

To: Senate Transportation, Commerce and Workforce Committee

From: Kevin Werner, Policy Director

Date: September 23, 2020

Re: Proponent Testimony for Sub. H.B. 263, the Fresh Start Act

Chairman McColley, Vice Chair Johnson, Ranking Member Antonio and members of the Senate Transportation, Commerce and Workforce Committee, thank you for the opportunity to testify today in favor of Sub. H.B. 263. My name is Kevin Werner and I am the policy director at the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems. Part of our work at OJPC is to increase gainful employment for Ohioans with criminal records.

OJPC strongly supports Sub. H.B. 263 as a result of our clients' experiences reclaiming their lives after a conviction. Access to economic opportunity is vital for the success of our economy. For Ohioans recapturing their lives and livelihoods, professional licensing and career opportunities are a crucial component of productive community integration. Sub. H.B. 263 is a significant and long-overdue reform that will enable Ohioans access to at least 125 occupations requiring professional licenses.

The Fresh Start Act essentially does four things by enacting O.R.C. §9.79, which builds off Senate Bill 255 of the previous General Assembly. First, it establishes clear, relevant disqualifiers for initial licenses that must be directly related to the licensed-occupation duties and responsibilities.

Second, the Fresh Start Act provides needed guiderails for licensing agencies with respect to considerations for evaluating conviction records and the standard of proof for making those evaluations. For example, if the Ohio Board of Psychology is considering issuing an initial license to an applicant to practice as a psychologist and that applicant has a conviction listed on the disqualifying list, the Board of Psychology must also consider the nature and seriousness of the offense, passage of time since the offense and the relationship of the offense to the occupation duties and responsibilities. The bill also allows the licensing agency to have discretion to consider any mitigating evidence of rehabilitation or treatment. The standard of proof the licensing agency will use is clear and convincing evidence.

Third, the Fresh Start Act places limitations on license denial. Under the bill, licensing agencies shall not refuse to grant an initial license based on a conviction,¹ non-specific qualifications such as "moral turpitude" or lack of "moral character", or if a disqualifying offense occurs after the designated time period.

Fourth, the Fresh Start Act requires, if the initial license is denied, the licensing agencies must notify an applicant in writing that spells out the reason for denial. The agency must also inform the applicant of the right to appeal, that evidence of rehabilitation may be considered and the

¹ Disqualifying offenses of violence or sexually oriented may be considered at any time. Other offenses may be considered within 5 years from the conviction, guilty finding, plea, or release from incarceration.



earliest date when the applicant can reapply. These four requirements can work as instructions for an applicant when they reapply.

In short, the mechanisms operating O.R.C. §9.79 that are then applied to 279 sections of the code that deal with licensing make it more likely that a professional license will be initially granted than denied after a conviction. I refer you to Table 1 for a visual representation of how The Fresh Start Act operates.

Turning our attention to why this bill is so very vital, consider this: Ohio has a 3.4 billion dollar problem. There are more than 250 laws and rules that create employment barriers for people with criminal convictions. Another 600 rules otherwise limit earning opportunities by restricting licensure or government contracting. Together these barriers restrict more than 1.3 million jobs in Ohio.

Now apply that concept to what you heard the bill sponsor cite in his written testimony, “nearly one in five Ohioans needs an occupational license to do his or her job.”

I would like to share one of OJPC’s clients’ story. For the sake of privacy, I am not using our client’s real name.

Donna Jones has always wanted to help people. For as long as she can remember, she wanted to be a nurse. Thirty-one years ago, Donna was convicted of a misdemeanor offense of child endangerment. She admits she made a mistake throwing a shoe at her daughter out of frustration. Donna was also struggling with substance abuse in 1991. She was convicted of a misdemeanor drug paraphernalia charge in 1993.

Today Donna is in long-term recovery. Part of her recovery is to continue involvement in her 12-step program. Today Donna understands there are other ways to solve problems than resorting to using drugs. But Donna cannot get into the career path she is most passionate about because of her child endangerment conviction thirty-one years ago. She wants to be a certified nursing assistant, which requires licensing through the Ohio Board of Nursing. Donna is barred from this career path because our current licensing laws place collateral sanctions on individuals with convictions rather than opening doors to a more prosperous future. This is the problem The Fresh Start Act begins to address.

The Ohio Justice & Policy Center is grateful to Representative Koehler for sponsoring this bill. I want to point out that there are places in the bill where inconsistencies exist and OJPC is happy to point those out. There are some 279 sections of the code impacted by this bill. I am happy to answer any questions members of the committee may have. Thank you for the opportunity to provide testimony on this bill.

Table 1. Summary Chart for Sub. H.B. 263

| <p style="text-align: center;"><u>LAs MAY disqualify an applicant based on</u></p> | <p style="text-align: center;">Unless it is required by federal law or RC 109.77...</p> <p style="text-align: center;"><u>LAs may NOT disqualify an applicant based on</u></p> |
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| <ul style="list-style-type: none"> - Convictions on the list (by name/ORC, not by general categories like “moral turpitude”); - That are directly related to duties/responsibilities of the licensed occupation; - Within 5 years, if the offense is not violent or sexually-oriented (or any time for violent or sexually-oriented offenses); - After considering, by clear and convincing evidence: <ul style="list-style-type: none"> o Nature and seriousness of offense for which conviction, judicial finding or plea; o Passage of time since the crime was committed; o Relationship of offense to ability, capacity, and fitness to perform duties and discharge responsibilities; o Evidence of mitigating rehabilitation or treatment undertaken. <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> - Convictions that are part of federal disqualification criteria; <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> - Criminal-records criteria in RC 109.77 (law enforcement training certificate). | <ul style="list-style-type: none"> - Nonconvictions; - Convictions that are not on the list; - Nonspecific qualifications (like “moral turpitude” or lack of “moral character”); - A non-violent, non-sexual offense that occurs over 5 years ago. |