

To: Chairman George Lang, House Criminal Justice Committee & Committee Members

From: Kevin Werner, Policy Director

Date: December 9, 2020

Re: Benefits of Sub SB 3 to collateral sanctions

The Ohio Justice & Policy Center supports Substitute Senate Bill 3 for a variety of reasons noted in written testimony submitted December 3, 2020. No doubt other proponents of the bill will talk about its benefits to Ohioans with drug addiction, about the benefits of diverting people away from Ohio's already-overcrowded prisons and about the disproportionate harm drug laws have done to some communities in our state. I want to focus your attention on the collateral sanctions SB 3 will remove.

Our common goal is to ensure people addicted to drugs have a pathway to recovery in front of them. That pathway is more than just avoiding a prison sentence when drug treatment is needed. We have to think about how people go from drug-addicted to productive citizen in long term recovery. We also have to think about what things contribute to people relapsing or returning to behavior that led to their addiction or drug abuse. Lack of lawful opportunities to earn a decent living is the leading driver. Under Ohio's current laws, a person with a conviction for felony drug possession faces 675 collateral sanctions impacting employment, livelihood and access to economic prosperity and stability. When a person cannot obtain gainful employment they come under financial distress that causes a downward-spiral chain reaction. No job means no money. No money means no stable housing and food insecurity, often not just for one person but for the entire family. These types of factors lead a person to duress and desperation, and that's when a person is more likely to relapse or reengage in illicit behavior.

The value of SB 3 is two-fold: it recognizes first that treatment is preferential to imprisonment and second, that by avoiding the felony conviction that leads to prison, we can also avoid some of the long-term barriers that exclude a person from the above-ground economy indefinitely. To use the slogan of a commonly seen demonstration sign, it's "Jobs not Jails" that create long-term recovery and productivity of returned citizens.

SB 3 brightens future economic prospects for people working through drug addiction by removing barriers to gainful employment and giving them a better chance to rebuild their lives. The information below comes from Ohio's Civil Impacts of Criminal Convictions (CIVICC) database. To summarize, SB 3 will relieve 387 obstacles to work created by the Ohio laws and agency rules. In the process, it will open 116 paths to livelihood that are now restricted or totally blocked by a felony drug possession record.

Table A below shows the 94 livelihood paths currently barred or restricted by a fourth- or fifth-degree felony drug possession conviction. SB 3 will create or widen access to all of these occupations. Table B shows the 22 law enforcement occupations that are now barred by any felony record but may in rare instances be barred by a misdemeanor drug possession offense as well. SB 3 will also remove barriers to these occupations for most if not all Ohioans with a

drug possession record up to and including a 4th degree felony. Table C shows the 51 paths to livelihood that will continue to be hindered under SB 3 for any felony or misdemeanor drug possession offense.

OCCUPATIONS AFFECTED BY S.B. 3

Since all drug possession offenses can be F1-F3 if the drug quantity is great enough, not everyone with a felony drug possession conviction will benefit from S.B. 3. In addition, most people with other felony convictions on their records will not benefit from S.B. 3.

It may thus be hard or impossible to estimate the number of people who will benefit from S.B. 3. But we can estimate work opportunities S.B. 3 will open, based on the Civil Impact of Criminal Convictions (CIVICC) database:

Work obstacles in ORC and OAC		Number, per CIVICC
triggered by F4 and/or F5 drug possession (often multiple consequences for a single job type)	≥	675
<i>also</i> triggered by Misdemeanor drug possession	≥	288
will be relieved by S.B. 3	≥	387

Avenues to livelihood		Number, per CIVICC
hampered by civil impacts of F4 and/or F5 drug possession (Tables A, B + C)	≥	167
<i>also</i> hampered by effects of M drug possession (Table C)	≥	51
will be relieved by S.B. 3 (Tables A + B)	≥	116 ¹

¹ 73 of the felony-based barriers, affecting 19 paths to livelihood (denoted with a red asterisk* in Table A) are triggered by any violation of ORC 2925.11 that is “not a minor drug possession offense,” *i.e.*, not a misdemeanor or F5. A person with an F4 possession record will benefit from S.B. 3 for the purpose of these opportunities. See [2925.11. \[Effective 3/22/2019\] Possession of controlled substances. \(B\)\(2\)\(a\)\(iv\)](#).

