



Office of the Ohio Public Defender

Timothy Young, State Public Defender

HB1 Proponent Testimony Intervention in Lieu of Conviction/Record Sealing Sponsor Representatives Hicks-Hudson and Plummer

Chair Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee. My name is Niki Clum. I am the legislative liaison for the Office of the Ohio Public Defender (“OPD”). Thank you for the opportunity to provide proponent testimony regarding House Bill 1 (HB1) on behalf of the OPD.

Ohioans are imprisoned for drug offenses more than any other offense.¹ According to recent data from the Ohio Department of Rehabilitation and Corrections, roughly 2600 individuals are in prison for drug possession.² That is enough people to fill approximately two prisons. Of those individuals, 1600 are incarcerated for low-level drug possession – amounts that are for personal use only. Unequivocally, the war on drugs is a failure. Opioids, meth, and cocaine continue to ravage Ohio. It is clear that Ohio will not incarcerate its way out of this crisis. We need a new approach.

OPD is grateful to Representatives Hicks-Hudson and Plummer who, in their short time in the legislature, have shown real leadership and understanding of Ohio’s need to have an efficient and effective criminal justice system. OPD is supportive of legislation that allows people suffering from addiction more opportunities to avoid criminal convictions and further opportunity to seal criminal convictions that act as a barrier to obtaining gainful employment. That is why OPD is supportive of HB1. However, OPD wants to stress that HB1 should not be seen a substitute to SB3. At minimum, Ohio should pass both bills.

Imprisoning addicts has done nothing to combat Ohio's drug crisis. Addiction is an illness, and Ohioans with addiction issues are suffering and need treatment. Incarceration is more expensive and, more importantly, less effective than treatment.³ Treatment reduces the demand for drugs, incarceration does not. It is also important for recovery that individuals suffering from addiction stay in their communities with the positive influences in their life that make them want to get clean and stay clean.⁴ Addiction experts have repeatedly found that treatment is the most effective when individuals can maintain their pro-social support systems, meaning individuals are able to keep their jobs, housing, and maintain personal family relationships. Imprisoning these individuals for a felony offense destroys their pro-social support systems by removing them from the community, the support of family, and makes it more likely they will relapse upon release. Further, incarcerating people who suffer from addiction makes Ohio more dangerous. The data shows that when these individuals are released from prison without a support system they are more likely to commit a violent offense and/or overdose.

HB1 attempts to keep more individuals who suffer addiction out of prison by expanding access to intervention in lieu of conviction (ILC). The bill creates a presumption for ILC "unless the court finds specific reasons to believe that the candidate's participation in ILC would be inappropriate."⁵ Courts will be required to hold a hearing to determine if ILC is appropriate when addiction is alleged. The bill, and current law, state that the court "shall" order an assessment to be considered at that hearing. In some jurisdictions of Ohio, judges require all defendants pay for their assessment out-of-pocket. If an assessment is not provided, the court will deny ILC. This practice eliminates opportunities an indigent people to participate ILC. While the bill sponsors seek to expand eligibility for ILC, the bill still allows courts to deny ILC for individuals



suffering from addiction if the reason is specified in the journal entry. The reason can still be that the individual did not provide the require assessment. Unfortunately, HB1 will not ensure that ILC is applied equitably throughout the state to all person regardless of income level.

As this committee well knows, felony convictions cause individuals' significant problems obtaining employment. It is the modern-day scarlet letter. Yet, "employment is one of the best predictors of positive treatment outcome."⁶ OPD supports HB1's efforts to help people who suffer from addiction avoid the criminal justice system and relieve the collateral consequences of convictions resulting from their addiction. However, OPD would be remiss if we did not caution that the positive impact HB1 will be extremely limited.

First, the Revised Code permits many employers to consider criminal records of dismissed cases and even sealed convictions. Data collected by the Ohio Civil Impacts of Criminal Convictions (CIVICC) Database found that, under Ohio law, there are 123 collateral consequences imposed on people who have completed ILC or a similar program. These collateral consequences obstruct an individual's ability to obtain employment in at least 33 different areas, including teaching, massage therapy, anesthesiology, and acupuncture, to name just a few. CIVICC also found that the Revised Code contains 37 statutes that authorize criminal record searches for employment and/or license applications. These 37 statues require the individual to disclose even sealed convictions when applying for employment with many public employers. HB1 does not address these collateral consequences and barriers to employment, limiting its beneficial impact.

Second, once a person is deemed a felon, that bell cannot be unrung. Because of the internet and social media, once a felon, always a felon – and a lifetime of struggling to meet their basic needs. Even if an individual's case is dismissed or sealed, the arrest records often



remain online. HB1 allows an individual to seek record sealing after one to three years depending on the level of the offense. By the time an individual is eligible, they will never be able to erase the record of their arrest and conviction from all corners of the internet.

