

PROPONENT TESTIMONY IN SUPPORT OF SENATE BILL 3

TO: Transportation, Commerce and Workforce Committee, The Ohio Senate
Chairman LaRose, Vice Chair Kunze, Ranking Minority Member Tavares, Senator Beagle, Senator Brown, Senator Dolan, Senator Hoagland, Senator Hottinger, Senator Manning, Senator Uecker, and Senator Yuko

FROM: Janet Hales, Director, Ohio Poverty Law Center (OPLC)
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Chairman LaRose, Vice Chair Kunze, Ranking Minority Member Tavares, and Committee members,

We enthusiastically support Senate Bill 3, in particular the provisions that improve the **Certificate of Qualification for Employment (CQE)** program, so that Ohio can realize all the benefits of opening doors for rehabilitated workers with criminal records. Because of our firsthand experiences with this program, OJPC, OPLC, and University of Akron School of Law have learned the immense opportunity offered by the CQE; we have also become aware of some obstacles to realizing its full potential. In addition to our support, and because of our experiences in the field, we suggest three amendments to make Senate Bill 3 and the CQE statute even more effective:

1. Ensure that the correct statutory definitions are applicable to the CQE statute to match new language in Senate Bill 3;
2. Include federal and out-of-state offenses in the definition of those eligible for a CQE;
and
3. Provide filing fee guidance.

Imagine expanding the workforce available to Ohio businesses by 1.9 million people—people who were once categorically and permanently barred from entire fields of work. By voting in favor of Senate Bill 3, this committee can greatly improve the likelihood that ready, willing, and able

workers with criminal records can meet the needs of Ohio's employers. One in six Ohioans—**over 1.9 million people**—has a felony or misdemeanor record. And that huge number of Ohio workers face an astonishing number of barriers: according to the Civil Impacts of Criminal Convictions (CIV-ICC) database, there are **over 900** state statutes and regulations that block people with various criminal records from employment, housing, familial relationships and many other rights and privileges. The CQE provisions in Senate Bill 3 will ensure that more individuals can become work-ready and begin rebuilding their lives.

CQEs work. Over 600 Ohioans have successfully petitioned for a CQE. Empirical and anecdotal data from the University of Akron School of Law—a pioneer with the Ohio Justice and Policy Center in representing clients seeking CQEs—indicates that successful petitions for CQEs help individuals find jobs.¹ Furthermore, a study of CQE utility in Central Ohio by researchers at the University of South Carolina indicated that individuals with CQEs were significantly more likely to receive a positive response—either an interview call back or job offer—than those similarly situated without CQEs.²

¹ See *Survey Results of Ohio Certificate of Qualification (CQE) Recipients*, UNIVERSITY OF AKRON SCHOOL OF LAW (Jan. 11, 2016), <http://bit.ly/2IRPLBz>; *OSBF Supports the University of Akron School of Law's CQE Clinics*, OHIO STATE BAR FOUNDATION (Nov. 16, 2015), <https://youtu.be/mK77xGCcu4Y>.

² Peter Leasure & Tia Stevens Andersen, *The Effectiveness of Certificates of Relief as Collateral Consequence Relief Mechanisms: An Experimental Study*, YALE L. & POL'Y REV. INTER ALIA (11/7/2016), <http://bit.ly/2IS1e47>

Observations from the field

Ohio Justice & Policy Center

The Ohio Justice and Policy Center is one of the foremost experts in this state on the multitude of legal barriers facing Ohioans with criminal records. OJPC was instrumental in the creation of the CQE statute in Senate Bill 337 (2012). A large part of its experience is rooted in twelve years of providing free legal clinics, several times each month, to people with criminal records in greater Cincinnati. OJPC has served over 6,000 Ohioans through these clinics. Through our direct representation and our training of other service providers, 145 people in Hamilton County have obtained a CQE. We have also built and maintain the most powerful state-law tool in the country for cataloguing criminal-record-based legal barriers: The Ohio Civil Impacts of Criminal Convictions Database (<http://CIVICOhio.org>). We provide community and professional education sessions statewide on these topics.

When we see clients representing themselves on CQEs, we often see them struggle to deal with the complexity of the application process. By removing the need to find and name each legal barrier they face, Senate Bill 3 would allow more rehabilitated workers will be able to complete the process on their own and move into the labor market.

