

**Calling on the Department of State to Rethink and Rewrite Proposed Regulations Implementing Act 53 of 2020**

**IRRC No. 3361 ~ 16A-66 (Consideration of Criminal Convictions)**

**Recommendation 2:**

**The Workforce Development Board, being on record since November 2021 as supporting pardons for those who have fully completed their sentences for non-violent crimes and have been arrest-free since then for at least five years, calls on the Department of State to rewrite its proposed regulations implementing Act 53 of 2020 so that, for such individuals, the presumption (rebuttable) is that their criminal histories are not “directly related” to any occupational license for which they are applying. The Workforce Development Board recommends that the rebuttable presumption be that criminal histories are not directly related to the occupational license, unless the conviction was within 7 years.**

**Rationale**

Criminal records keep people from better jobs, licenses, careers, and incomes long after they have fully served the sentence imposed on them by a judge. In 2020, the General Assembly adopted and the Governor signed Act 53, which substantially reformed the criteria by which occupational licenses could be denied, by eliminating vague criteria like “good moral character” and requiring that criminal convictions be “directly related” to the work. The Department of State has now issued proposed regulations that would create “a rebuttable presumption that licensure of the individual would pose a significant risk to the health and safety of the individual’s patients or clients or a significant risk of further criminal convictions” regardless of how many years ago the crime occurred or whether the individual had fully “repaid their debt to society” by completing the sentence imposed by the judge.

This is not only contrary to past recommendations of this Board, but violates what the Pennsylvania Supreme Court in 1973 found to be

the deeply ingrained public policy of this State to avoid unwarranted stigmatization of and unreasonable restrictions upon former offenders. This State in recent years has been unalterably committed to rehabilitation of those persons who have been convicted of criminal offenses. To forever foreclose a permissible means of gainful employment because of an improvident act in the distant past completely loses sight of any concept of forgiveness for prior errant behavior and adds yet another stumbling block along the difficult road of rehabilitation. *Secy. of Revenue v. John's Vending Corp.*, 453 Pa. 488, 494-5 (Pa. 1973)

The Workforce Development Board joins with others in opposing the creation of a presumption against state occupational licensure simply due to a past conviction, and instead urges the adoption of a presumption that a past conviction is not directly related to a state-licensed job if the conviction was not for a crime of violence and the applicant completed their sentence at least seven years ago and has not been arrested since then. The seven-year bright line is drawn from the 2018 Commonwealth Court held that a school district could not reasonably or rationally use a seven year-old criminal conviction to terminate an employee’s job, and upheld the individual’s claim that doing so violated his constitutional rights. *Megraw v. School District of Cheltenham Township*, 2018 WL 2012130 (Pa. Cmwlth. 2018).