search for jobs and housing, further their education, apply for insurance and credit, and attempt to participate in public programs and services and economic development programs. Even once probation and parole are complete, barriers remain. Among New England states, Connecticut has the highest rate of people who are disenfranchised because of their involvement with the justice system.

We recommend a careful review of the new Reentry Strategy report developed by the Office of Policy and Management in collaboration with the Connecticut Re-entry Collaborative (housed at the Institute for Municipal and Regional Policy at Central Connecticut State University). This report thoroughly describes past reentry efforts in Connecticut and provides detailed recommendations for future reforms. We support the reforms laid out in this report. Below, we highlight some of these recommendations and include additional suggestions. Connecticut must do more to support people reentering communities and reduce the collateral consequences that are imposed as a result of criminal convictions.

I. DIRECTOR OF REENTRY POLICY AND PLANNING FOR THE STATE OF CONNECTICUT

In line with the recommendations in the Reentry Strategy report, we recommend creating a new position of Director of Reentry Policy and Planning for the State of Connecticut. Many state agencies, municipalities, nonprofit organizations, and community groups are involved in different aspects of reentry in Connecticut. Reentry Roundtables are active in eight locations around the state. There should be a person in state government whose job is devoted to coordinating and supporting these groups and advocating for individuals reentering communities from prison. The Governor-elect should engage the Statewide Reentry Collaborative in the process for selecting this Director. Strengthening collaboration among state, municipal, and community groups is crucial to ensuring that people reentering communities from prison are sufficiently supported. Success should be measured not only by reductions in recidivism, but also by considering outcomes related to health, employment, housing, education and other matters.

II. CLEAN SLATE LEGISLATION

Currently, Connecticut does not have a mechanism providing for automatic erasure of convictions after a period of time. Instead, the only means of erasing a conviction is by obtaining a pardon from the Board of Pardons and Paroles. Connecticut does provide for the automatic erasure of police and court records when a case has been dismissed or nolle, or a defendant has been acquitted after trial.¹

Pennsylvania recently enacted legislation (the Clean Slate Act) that provides an automatic mechanism to seal certain types of misdemeanor convictions after a person has been crime-free for a period of ten years. Under the Act, the administrative office of the courts and the state police identify eligible convictions and undertake steps to ensure these records are subject to “limited access”—meaning the records can be disclosed to noncriminal justice agencies and individuals only in very limited circumstances.²

We recommend enactment of “Clean Slate” legislation in Connecticut that provides that misdemeanor offenses will be erased automatically from an individual’s record when a set number of years has passed since the person’s most recent conviction. In other words, any new conviction (for a felony or misdemeanor) would restart the waiting period for misdemeanor erasure. The legislation should make clear that offenses previously classified as felonies that are now misdemeanors (such as drug possession offenses) would qualify for erasure. We recommend selecting a waiting period for misdemeanor offenses somewhere in the range of 3 to 5 years. Moreover, the legislation should include automatic erasure of some lower-level felonies—possibly with a somewhat longer waiting period for erasure. The legislation would need to provide sufficient time for implementation and we anticipate some complexities involved

¹ Conn. Gen. Stat. § 54-142a.

² HB 1419 (Penn. 2018), <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2018&sessInd=0&act=56>.

with achieving automatic erasure of convictions that occurred prior to 1999 given the various databases involved.³

Such a proposal aligns with research showing that individuals who remain crime-free for a period of three years have a significantly reduced risk of recidivism. After someone has been crime-free for about seven years, his or her risk of a new offense is similar to that of a person without any criminal record.⁴ The proposal will reduce costs and promote economic growth by helping people access jobs and housing so they can support themselves and their families.

III. ANTI-DISCRIMINATION LAW

Connecticut can reduce the collateral consequences that are imposed on people who are living with a criminal record by expanding the scope of Connecticut's anti-discrimination laws. The Connecticut General Assembly should pass a law to prohibit discrimination on the basis of a criminal record in the realms of employment, housing, public education and accommodations, insurance, credit transactions, public programs and services, and economic development programs so that people can access the basic necessities they need to survive. Our state will be safer and stronger when people returning home after incarceration have a fair chance to support themselves and their families. The Governor-elect has agreed to support such legislation.