Finally, for record sealing to provide true relief from the collateral consequences of addition, Ohio's record sealing statute must be written so that average Ohioan can navigate the process without having to pay an attorney. Under current record sealing law, an individual must first determine if they are barred from sealing by having a conviction for one of forty-one specified offenses. These are mostly violent or sexual offenses. If the person is not barred, the individual must determine if they have five or fewer felony convictions. If so, they must then determine if all the felonies are fourth- or fifth-degree felonies. If they are all low-level felonies, to remain eligible, the individual must determine if they are prohibited from sealing their record because they have a conviction for one of fifteen additional specified felony offenses. If the person is still eligible, and they are trying to seal one felony, they must make sure that at least three years have lapsed since they completed either the term of incarceration or supervision, whichever is later. If the individual is trying to seal two felonies, they must ensure that at least four years have lapsed since they completed either the term of incarceration or supervision. If the individual is trying to seal three, four, or five felonies, they must ensure that at least five years have lapsed since they completed either the term of incarceration or supervision. If they are trying to seal a misdemeanor, they must determine if the misdemeanor is one of the traffic offenses that cannot be sealed. If the misdemeanor is still eligible, they must ensure at least one year has lapsed since they completed either the term of incarceration or supervision. Finally, they must make sure all of fines and costs associated with the convictions are paid.



Let's backup to someone who has been convicted of a felony that is not a felony of the fourth or fifth degree or one of the forty-one barred offenses. That individual must determine if they have been convicted of not more than one felony, two misdemeanors, or not more than one felony and one misdemeanor. If they are still eligible, they should note that minor misdemeanors, or a violation of any section of R.C. 4507, 4510, 4511, 4513 or 4549 do not count as a conviction, except violations of R.C. 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, 4549.62, 4549.41 to 4549.46, 4510.11 or 4510.14 that are based upon the offender's operation of a motor vehicle during a suspension imposed by R.C. 4511.191 or 4511.196, and any felony violation traffic offense do count as a conviction. They must also consider that two or three convictions from same indictment, complaint or information and that result from related criminal acts that were committed within a three-month period but do not result from the same act or offenses committed at the same time, may be treated as one conviction if the court finds that it is in the public interest. If the individual is still eligible, they must then determine if they are barred by one of the ten delineated exceptions in statute. If they are still eligible, they must ensure the minimum amount of time has elapsed as discussed above.

Most Ohioans would not be able to understand this statute without the assistance of an attorney. Many attorneys cannot even understand this statute. HB1 tinkers around the edges, but it does not do what Ohio really needs - a large overhaul of the sealing statute. OPD is aware that Representative Rogers has been working on a comprehensive bill to simplify the sealing statute and allow more Ohioans the opportunity to request that their record be sealed. Representative Rogers plans to introduce that bill in the House soon. Until Ohio's sealing



statute is easy to understand and use without an attorney, getting one's record sealed is not an effective way to obtain relief from the collateral sanctions of addiction.

In terms of criminal justice reform and fighting the opioid epidemic, Ohio is getting left behind, and its citizens are suffering. The time has come for this legislature to take a bold step. A step that will save lives and improve the entire state. HB1 and SB3 are two small steps in that direction, and both should be passed into law

Thank you for the opportunity to testify today. I am happy to answer questions at this time.

¹ Schladen, Marty, *Ohio's Issues 1 Diagnosed A Prison Problem, But Solutions Complicated*, The Columbus Dispatch, December 3, 2018, citing Ohio Department of Rehabilitation and Corrections data

² Ohio Department of Rehabilitation and Corrections FY 2018 Commitment Report

³ *Drug Rehab Instead of Prison Could Save Billions*, Foundations for Recovery Network, <https://www.dualdiagnosis.org/drug-rehabinstead-of-prison-could-save-billions-says-report-2/>; citing Zarkin, G., Cowell, A., Hicks, K., et.al. *Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders from State Prison*, Sage Journals, August 1, 2015; see also *Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Cost*, RTI International, Newswise, January 9, 2013

⁴ McVay, Doug, Schiraldi, Vincent, Ziedenberg, *Treatment or Incarceration*, Justice Policy Institute, January 2004; *Drugs and Crime*, National Council on Alcoholism and Drug Dependence, April 29, 2014, <https://www.ncadd.org/about-addiction/addiction-update/alcohol-drugs-and-crime?highlight=WyJkcVncylsmRydWdzJyIsImNyaW1lIlI0=>

⁵ Ohio Legislative Service Commission, Bill Analysis, H.B. 1

⁶ Laudet, Alexandre B., *Rate and Predictors of Employment among Formerly Polysubstance Dependent Urban Individuals in Recovery*, US National Libraries of Medicine National Institutes of Health, July 2012 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3416052/>