Table (A)

(A) Paths to livelihood now barred or restricted by F4-F5 drug possession but hampered less severely or not at all by Misdemeanor drug possession. S.B. 3 will remove or reduce obstacles to these career paths.	<i>[total = 94]</i>
Accountant registration or CPA certificate (4701.06, -.07, -.09)	Discretionary
Agricultural commodity handler license (926.05)	Discretionary
Appraisal management company license (4768.08)	Discretionary
Athletic trainer license (4755.64)	Discretionary
Architect, loss of certification (4703.15)	Discretionary
*Attend public school in Ohio (3313.662)	Discretionary *
Auctioneer license (10-year bar) (4707.02)	Mandatory
Audiology license (4753.10)	Discretionary
*Autism program provider, employee, contractor, or volunteer (3310.41, 3319.39)	Mandatory *
Bank or family trust company, any management role (1105.02, 1112.08)	Mandatory
Behavior analyst license (4783.09)	Discretionary
Bingo operator qualification (2915.11)	Mandatory
Bingo supplies distributor or manufacturer (2915.081-.082)	Discretionary
Building trades contractor license (possible 1-yr exclusion for M, possible 3-yr exclusion for F) (4740.06-.061)	Discretionary
Casino license or employment (3772.10)	Mandatory
Casino control commission employment (3772.07)	Mandatory
Check cashing business license (1315.23)	Discretionary
Chemical dependency counselor, assistant, or prevention specialist license, certificate or endorsement (1-year bar is mandatory) (4758.24)	Mandatory/discretionary
*Child care license or employment (5104.013)	Mandatory *
Chiropractor license(4734.31)	Discretionary
Circulate election petitions (2961.01)	Mandatory
Civil service (state or local govt.) initial employment or return from disability (124.25)	Discretionary
Civil service (state or local govt.) employment termination (124.34)	Mandatory
*Coach, other “out-of-home care” for children (2151.86 + rule)	Mandatory *

(A) Paths to livelihood now barred or restricted by F4-F5 drug possession but hampered less severely or not at all by Misdemeanor drug possession. S.B. 3 will remove or reduce obstacles to these career paths.	<i>[total = 94]</i>
*Community-based long-term care provider or employee (173.38-.381 + rule)	Mandatory *
*Community mental health provider, employment or volunteer service (5122-26-06)	Mandatory *
Credit services organization registration (4712.03)	Discretionary
Credit union executive officer (1733.20)	Discretionary
*Developmental disabilities – contract or employment with DODD or county board (5123.081 + rule ²)	Mandatory *
*Developmental disabilities residential facility license (5123:2-3-01)	Mandatory *
Dietitian license (4759.07)	Discretionary
Driver training instructor (10-year bar) (4508.04)	Mandatory
Embalmer or funeral director license (4717.14)	Discretionary
Emergency medical services training program accreditation (4765.18)	Discretionary
Emergency Medical Technician (EMT) employee (IF CR check performed) (4765.301)	Mandatory
Firefighter employment or volunteer service (505.381, 737.081, 737.221)	Mandatory
*Foster care provider (2151.86)	Mandatory *
Fund-raiser or fund-raising consultant, registration or employment (5 year bar) (1716.05, 0.07)	Mandatory
*Head start agency employment (3301.32)	Mandatory *
Hearing aid dealer or fitter (4747.05)	Discretionary
Home medical equipment provider, license or registration (4752.09)	Discretionary
Insurance agent license (3905.14)	Discretionary
Insurance navigator certification	Discretionary
Livestock dealer license (943.05)	Discretionary

² OAC 5123:2-2-02(E)(1)(e)(i) provided an exception to the statutory barrier for someone with a “minor drug possession offense” (MM-F5). That rule has been rescinded, however (per *Lawriter*), and further research will be required to determine what has replaced it. It is possible that now any drug possession offense, even a minor misdemeanor, will permanently bar employment or a contract with the state department or a county board of DD.

