



1108 City Park Avenue, Suite 200
Columbus, OH 43206
614.827.0549
ohiopovertylawcenter.org

Interested Party Testimony, SB 3
Megan O’Dell, Attorney
Ohio Poverty Law Center
Senate Judiciary Committee
June 12, 2019

Chair Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, my name is Megan O’Dell, and I am an attorney at the Ohio Poverty Law Center. The Ohio Poverty Law Center advocates for evidence-based policies that protect and expand the rights of low-income Ohioans. We are a non-profit law firm working closely with Ohio’s legal aid community, serving Ohioans who are living, working, and raising their families in poverty. Thank you for the opportunity to provide interested party testimony on Senate Bill 3.

Approximately one in six Ohioans has a felony or misdemeanor conviction record.¹ This means that close to two million Ohioans face significant barriers to employment and occupational licensing due to their criminal record, disproportionately affecting low income people and communities of color, further perpetuating the cycle of poverty.² When looking at records created by arrests and other infractions, this number jumps to one in three individuals.³

Barriers to employment and occupational licensing are somewhat reduced when an individual has their record sealed. Last session’s Senate Bill 66 greatly expanded eligibility for record sealing which is helping many Ohioans who had multiple convictions in their past. It is important to note that the sealing of a criminal record does not delete the record. Sealing a record simply hides the record from public view, which means that public employers and state licensing agencies are still able to see an individual’s record, barring an individual from employment and licensing. Similarly, intervention in lieu of conviction also reduces collateral sanctions as an individual’s case is dismissed if they successfully complete treatment. However, just being eligible for intervention in lieu of conviction creates barriers to employment and licensing and is often treated like a criminal conviction in our statutes and administrative rules. For example, an individual seeking to become a cosmetic therapist can be denied a license to practice for being found guilty of or for being found eligible for intervention in lieu of conviction for any violation of a state or federal drug law. Similar bars exist for acupuncturists, community health workers, home health aides, and massage therapists, for example.

¹ See <http://www.ohiojpc.org/about/>.

² Vallas, Rebecca and Sharon Dietrich, *One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records* (Dec. 2014). <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>.

³ *Id.*

We appreciate the focus in SB 3 on rehabilitation for those vulnerable to the criminal justice system. Reducing low level felony drug possession offenses to misdemeanors will remove at least 268 legal barriers to employment and occupational licensing that are triggered by F5 drug possession offenses. However, 259 legal barriers exist for misdemeanor drug possession offenses, potentially excluding 51 careers for individuals with any drug possession offense record.

For example, an individual seeking to be licensed as an acupuncturist may be denied a license for pleading guilty to or for being eligible for intervention in lieu of conviction for violating any state or federal drug possession law.⁴ An individual seeking to be licensed as a barber may have their license suspended or denied for possession or addiction to the use of any controlled substance that is prohibited by state or federal law.⁵ An individual seeking to be licensed as a community health worker may be denied a license or have their license revoked for any drug possession conviction or for “a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction”.⁶ An individual seeking to become a social worker can be denied a license or have their license suspended or revoked by the Counselor, Social Worker, and Marriage and Family Therapist Board if they have been convicted of or found guilty of a drug possession offense.⁷

These barriers do not just exist on paper. As Charles Jenkins spoke about in his proponent testimony, his son, Alex, was a recovering addict but could not obtain employment due to his criminal record. He testified that he believes his son would still be alive if he had found stable employment. But due to his criminal record and the barriers in the law to employment, he could not. According to his dad, this led to his relapse and death.

Those recovering from substance abuse need stable employment. The routine and structure that employment creates as well as the sense of worth and the ability to provide for oneself and their family keep those in recovery away from drugs and out of our criminal justice system. At the same time, during this period of low unemployment, employers need workers. Towards Employment testified that middle-skill jobs account for 55 percent of our labor market, but only 47 percent of Ohio’s workers are trained at this middle-skill level. Those who are impacted by a criminal record who could fill these middle skill level jobs are being left behind. Other organizations such as the ACLU and Koch Industries testified that the inability to achieve employment has a severe impact on our economy. Koch Industries testified that Ohio is ignoring one third of potential employees due to a criminal record, and our collateral sanctions cost individuals an estimated \$3.4 billion in foregone wages in 2017.

Because employment is critical to successful reentry and rehabilitation, reducing the mandatory bars in the law and administrative rule is crucial. Sealing, intervention in lieu of conviction, and drug courts are tools to reduce recidivism. However, if the goal is to solve our drug epidemic, then lessening the hundreds of barriers to employment and occupational licensing in the law and administrative rule is an important piece of the solution and should be a priority. We ask that you go one step further with SB 3 and open licensing and employment opportunities for Ohioans with drug convictions. Attached to my testimony is list of recommended changes.

