



Ohio Prosecuting Attorneys Association

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Senate Bill 66
Interested Party Testimony
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Chairman Manning, Vice-Chair Rezabek, Ranking Member Celebreeze and members of the House Criminal Justice Committee, thank you for the opportunity to provide interested party testimony on Senate Bill 66. My name is Carol O'Brien. I am the Delaware County Prosecuting Attorney, President-Elect of the Ohio Prosecuting Attorneys Association, and Chair of the OPAA Legislative Committee. There are two changes in Senate Bill 66 that are of particular concern to Ohio prosecutors.

First, the bill proposes to expand intervention in lieu of conviction (ILC) to authorize courts to grant ILC to eligible offenders as long as the offender has not previously been convicted of an offense of violence and regardless of whether the offender has previously been through ILC. To be sure, prosecutors have no issue with intervention in lieu of conviction in appropriate cases. It is a valuable option for offenders with minimal criminal records. Prosecutors believe in the value of treatment and believe in second chances. There should be a point, however, at which someone can no longer obtain the benefit of having charges dismissed. This does not mean that an offender will necessarily go to prison and certainly does not mean that they will not receive treatment. It simply means that at some point there should be recognition that a felony has been committed.

Additionally, the bill expands eligibility for ILC to include offenders charged with third degree felony drug possession. This would make offenders charged with possession of substantial amounts of drugs eligible for ILC and therefore eligible to have their charges dismissed entirely. Currently, third degree felony drug possession creates a presumption in favor of prison. This is a substantial change from a presumption of prison to an opportunity to have charges dismissed. It will inevitably include offenders who are documented to be involved in drug trafficking. It means, for example, that someone in possession of as much as 9.9 grams or 99 unit doses of heroin could receive intervention in lieu of conviction.

Senate Bill 33, enacted late last year, expanded ILC to allow a judge to grant continuances an offender of ILC without regard to the number of times the offender violates the terms of their agreement. We believe that the General Assembly should wait to see the impact of this change before expanding this statute even further.

Second, the bill proposes to expand eligibility for record sealing by defining "eligible offender" to include offenders who have multiple fourth and fifth degree felony convictions. Under current law, an offender is eligible for sealing if they have no more than one felony conviction, no more than two misdemeanor convictions, or no more than one felony conviction and one misdemeanor conviction. As with the expansion of ILC we are taking a statute that is a privilege for someone who has made a mistake and who deserves the

opportunity for a second chance, and expanding that statute to include offenders who have committed an undefined number of felonies. Any prosecutor can provide examples of lifetime criminals who may have committed double digit fourth and fifth degree felonies and similar numbers of misdemeanors. Under the bill, these offenders have the opportunity to have their records erased. While our preference is to maintain the current eligibility requirements for sealing, at a minimum, some guardrails should be placed on how long an offender must wait to apply to seal multiple felonies and how many they can seal.

While the current focus of the General Assembly is on alleviating collateral consequences for low level felony non-violent offenders and to treat them as pseudo-misdemeanants, we believe that calling something a felony means that the conduct has certain consequences. If the legislature wishes to treat these offenders as misdemeanants it ought to label the crimes as misdemeanors rather than water down the seriousness of felonies. It is also important to note that these are not always victimless crimes. We should not ignore victims' rights or the consequences for victims and for public safety. We are concerned that the proposed amendments to ILC and record sealing do just that.

Thank you for your consideration of these comments and I would be happy to answer any questions.