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*Long-term care ombudsman program, employment (173.27 + rule)	Mandatory *
Lottery sales agent license (10-year bar is mandatory) (3770-2-02)	Mandatory/discretionary
Manufactured housing broker, dealer, installer or salesperson (2-year bar is mandatory for installer) (4781.08, 4781.18)	Mandatory/discretionary
Manufactured housing inspector or plans reviewer (4781.07 + rule)	Discretionary
*Medicaid provider contract or employment (5164.34-.342 + rules)	Mandatory *
Medical marijuana cultivator, processor, testing laboratory, or dispensary –license or employment (3796.13; 3796:2-1-03; 3796:3-1-03; 3796:4-1-03; 3796:5-2-03)	Mandatory
Mental Health Dept. (ODMHAS) employment (5119.181)	Discretionary
*Mental health residential facility – license, employment or volunteer service (5122-30-31)	Mandatory *
Motor vehicle dealer or auction owner (10-year bar) (4501:1-3-09)	Mandatory
Motor vehicle dealer or auction officer (4517.12)	Discretionary
Motor vehicle distributor employment (4517.13)	Discretionary
Motor vehicle salvage license (possible 1-yr exclusion for M, possible 3-yr+ exclusion for F) (4738.07)	Discretionary
Nursing home administrator or health services executive license (4751.32)	Discretionary
Occupational therapist or assistant license (4755.11)	Discretionary
Office-based opioid treatment program, license or employment (4729.553, 5119.37)	Mandatory for emplmt, Discretionary for license
“Office of honor, trust or profit” (2961.01)	Mandatory
Ohio licensing board or authority member, <i>e.g.</i> : Casino Control, Psychology, Speech & Hearing Professionals, etc. (<i>e.g.</i> , 3772.02, 4725.031, 4732.02, 4744.02)	Mandatory
Optician or ocularist license, apprentice registration (possible 1-yr exclusion for M, possible 3-yr exclusion for F) (4725.48. -.52, -.53))	Discretionary
Optometry license or certificate (4725.19)	Mandatory
Pain management clinic employment (4729.552)	Mandatory

(A) Paths to livelihood now barred or restricted by F4-F5 drug possession but hampered less severely or not at all by Misdemeanor drug possession. S.B. 3 will remove or reduce obstacles to these career paths.	<i>[total = 94]</i>
Pension Fund or Retirement Board member: Police & Fire (742.046), Public Employees (145.057), School Employees (3309.061), State Teachers (3307.061), State Highway Patrol (5505.048)	Mandatory
Pesticide applicator or operator license (921.23)	Discretionary
Physical therapist or physical therapy assistant license (4755.47)	Discretionary
Possession of firearms (2923.13)	Mandatory
*Preschool program employment (3301.541)	Mandatory *
Private investigator or security services license (possible 1-yr exclusion for M, possible 3-yr+ exclusion for F) (4749.03)	Discretionary
Professional engineer registration (4733.20)	Discretionary
Professional surveyor registration (4733.20)	Discretionary
Psychologist or school psychologist license (4732.17)	Discretionary
*Public children services agency employment (5153.1111)	Mandatory *
Public insurance adjuster certificate of authority (3951.04)	Mandatory
Racetrack satellite facility operation or employment (3769.26)	Mandatory
Real estate appraiser license or certificate, or appraiser assistant registration (4763.10)	Discretionary
Real estate broker or salesperson, exam eligibility (4735.07, 4735.18)	Discretionary
Residential mortgage lender, broker, or servicer certificate (7-year bar) (1322.10)	Discretionary
Residential mortgage loan originator license (7-year bar) (1322.21)	Mandatory
Respiratory care professional license or permit (4761.09)	Discretionary
Restricted snake possession or propagation permit (935.09)	Mandatory
Sanitarian certificate of registration (4736.13)	Discretionary
School bus driver (5-year bar is mandatory) (3301-83-23)	Mandatory/discretionary
*School employee (any), contractor, or work experience volunteer (e.g., 3314.03, 3319.089, 3319.39-.392, 3326.11)	Mandatory *
*Special-needs program provider, employee. contractor, or volunteer (3310.58, 3319.39)	Mandatory *
Speech pathology license (4753.10)	Discretionary

(A) Paths to livelihood now barred or restricted by F4-F5 drug possession but hampered less severely or not at all by Misdemeanor drug possession. S.B. 3 will remove or reduce obstacles to these career paths.	<i>[total = 94]</i>
*Supported living certificate from DODD (5123.169 + rule ³)	Mandatory *
Surety bail bond agent license (3905.85)	Discretionary
Telephone solicitor (telemarketing) registration or employment (4719.02-.03)	Discretionary
*Temporary host family for children (2151.906)	Mandatory *
Vending facility on government property, operating license for blind person (3304.31)	Discretionary
Video lottery technology provider or independent testing laboratory (10-year bar is mandatory) (3770:2-5-05)	Mandatory/discretionary
Wildlife shelter or wildlife propagation permit (935.06)	Mandatory

³ OAC 5123:2-2-02(E)(1)(e)(i) provided an exception to the statutory barrier for someone with a “minor drug possession offense” (MM-F5). That rule has been rescinded, however, per Lawriter, and further research will be required to determine what has replaced it. It is possible that now any drug possession offense, even a minor misdemeanor, will permanently bar a supported living certificate.