Also, like the University of Akron School of Law, we have had multiple informal conversations with federal judges and probation officers who would be more than willing to share information with a state court that was investigating a CQE applicant. We have had to turn away many excellent CQE candidates (and prospective Ohio taxpayers) because they have federal convictions. Senate Bill 3 should allow people with out-of-state and federal convictions to apply for CQEs when the out-of-state or federal court that imposed the conviction is willing to share information with the Ohio court considering a CQE application.

University of Akron School of Law

The University of Akron School of Law has extensive experience with the CQE statute and its application process. Since June 2013, the law school has conducted free monthly clinics to prepare CQE applications and court sealing applications. Over 3,000 people have attended the monthly clinics in Akron, with the volunteers completing 637 CQE applications. In 2016, the clinic prepared and submitted 179 CQE petitions, most of them in Summit County, which continues to be one of the leaders in granting CQE petitions. To date, Summit County judges have granted 142 CQEs. Only one other county in Ohio – Hamilton County – has granted as many CQE petitions (145). The success in both counties is attributable to the assistance CQE applicants receive in Summit County (University of Akron Law School) and Hamilton County (Ohio Justice and Policy Center).

Senate Bill 3 addresses issues that have arisen during the Akron clinics. Senate Bill 3 removes the current statutory requirement that CQE applicants list each collateral sanction that could possibly interfere with their employment aspirations. The bill allows applicants to make a general statement of why the individual has filed the petition and how the certificate would assist them in addition to information currently required in the CQE statute. The requirement of providing other information will not change, and includes conviction information, employment history, verifiable references and endorsements, family members supporting the reentry plan, and a summary of the reason the applicant believes the CQE should be granted. A judge considers all these factors and may request additional information if he or she believes it is needed. Senate Bill 3 addresses the need to provide relevant information to the courts while removing a highly technical endeavor that does not help courts decide whether to grant CQEs.

This small change would have huge impact for CQE applicants, their advocates, law students and volunteer attorneys, and others assisting them in the petition process by reducing the time it takes to complete a CQE application. The CQE application is sixteen pages long and is complicated. The most difficult part of the application process is identifying the appropriate collateral sanction and listing it in the petition. A court has already interpreted the inability to meet this technical requirement to disqualify an applicant. In a recent case from the 10th District Court of Appeals, *Tansky v. O'Brien* 2016-Ohio-7068, the appellate court read the current requirements in the statute to require the applicant to list a specific collateral sanction on his application and reversed the trial court's decision on that basis alone. Otherwise qualified applicants should not be denied a CQE because of a technical misstep that does not affect the substance of the petition. Senate Bill 3 makes an important change that will reflect the intent of the CQE.

The CQE amendments proposed in Senate Bill 3 will greatly expand access to the CQE process by making it available to more petitioners and streamlining the petition process. It will also allow the University of Akron Law School to continue its efforts to help people with the CQE process so they can be contributing members of their community.

Ohio Poverty Law Center

The Ohio Poverty Law Center (OPLC) advocates for evidence-based policies aimed at reducing poverty and increasing access to opportunities for low-income Ohioans. OPLC also assists and collaborates with the Ohio legal aid community as the legal aid support center for Ohio. The legal aid community provides direct legal assistance to Ohio's poorest citizens, those living at or below 125% of the Federal Poverty Level. Removing mandatory legal barriers to employment is critical to the livelihoods of clients who are unable to get

work or licensing to improve their financial well-being.

Legal clinics sponsored by legal aid often depend on the support of volunteer attorneys, whose time and commitment are highly valued and greatly appreciated. CQE legal clinics sometimes end without volunteer attorneys, assistants, and clients being able to complete a petition due to the amount of time needed to identify each collateral consequence faced by a petitioner. By making the CQE process more streamlined, petitioners and their advocates will be able to complete and file successful petitions and use volunteer attorney time more efficiently. As a result, clients can reenter the workforce, support their families, and take an imperative step toward escaping poverty.

Proposed Amendments

The three amendments proposed in this testimony will align language in Senate Bill 3 with definitions elsewhere in the Ohio Revised Code, expand CQE eligibility to more qualified individuals, and ensure that the CQE is accessible to low-income petitioners. A draft of sample language is attached to this testimony.

1. Definitions

Senate Bill 3 adds language to R.C. 2953.25(D)(2)-(3), which aligns the CQE with the Certificate of Achievement and Employability ("CAE"), an analogous certificate that individuals can petition for during their incarceration and serving the same purpose of removing employment and licensing barriers. R.C. 2961.21 provides the definitional language that applies to the terms used in the CAE statute, but does not currently apply to the CQE statute.