⁴ ORC 4762.13(B)(17)

⁵ ORC 4709.13(A)(2), ORC 4709.13(B)(1)-(2)

⁶ OAC 4723-26-11(B)(5)

⁷ ORC 4757.36, OAC 4757-11-01(C)(12)

Members of the Senate Judiciary Committee, thank you for your time and consideration. I look forward to working with you on removing barriers to employment and occupational licensing.

Senate Bill 3 Policy Recommendations

<u>Occupation or License</u>	<u>Statutory or Administrative Restriction</u>	<u>Recommendation</u>	<u>Recommended Language</u>
Acupuncture License	ORC 4762.13(B)(17)	Recommend removing intervention in lieu of conviction and excluding minor drug possession offense as a disqualifying offense	"...conviction or intervention in lieu of conviction for violating any state or federal law regulating the possession, distribution, or use of any drug, including trafficking, <u>that is not a minor drug possession offense...</u> "
Adult Day Care Employment	ORC 3721.121(C)(1)(a)	Recommend excluding minor drug possession offense as a disqualifying offense	"Except as adopted in rules by the director of health...no home or adult day care program shall employ a person in a position that involves providing direct care to an older adult if the person has been convicted or pleaded guilty to...2925.11 <u>that is not a minor drug possession offense.</u> "
Barber License	ORC 4709.13(A)(2); (B)(1)-(2)	Recommend excluding minor drug possession offense as a disqualifying offense	"Board may refuse to issue or renew or may suspend or revoke or impose conditions upon any license...for habitual drunkenness or possession of or addiction to the use of any controlled drug prohibited by state or federal law <u>unless for minor drug possession offenses...</u> "
Community Health Worker License	OAC 4723-26-11(B)(3)-(7)	Recommend removing intervention in lieu of conviction and excluding minor drug possession offense as a disqualifying offense	(3) "...a judicial finding of eligibility... for intervention in lieu of conviction... ; (4) "... or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for... ; (5) "... or a judicial finding of eligibility... for intervention in lieu of conviction for, violating any municipal, state, county, or federal drug law <u>that is not a minor drug possession offense;</u> (6) or a judicial finding of eligibility for a pretrial diversion or similar program or for intervention in lieu of conviction for... ; (7) "... or a judicial finding of eligibility... for intervention

			in lieu of conviction for, ...”
--	--	--	---------------------------------

Cosmetic Therapist License	ORC 4731.22(B)(3), (9), (11), (13)	Recommend removing intervention in lieu of conviction and excluding minor drug possession offense as a disqualifying offense	"Grounds for denial exist if the applicant has pled guilty to, been found guilty of, or been found eligible for intervention in lieu of conviction for : a felony; a misdemeanor involving moral turpitude; a misdemeanor committed in the course of practice; or any violation of a state or federal drug law <u>unless a minor drug possession offense.</u> "
Home Health Agency, Direct – Care Employment	ORC 3701.881(B)(3)	Recommend removing intervention in lieu of conviction as a disqualifying offense	“(B)(3) Except as provided in rules adopted under this section, the applicant or employee is found by a criminal records check required by this section to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.”
Massage Therapist License	ORC 4731.22(B)(3), (9), (11), (13)	Recommend removing intervention in lieu of conviction and excluding minor drug possession offense as a disqualifying offense	(B)(3) “ or a judicial finding of eligibility for intervention in lieu of conviction of , a violation of any federal or state law regulating the possession, distribution, or use of any drug <u>unless a minor drug possession offense</u> ; (9) or a judicial finding of eligibility for intervention in lieu of conviction for , a felony; (11) or a judicial finding of eligibility for intervention in lieu of conviction for (13) or a judicial finding of eligibility for intervention in lieu of conviction for
Professional Counselor License or Trainee Registration	ORC 4757.36(C), OAC 4757-11-01(C)(12)	Recommend changing administrative rule to allow board to deny license to anyone who has been convicted of or has pled guilty or no contest to any municipal, state, county or federal drug law that is not a minor drug possession offense	"(12) Sold, given away, diverted, or administered drugs for other than legal purposes; or been convicted of, pled guilty to, pled no contest to, or had a judicial finding of guilt imposed for violating any municipal, state, county or federal drug law <u>that is not a minor drug possession offense;</u> "

Social Worker License or Trainee Registration	ORC 4757.36, OAC 4757-11-01(C)(12)	Recommend changing administrative rule to allow board to deny license to anyone who has been convicted of or has pled guilty or no contest to any municipal, state, county or federal drug law that is not a minor drug possession offense	"(12) Sold, given away, diverted, or administered drugs for other than legal purposes; or been convicted of, pled guilty to, pled no contest to, or had a judicial finding of guilt imposed for violating any municipal, state, county or federal drug law <u>that is not a minor drug possession offense</u> ;"
---	------------------------------------	--	--