

January 21, 2019

The Honorable John Eklund  
The Ohio Statehouse  
1 Capitol Square, Rm 143  
Columbus, OH 43215

Dear Chairman Eklund and Esteemed Members of the Senate Judiciary Committee:

Thank you for the opportunity to weigh in on House Bill 1 as this committee considers this important legislation. House Bill 1 can work as a valuable complement to the reforms this committee has been developing over the last year in Senate Bill 3. We support House Bill 1's additional approaches and urge the committee to pass as full a range of reform proposals as the opiate crisis demands.

Over the past decade, Ohio lawmakers have been national leaders in showing the country how best to take important steps to improve the operation of justice systems and develop best-practice policies grounded in smart approaches to public safety.

This year, faced with an unprecedented addiction and overdose crisis, Ohio legislators have been working to develop responses that prioritize recovery, rehabilitation, and public safety. The Senate Judiciary Committee has been a leader in this effort through its work on Senate Bill 3 and its best-practice solutions to issues of addiction, criminal justice, and their intersection.

At the same time, leading legislators in the House have developed a bill that addresses two areas not addressed in Senate Bill 3: Ohio's existing Intervention-in-Lieu diversion program, and the circumstances under which people with moderate criminal record are eligible to petition for expungement. With its special focus on these two sets of procedural changes, House Bill 1 serves as a valuable complement to the reforms this committee has been developing in Senate Bill 3.

Together, these bills form a smart, comprehensive set of reforms and a new, solutions-focused approach to drug issues in the criminal justice system. Our analysis of House Bill 1's provisions and how they complement those approaches in Senate Bill 3 follows.

#### House Bill 1's Amendments to Intervention in Lieu of Conviction

The first of House Bill 1's two areas of focus is the Intervention in Lieu of Conviction program, a diversion program for people who are charged with a range of misdemeanor and low-level felony offenses. Diverting people facing low-level drug and property crime charges through programs like ILC is smart, proven public safety policy. Diverting people to case-appropriate interventions like treatment can interrupt cycles of crime, limit the destabilizing collateral consequences of a felony record, and preserve limited public safety and corrections resources for true threats to public safety.

Recognizing that the promise of ILC is too often not made available to Ohioans struggling with alcohol and drug abuse and that too many requests for ILC are denied without due consideration, House Bill 1 includes changes designed to encourage the use of ILC when alcohol and drug use contributed to the underlying offense.

Specifically, House Bill 1 establishes that when anyone requests ILC because either alcohol or drug use was a factor leading to their offense (generally a drug crime or property crime like theft, per existing ILC eligibility provisions) they can be assessed and have a hearing to determine if the court should grant their request for ILC. House Bill 1 also establishes that ILC is presumptively appropriate in any case for which a hearing is held, and requires that when judges override this presumption and deny ILC they state their reasons for doing so on the record.

House Bill 1 and Senate Bill 3 both incorporate the recognition that felony records and prison time are inappropriate and ineffective responses to addiction. The two bills are ultimately complementary because they focus on different, but at times overlapping, populations. While Senate Bill 3's key area of focus is on people whose only offense is low-level possession of drugs for personal use, House Bill 1 is focused on people who commit a wider range of offenses but where an underlying driver is alcohol or drug use. House Bill 1 establishes a set of procedural reforms designed to match a greater percentage of people engaging in low-level crime because of a drug or alcohol problem to treatment interventions. Senate Bill 3 establishes a backstop for people whose only charge is low-level, personal use drug possession, and ensures that even if they fall through the cracks of ILC, their case will not result in a state prison sentence or a felony conviction.

#### House Bill 1's Amendments to Record Sealing

House Bill 1 also expands access to record sealing, a critical remedy that allows people to shield certain old criminal records on certain background checks. Too often, these records follow people for years after they complete their sentences, hindering their ability to find stable employment and stable housing - both of which are key elements of successful recovery and reduced recidivism. Record sealing allows people to begin to limit the hundreds of lifelong barriers and collateral consequences that these records can trigger. Sealing these records and giving people a better shot at employment and housing promotes success, stability, and recovery - in short it is smart public safety policy.

House Bill 1 includes a proposal to expand access to record sealing to certain groups of people who may be barred from this relief today. Specifically it does so by (1) eliminating a cap currently in place for people with a high number of less serious records, meaning convictions for misdemeanors, F5s, and F4s that are not violent or sex offenses, (2) allowing people who have both less serious criminal records and one more serious criminal records to seal some or all of the less serious cases records, and (3) allowing people to ask the court for a relief without having to wait as long as they currently do (1 year from discharge instead of 3-5 years).

Tens of thousands of Ohioans are living with old felony convictions on their records because they were convicted of a low-level felony, in some cases just personal use drug possession and in some cases other

low-level crime. House Bill 1's changes mean that more people with these kinds of records will be eligible for record sealing than are today.

Here again, these reforms complement the reforms in Senate Bill 3. The two bills share a core public safety concern - that the collateral consequences of a felony conviction can destabilize people and impede successful recovery - and propose reforms for two different but at times overlapping groups. House Bill 1's focus is on ensuring that people with a range of low-level criminal convictions are not legally prevented from seeking record sealing relief.

Senate Bill 3, on the other hand, focuses specifically on people charged with low level, personal use drug possession and serves as a backstop in these cases. Even when someone does not seal their record - the majority of people who are eligible for record sealing today do not do so - Senate Bill 3 will ensure that while a conviction for low-level drug possession may still show up on a background check, that person will avoid the lifelong stigma and restrictions associated with a felony record.

Ultimately, the scope and urgency of the complex problems facing Ohio demand a range of solutions. We see the changes to ILC and record sealing in House Bill 1 as excellent complements to the reforms this committee has been carefully refining in Senate Bill 3. We support, and urge the committee to support, the approaches in both House Bill 1 and Senate Bill 3.

Thank you again for the opportunity to submit our comments. We remain deeply committed to the critically important goals reflected in both Senate Bill 3 and House Bill 1 and applaud your leadership in advancing needed reform. Please let us know if we can provide any more information.

Sincerely,

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