We recommend amending R.C. 2961.21, the CAE statute, so that the definitions in that statute apply to the changes made in Senate Bill 3. Without this amendment, the important changes in Senate Bill 3 may be ambiguous and misinterpreted.

2. *Out-of-State and Federal Offenses*

The University of Akron School of Law and OJPC have observed that many individuals seeking assistance with filing a CQE petition have out-of-state and federal convictions that are not covered under current law. Although these individuals would contribute to our economy and the needs of Ohio's employers, they cannot qualify for a CQE. Because a judge will be making the final determination on any CQE petition, it makes sense to offer this to people seeking work in Ohio regardless of where their prior offense arises.

3. *Filing Fees*

Filing fees can be a major barrier to filing a CQE petition. Legal aid attorneys, who often represent clients from 6-8 counties, have noted the wide range of filing fees for CQEs. The wide range in CQE filing fees results in unequal access to justice and the opportunity offered to people filing the same petition in other counties. For instance, filing for a CQE in Franklin County would cost a petitioner \$35, whereas filing in neighboring Madison County would cost a petitioner \$450. A filing fee cap and a requirement that courts accept a poverty affidavit would further help the CQE to reach its full potential throughout Ohio. Data collected regarding the stated cost of filing for a CQE in each county is attached to this testimony to demonstrate the range of filing fees across the state. The table also provides information on the number of CQE approvals by county.

The Ohio Poverty Law Center, Ohio Justice and Policy Center, and University of Akron School of Law greatly appreciate the opportunity to speak with you about his bill. Please do not hesitate to contact us with any questions that you have.



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Suggested Amendment Language (highlighted)

I. Definitions:

- a. Revise R.C. 2961.21 Definitions regarding application for certificate of achievement and employability.
 - i. As used in Sections **2953.25 and** 2961.21 to 2961.24 of the Revised Code:

II. Allow people with out-of-state and federal offenses to obtain CQEs:

- a. Sec. 2953.25(A)(6) [ln. 696-697] "Offense" means any felony or misdemeanor under the laws of this state, **another state, or federal law.**
- b. Sec. 2953.25(B)(2)(b) [ln. 725-730] In the case of an individual who resides outside of this state **and has a conviction or plea of guilty under the law of this state,** filing a petition with the court of common pleas of any county in which any conviction or plea of guilty from which the individual seeks relief was entered or with the designee of the deputy director of the division of parole and community services;
- c. Sec. 2953.25(B)(2) [insert after ln. 730] **(c) In the case of an individual who resides outside this state and has an offense under the law of another state or federal law, with the designee of the deputy director of the division of parole and community services.**
- d. Sec. 2953.25(B)(5)(a) [ln. 767-778] A designee that receives a petition for a certification certificate of qualification for employment from an individual under division (B) (1) or (2) of this section shall review the petition to determine whether it is complete. If the petition is complete, the designee shall forward the petition, and any other information the designee possesses that relates to the petition, to the court of common pleas of the county in which the individual resides if the individual resides in this state, or if the individual resides outside of this state, to the court of common pleas of any county in which any conviction or plea of guilty from which the individual seeks relief was entered, **or, If the individual resides outside the state and has been convicted of or pled guilty to an offense under the law of another state or federal law, to the court of common pleas of the county in which the individual chooses to file.**
- e. Sec. 2953.25 (B)(5)(b) [ln. 779-793] A court of common pleas that receives a petition for a certificate of qualification for employment from an

individual under division (B) (2) of this section, or that is forwarded a petition for such a certificate under division (B) (5) (a) of this section, shall attempt to determine all other courts ~~in this state~~ in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief. The court that receives or is forwarded the petition shall notify all other courts ~~in this state~~ that it determines under this division were courts in which the individual was convicted of or pleaded guilty to an offense other than the offense from which the individual is seeking relief that the individual has filed the petition and that the court may send comments regarding the possible issuance of the certificate.

III. Filing Fees

- a. Set a cap of no more than \$100 on the CQE filing fee, and
- b. Require courts to waive filing fees if applicants are indigent, as documented in a poverty affidavit.

