



Ohio Prosecuting Attorneys Association

Louis Tobin
Executive Director
House Bill 67
Opponent Testimony
June 11, 2024

Chair Abrams, Vice-Chair Williams, Ranking Member Brown and members of the House Criminal Justice Committee, thank you for the opportunity to testify in opposition to House Bill 67 to allow an offender to apply for a retroactive reduction of a penalty, forfeiture, or punishment in the event that the penalty, forfeiture, or punishment is reduced by change to the Revised Code or Ohio Constitution.

As an initial matter, it is worth noting that Ohio already has one of the most expansive record sealing/record expungement schemes in the country allow for the sealing and expungement of an unlimited number of misdemeanors, F5, and F4 offenses, and up to two F3 offenses. It is not clear what benefit this legislation will provide to an offender that cannot already be obtained through our record sealing and record expungement law.

Secondly, there are what we view as a number of definitional and practical problems with this legislation that the Committee should be aware of.

- The bill defines “Reduction in a penalty, forfeiture, or punishment for an offense” so that it includes a change in the length or “substance” of the possible prison term that “lessens the seriousness of the substance: of the offense. It is unclear what it means to change the substance of an offense or lessen the seriousness of the substance of an offense.
- The definition of “Reduction in penalty, forfeiture, or punishment for an offense” also includes changes that make the length, forfeiture, or penalty for an offense “less stringent.” Again, it is unclear what it means to make an offense “less stringent.”
- As a practical matter, an offender can apply for relief under the bill if there is a change in the length of a possible prison term or jail term or the range of possible prison terms or jail terms for the offense. This creates the following possibilities that have no discernible benefit:
 - Someone convicted of an F3 offense prior to the enactment of HB 86 who was sentenced to and served 5 years in prison can now seek relief under this bill to have the record reflect that they should only have been sentenced to a maximum of 36 months in prison, the new maximum for most F3 offenses.
 - Someone convicted of an F4 offense who was sentenced to community control and has completed that community control will be able to seek relief under this bill if the legislature subsequently reduces the penalty for their offense from an F4 to an F5. This despite the fact that they would still be subject to the same community control sentence.

- Someone convicted of an F4 offense who was sentenced to prison for 12 months will be able to seek relief under this bill if the legislature subsequently reduces the penalty for their offense from an F4 to an F5 even though the judge could have sentenced them to 12 months in prison for the F5.
- Additionally, because the bill provides for relief when a change to law “otherwise reduces the penalty, forfeiture, or punishment” for an offense it creates the following possibilities:
 - Someone convicted of F5 theft prior to the enactment of HB 86 in 2011 for the theft of \$500 can now come to court to seek to have their records reflect that this offense is now misdemeanor theft. They can do this even though they are eligible to simply have the record expunged. But because the change from a felony to a misdemeanor also reduced the possible fine for the offense this is a change in the “punishment” for an offense that would enable them to get their fine money back from the state.
 - If the same offender had property forfeited that is no longer forfeitable the bill would enable them to have the forfeited property returned.

This is vaguely written legislation that provides no clear benefit to some offenders, particularly in light of our extremely liberal sealing and expungement laws, and penalizes the state for enforcing the law as it was written at the time the person committed the crime. People should be punished based on what the law is when they break it not based on some after the fact change to the law. The legislature can and has provided mechanisms for relief on the back end of convictions and those mechanisms are beyond sufficient.

I would be happy to answer any questions.