The legislation should: (1) expand the scope of Connecticut's anti-discrimination laws to prohibit discrimination on the basis of a criminal record; (2) prohibit discrimination based on a person's criminal history in the realms of employment, housing, public education and accommodations, insurance, credit transactions, public programs and services, and economic development programs; and (3) provide a narrow exception permitting denial where (a) the conviction is closely related to the job/housing/program the applicant is seeking; (b) the applicant is shown the criminal record and given an opportunity to present evidence of mitigating circumstances and rehabilitation; and (c) the applicant fails to show present fitness for the job/housing/program being sought.

IV. EMPLOYMENT AND LICENSES

Under Connecticut law, the state or state agency can deny employment or a professional license to a person based on his or her prior criminal conviction only if the state or state agency determines the person is "unsuitable" for the job or license after considering: (1) the nature of the crime and its relationship to the job; (2) information relating to the person's rehabilitation; and (3) the time elapsed since the conviction or release or discharge from prison/sentence.⁵

Connecticut has recently enacted several pieces of legislation relating to employment and licenses for people with convictions. Under legislation enacted in 2010, the state or state agency

³ The Judicial Branch's electronic database is complete back to 1999. We are investigating whether automatic erasure could be achieved for convictions before that date.

⁴ Megan C. Kurlychek, et. al, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement, Crime & Delinquency* (2017), <https://www.ilr.cornell.edu/sites/ilr.cornell.edu/files/kurlychek%20crimeanddelinquencyracine.pdf>.

⁵ Conn. Gen. Stat. § 46a-80.

cannot inquire about a prospective employee’s past convictions until the individual has been deemed otherwise qualified for the position (unless Connecticut law specifically disqualifies a person from such employment because of a prior conviction of a crime). In addition, pursuant to the 2016 Fair Chance Employment Act, *any* employer (in the public or private sector) may not “inquire about a prospective employee’s prior arrests, criminal charges or convictions on an initial employment application,” unless required to do so by law or a security bond or fidelity bond is required for the position.⁶ Finally, in 2017, Connecticut enacted a law providing that applicants for barber and hairdresser licenses shall not be required to submit to criminal history record checks, and may not be denied licenses based on a criminal record.⁷

We recommend the following further reforms relating to licensing and employment:

- Review licensing restrictions to determine whether reforms adopted with respect to barber/hairdresser licenses should apply to other licenses.
- Require state agencies to collect data revealing (1) the number of people who apply for particular licenses who have criminal convictions; (2) the nature of the conviction/s; (3) the age of the convictions; and (4) whether the license is granted or denied. This data will help policymakers identify areas where further reform is needed.
- Expand the Fair Chance Employment Act to (1) delay criminal background checks until provisional job offers have been made; (2) require employers to show the applicant the criminal history record; (3) provide applications with the opportunity to present evidence of mitigating circumstances and rehabilitation; (4) prohibit convictions from being the basis for denial unless they are closely job-related; and (5) provide that a closely job-related conviction shall not be the basis for denial if the applicant can show present fitness to perform the duties of the position sought.⁸
- Coordinate with the Department of Labor and Department of Correction to identify local labor market needs, and provide vocational training in prison and after release that meets these needs. Work with the business community to encourage the hiring of individuals with criminal records.

V. HOUSING

Access to housing is critical to successful reentry. Yet people with criminal histories are routinely denied subsidized housing. Although federal law prohibits access to federally-subsidized housing in several narrow circumstances, most denials of public housing to people with convictions are the result of state and local policies.⁹

⁶ *Id.* § 31-51i

⁷ *Id.* §§ 20-236, 252.

⁸ Provisions (2) through (5) may not be needed if the anti-discrimination proposal outlined in Section II is adopted.

⁹ Under federal law, housing authorities (receiving federal funding) must an application who is required to register as a sex offender for life or has been convicted of manufacturing methamphetamine on federally assisted property. *See* 42 U.S.C. § 1437(f)(1); 42 U.S.C. § 13663(a); *see also* 24 C.F.R. §§ 960.204, 982.553(a)(2), 960.204, 982.553(a)(1)(ii)(C).