Filing Fee Data

| CQE FILING FEES BY COUNTY | | |
|----------------------------------|--|-----------------------|
| COUNTY | # CQE Approvals as of Feb. 23, 2017 | CQE Filing Fee |
| ADAMS | 0 | \$275.00 |
| ALLEN | 1 | \$100.00 |
| ASHLAND | 0 | \$350.00 |
| ASHTABULA | 2 | \$50.00 |
| ATHENS | 0 | \$100.00 |
| AUGLAIZE | 0 | \$250.00 |
| BELMONT | 0 | \$150.00 |
| BROWN | 0 | \$150.00 |
| BUTLER | 1 | \$150.00 |
| CARROLL | 0 | \$175.00 |
| CHAMPAIGN | 1 | \$75.00 |
| CLARK | 1 | \$105.00 |
| CLERMONT | 5 | \$100.00 |
| CLINTON | 0 | No fee established |
| COLUMBIANA | 1 | \$130.00 |
| COSHOCTON | 0 | \$200.00 |
| CRAWFORD | 1 | \$300.00 |
| CUYAHOGA | 120 | \$250.00 |
| DARKE | 3 | \$300.00 |
| DEFIANCE | 0 | No fee established |
| DELAWARE | 1 | \$160.00 |
| ERIE | 1 | \$100.00 |
| FAIRFIELD | 0 | \$180.00 |
| FAYETTE | 0 | \$150.00 |
| FRANKLIN | 29 | \$35.00 |
| FULTON | 0 | \$125.00 |
| GALLIA | 0 | \$275.00 |
| GEAUGA | 0 | \$250.00 |
| GREENE | 4 | \$35.00 |
| GUERNSEY | 0 | \$250.00 |
| HAMILTON | 145 | \$150.00 |
| HANCOCK | 3 | \$100.00 |
| HARDIN | 1 | \$350.00 |
| HARRISON | 1 | \$100.00 |
| HENRY | 0 | \$150.00 |
| HIGHLAND | 0 | \$50.00 |
| HOCKING | 1 | \$100.00 |
| HOLMES | 2 | \$150.00 |

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| HURON | 1 | \$0.00 |
| JACKSON | 0 | \$175.00 |
| JEFFERSON | 1 | \$125.00 |
| KNOX | 0 | \$50.00 |
| LAKE | 11 | \$100.00 |
| LAWRENCE | 0 | \$200.00 |
| LICKING | 0 | \$200.00 |
| LOGAN | 0 | \$46.00 |
| LORAIN | 16 | \$300.00 |
| LUCAS | 18 | \$50.00 |
| MADISON | 0 | \$450.00 |
| MAHONING | 17 | \$225.00 |
| MARION | 7 | \$190.00 |
| MEDINA | 3 | \$350.00 |
| MEIGS | 0 | \$100.00 |
| MERCER | 1 | \$350.00 |
| MIAMI | 0 | \$300.00 |
| MONROE | 0 | \$150.00 |
| MONTGOMERY | 19 | \$306.00 |
| MORGAN | 0 | \$180.00 |
| MORROW | 0 | \$400.00 |
| MUSKINGUM | 0 | \$200.00 |
| NOBLE | 0 | \$150.00 |
| OTTAWA | 0 | \$28.00 |
| PAULDING | 0 | \$50.00 |
| PERRY | 1 | \$175.00 |
| PICKAWAY | 0 | \$210.00 |
| PIKE | 0 | \$50.00 |
| PORTAGE | 3 | \$75.00 |
| PREBLE | 0 | \$215.00 |
| PUTNAM | 0 | \$50.00 |
| RICHLAND | 1 | \$215.00 |
| ROSS | 0 | \$350.00 |
| SANDUSKY | 1 | \$100.00 |
| SCIOTO | 0 | \$275.00 |
| SENECA | 1 | \$350.00 |
| SHELBY | 0 | \$100.00 |
| STARK | 35 | \$100.00 |
| SUMMIT | 142 | \$100.00 |
| TRUMBULL | 4 | \$253.00 |
| TUSCARAWAS | 3 | \$50.00 |

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|-------------------|---|----------|
| UNION | 0 | \$75.00 |
| VAN WERT | 0 | \$90.00 |
| VINTON | 0 | \$200.00 |
| WARREN | 2 | \$50.00 |
| WASHINGTON | 0 | \$300.00 |
| WAYNE | 0 | \$50.00 |
| WILLIAMS | 0 | \$125.00 |
| WOOD | 1 | \$75.00 |
| WYANDOT | 0 | \$300.00 |