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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 21-H 5599,
REMOVING "MORAL TURPITUDE" FROM LICENSING STATUTES
March 1, 2021

The ACLU of RI strongly supports this bill, which would remove the term "moral turpitude" from state licensing statutes as the basis for denying or revoking a person's professional license. It is an important step in bringing some level of rationality to a mish-mash of state licensing statutes that can have a devastating impact on individuals seeking to enter a profession for which they may have trained years. Passage of this legislation is also critical to keep licensing laws in line with this legislature's action last year in passing "fair chance licensing" and seeking to remove unnecessary employment and licensing barriers for people with criminal records.

"Moral turpitude" is a legally vague term that has caused considerable confusion in Rhode Island's licensing statutes for decades. Fortunately, it has been years since the General Assembly has enacted a licensing statute that used the term, so it is time that it be removed once and for all.

The use of the term "moral turpitude" in the law goes back over 100 years, but it received its judicial sanction in 1951 with a U.S. Supreme Court decision called *Jordan v. DeGeorge*. By a 6-3 vote, the Court held that the term was not unconstitutionally vague. The continued history of judicial interpretation of that phrase belies that determination. To this day, courts routinely disagree on what the term means and what crimes fit into the category.

The dissenters in the *Jordan* case summed it up well by noting: "If we go to the dictionaries, the last resort of the baffled judge, we learn little except that the expression is redundant, for turpitude alone means moral wickedness or depravity and moral turpitude seems to mean little more than morally immoral. The Government confesses that it is 'a term that is not clearly defined.'" At the time of the decision, Black's Law Dictionary defined the phrase as "inherent baseness or vileness of principle or action; shameful wickedness or depravity." It's worth noting the "depraved" crime that the majority of the judges in *Jordan* concluded constituted a crime of "moral turpitude": conspiracy to defraud the government of taxes on distilled spirits.

Time has not been any kinder to the term. It is currently defined in Black's Law Dictionary as "conduct that is contrary to justice, honesty or morality." Not terribly helpful, and certainly not very limiting. Just a few years ago, a federal appeals court had to address the question whether the crime of being an accessory after the fact was a conviction of a crime for moral turpitude. The decision, before a 15-judge panel, led to four written opinions, ultimately with nine of the fifteen judges concluding it did not constitute "moral turpitude" and six believing it did.

In sum, passage of this bill is essential to complement the General Assembly's work last year in passing the "fair chance licensing" bill limiting the use of criminal record history to deny

occupational licenses. Agencies should not be able to make an end-run around that statute's restrictions by relying on a hopelessly vague "moral turpitude" standard. No person should fear being denied entry into their profession, or losing a license, based on a criterion that no reasonable person can truly explain with anything coming close to precision and that undermines the fair chance licensing law.

The ACLU of RI urges passage of this legislation.

Submitted by: Steven Brown, Executive Director