At the state level in Connecticut, the Department of Housing can revise its Administrative Plan for both the statewide Section 8 program and the Rental Assistance Program. State leaders can also work with local housing authorities to encourage them to change their policies and develop housing options accessible to people leaving prison and jails. We recommend these reforms to admissions policies: (1) consider only convictions that are closely related to a person's ability to be a successful tenant; (2) provide that older convictions cannot be used to disqualify prospective tenants (i.e., adopt reasonable look-back periods depending on the nature of the crime); and (3) adopt a process that allows for further review before denying the application of a potential tenant based on his or her criminal record (in that review process, permit the applicant to see the criminal record and provide evidence of mitigating circumstances and rehabilitation).¹⁰

VI. VOTING RIGHTS

In Connecticut, individuals may not vote while incarcerated for a felony or when on parole following release from incarceration.¹¹ In contrast, individuals on probation may vote. People held in pretrial detention or serving sentences for misdemeanors retain their right to vote but have difficulty exercising that right as a practical matter. A bill was introduced in the 2018 legislative session that would have given those on parole the right to vote.¹² The bill was supported by the Secretary of State, who reported that there was confusion in the public about the timing for regaining the vote after leaving prison given the different treatment of those on parole and probation.

By denying parolees the right to vote, Connecticut is an outlier among New England states. In Maine and Vermont, citizens never lose the right to vote—even while incarcerated. In Massachusetts, Rhode Island, and New Hampshire, individuals have their right to vote restored automatically when released from incarceration.¹³ At the very least, Connecticut should join these neighboring states and permit parolees to vote—and ensure that those detained pretrial or for misdemeanors can actually exercise their voting rights. But we should also consider adopting the approach of Maine and Vermont and not disenfranchise any of our incarcerated citizens. Individuals are more successful at reintegrating into society when they are engaged in the community, and the right to participate in the democratic process is central to fostering this engagement.

VII. REFORM OF THE SEX OFFENDER REGISTRY

Pursuant to a directive from the General Assembly, the Connecticut Sentencing Commission developed a proposal for reform to the sex offender registry based on two years of careful study and analysis.¹⁴ The proposal recommends a move from a conviction-based registry

¹⁰ Provisions (1) and (3) may not be needed if the anti-discrimination proposal outlined in Section II is adopted.

¹¹ Conn. Gen. Stat. § 9-46(a).

¹² HB 5418 (Conn. 2018), <https://www.cga.ct.gov/2018/FC/pdf/2018HB-05418-R000369-FC.PDF>.

¹³ National Conference of State Legislatures, Felon Voting Rights, <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

¹⁴ The Commission's report and recommendations is available here:

http://ctsentencingcommission.org/wpcontent/uploads/2018/05/Sex_Offender_Report_December_2017.pdf.

to a risk-based registry focused on the risk, needs and responsivity model supported by research and evidence-based practices. The categories of sex offenders required to register with the Department of Emergency Services and Public Protection would be based on the crime for which they were convicted, as under current law. However, the length of time on the registry, the compliance requirements, and whether a registrant is placed on a public or a law enforcement-only registry would be determined by a board's evaluation of the registrant's risk of reoffending. The proposal would allow for more focused monitoring and management of the riskiest individuals while providing mechanisms for individuals who have rehabilitated themselves to more fully reintegrate into their communities.

There are currently approximately 5,400 people on Connecticut's public registry. It is exceedingly difficult for individuals on the registry to find jobs and housing, which only further isolates them and increases the risk of recidivism. We recommend supporting legislation to reform the registry so that people who present a low risk of recidivism are moved to a law enforcement registry or removed from the registry entirely. Members of our committee expressed differing views on the extent to which removal provisions should be applied retroactively. Some expressed the view that everyone should be treated the same regardless of conviction date as a matter of fairness and to avoid equal protection challenges. Others expressed concern about the impact of retroactivity on victims.