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To: Senate Judiciary Committee

From: Kevin Werner, Policy Director

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Re: SB 288 Testimony relevant to record sealing & expungement

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Chairman Manning, Vice Chair McColley, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the invitation to provide testimony on provisions pertaining to record sealing and expungement within Senate Bill 288. I am Kevin Werner, policy director for the Ohio Justice & Policy Center (OJPC), a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems.

The most significant change this bill makes is expanding, within some constraints, eligibility for the sealing of criminal convictions. The bill accomplishes this by removing the “eligible offender” determination prior to a judge considering a record sealing application. The upside to the removal of this language is that Ohio judges will use their discretion to determine which applicants can seal or expunge their records, rather than a predetermined criteria that misses the mark in seeing the actual living, breathing person coming before the court.

OJPC is very supportive of the provisions in the bill that allow sealable offenses to be expunged. The interests of an applicant in expungement will always weigh more heavily than the same person’s interest in mere sealing, because so many people, organizations and political subdivisions can see sealed records. This occurs both as a result of statute and due to carelessness or mistakes by third party background checkers often in the context of employment. We call it “the leaky seal” and allowing sealable records to be expunged will fix some of the leaky seal problems.

Similarly, OJPC is very supportive of the provision that allows pardoned offenses to become sealable. By making pardoned or partially pardoned offenses sealable, the legislature is fulfilling the basic purpose and promise of a pardon—to relieve the person to whom it is granted of all disabilities arising out of the conviction or



convictions for which it was granted.¹ Decisions by the Ohio Supreme Court over the past decade require the law to be changed in this way.

OJPC offers two additional concepts for the bill sponsor and committee to consider.

Consider a presumption in favor of expungement. OJPC believes the bill can be improved with a very slight addition that is common in Ohio made in criminal justice bills. Generally speaking, various places of the revised code contain presumptions² when certain conduct occurs or conditions are met. For example, there is the presumption for a prison term for certain drug offenses. There is a presumption for intervention in lieu of conviction created under HB 1 of the 133rd General Assembly. The point being, the revised code is full of instances where presumptions exist. Creating a presumption in favor of expungement makes sense given the subject matter of the bill.

Automate sealing in certain circumstances. As the bill is currently drafted, and for all intents and purposes, nonconvictions and dismissals are largely treated as convictions or guilty pleas. Collateral sanctions come along with nonconvictions and dismissals just as they do with convictions and plea agreements because they appear in criminal background check reports. A criminal record can hold a person back with respect to employment, education and housing. If the legislature's intent is to remove unnecessary barriers to full participation and citizenship after a person serves out a sentence, then the good faith measure the legislature can provide is to seal nonconvictions and dismissals and certain types of convictions without that person needing to go through a cumbersome and opaque process. Nonconvictions and dismissals are the lowest of the low-hanging fruit. We often ask ourselves, *why does a person need to navigate the record sealing statutes to understand how to seal something that never actually occurred in the first place?*

Pennsylvania, in 2018, was the first in the nation to enact the clean slate concept for misdemeanor offenses. The impact is staggering. Pennsylvania state courts reported nearly 35 million criminal cases were sealed the first year the law went into effect. Utah passed a version of clean slate in 2019. At that time Michigan,

¹ Ohio Revised Code section 2967.04

² Section 1.48; Section 2121.01; Section 2121.3523; Section 2903.42; Section 2903.421; Section 2953.25; Section 2961.23; Section 3111.03; Section 4123.68; Section 5160.37; Section 5301.07; Section 2929.13; Chapter 2925; Section 2951.041; Chapter 3719; Chapter 4729.



Connecticut, Washington, North Carolina, Louisiana, California, and New Jersey all had bills pending.

Last week, Colorado introduced a clean slate bill and the rationale seems tailor made for Ohio. Guest columnist Bryant Dulin, who is the founder of a digital recruiting platform in Colorado explained why the clean slate bill is so important:

Colorado's recovery is slowing in the face of a workforce shortage. Job levels are 48% lower than they need to be to see a full economic recovery by 2023. We have thousands of open positions, and vital industries like construction are short thousands of workers. Despite this, we currently restrict access to employment for millions of Coloradans—often completely unnecessarily—due to criminal or arrest records.³

Chairman Manning and members of the committee, I know SB 288 is not an economic development bill but there sure could be a huge bonus to Ohio's employers, our economy and the estimated 1 in 3—or approximately 3.9 million—Ohioans living with a criminal record.⁴ Our organization collaborated to produce a report in 2018 called *Wasted Assets*, which details a few of the economic impacts of collateral sanctions in Ohio.

The Ohio Justice & Policy Center strongly supports the clean slate concept being an additional mechanism by which SB 288 can have an enormous and positive impact on the lives of Ohioans. Thank you for the opportunity to provide testimony on the record sealing and expungement portions of SB 288. I will try to answer any questions the committee has.

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³ Bryant Dulin. *ColoradoPolitics.com*, "Clean-slate legislation needed in Colorado." February 14, 2022. Available at <https://www.coloradopolitics.com/opinion/clean-slate-legislation-needed-in-colorado/article>

⁴ Michael Shields and Pamela Thurston. "*Wasted Assets: The cost of excluding Ohioans with a record from work.*" 2018. Available at <https://www.policymattersohio.org/research-policy/fair-economy/work-wages/wasted-assets-the-cost-of-excluding-ohioans-with-a-record-from-work>



Addendum to record sealing & expungement within SB 288

Suggested technical changes to the bill:

Lines 22638-22639 should omit "if convicted" because under current law, a minor misdemeanor is *not* a conviction. The change is technical in nature and doesn't substantively change the bill.

Lines 23599-23605. We suggest harmonizing with provisions in SB 183 so that solicitation or prostitution offenses need not be the predicate offenses for expungement for victims of human trafficking.