Table (B) These law enforcement-related jobs are now barred to anyone with a felony conviction. The laws also require termination of a worker who pleads guilty to a misdemeanor under an agreement that includes relinquishment of the safety officer training certificate. A misdemeanor thus does not obstruct entry, but it may cause a loss of employment under certain circumstances. The subset of misdemeanors actually leading to job loss, however, is probably quite small.

So even though these jobs have post-entry barriers for certain people with misdemeanor records, in general they are jobs that will be opened up by S.B. 3.

(B) Law enforcement occupations now barred by F4-5 drug possession (always mandatory) but *probably not* by M drug possession [total =22]

BCI investigator or special agent
City police dept. employee
Conservancy district police officer
Deputy sheriff
Enforcement agent with DPS investigative unit
Game protector
Housing authority police force employee
Natural resources law enforcement staff officer
Natural Resources Officer
Park district law enforcement officer
Police chief for Ohio veterans' homes
Police constable
Police officer for bank, railroad, hospital or amusement park
Police officer for nonprofit corporation or for private college or university
Regional transit authority police officer
Special police officer for DODD or ODMHAS
State university law enforcement officer
Tax enforcement agent
Township park district law enforcement officer
Township police officer
Veterans' home police officer
Village police force employee

Table (C)

(C) Paths to livelihood now hindered by any drug possession (Misdemeanor or Felony). These obstacles will continue under S.B. 3.	<i>[total = 51]</i>
Acupuncturist certificate to practice (4762.13)	Discretionary
Adult day care employment (3721.121)	Mandatory
Ambulette (wheelchair van) driver employment (4766.15 + rule)	Mandatory
Anesthesiologist assistant certificate to practice (4760.13)	Discretionary
Barber license (4709.13)	Discretionary
Casino-related business or employee license (3772.10)	Discretionary
Community health worker certificate from Board of Nursing (4723.86)	Discretionary
Community school operator contract or governing authority member (3314.02)	Mandatory
Cosmetic therapist license (4731.22)	Discretionary
Dental hygienist teacher's certificate (4715.27)	Discretionary
Dentist or dental hygienist license (4715.10, 4715.21)	Discretionary
Developmental disabilities, volunteer service (for county board or at DODD licensed residential facility) (5123-4-01, 5123:2-3-01)	Mandatory
Dialysis technician certificate from Board of Nursing (4723.28)	Discretionary
Driver's license (subject to suspension; any arrest warrant is a bar) (4507.091)	Mandatory
Driver training instructor (5-year restriction) (4508.04)	Mandatory
Early intervention services certificate from DODD (5123:2-5-05)	Mandatory
Emergency medical technician or first responder certificate to practice (4765.115)	Discretionary
Genetic counselor license (4778.14)	Discretionary
Home health agency, direct-care employment (3701.881)	Mandatory
Home medical equipment provider employment (4752.05)	Discretionary
Hospice employment (3712.09)	Mandatory
Marriage & family therapist license or trainee registration (4757.36)	Discretionary
Massage therapist license (4731.22)	Discretionary
Medicaid School Program contract or employment (5164.34)	Mandatory
Medical marijuana dispensary license or employment (3796:6-4-03)	Discretionary
Medication aide certificate from Board of Nursing (4723.651)	Discretionary

(C) Paths to livelihood now hindered by any drug possession (Misdemeanor or Felony). These obstacles will continue under S.B. 3.	<i>[total = 51]</i>
Medication & health related activities certificate from DODD (5123.452)	Discretionary
Motor vehicle registration (arrest warrant may bar). (4503.13)	Discretionary
Nursing home administrator or health services executive license, nursing home employment (4751-1-05, 3721.121)	Mandatory
Nursing license (RN or LPN) or advanced practice nursing license (4723.28); volunteer nursing certificate (4723.26)	Discretionary
Ohio Reads volunteer (3301.88) (IF CR check performed)	Mandatory
Opioid treatment program license (5119.37)	Discretionary
Oriental medicine practitioner license (4762.13)	Discretionary
Pawnbroker license (4727.15)	Discretionary
Pediatric respite care program license or employment (3712.09)	Mandatory
Peer recovery supporter certified by ODMHAS (5122-29-15.1)	Discretionary
Pharmacist or pharmacy intern license (4729.16)	Discretionary
Pharmacy technician or trainee registration (4729.96)	Discretionary
Physician license or training certificate (4731.22)	Discretionary
Physician assistant license (4730.25)	Discretionary
Podiatrist training certificate (4731.573)	Discretionary
Professional counselor license or trainee registration (4757.36)	Discretionary
Radiologist assistant certificate to practice (4774.13)	Discretionary
Real estate broker or salesperson license (4735.143)	Discretionary
Real estate continuing education, approval to teach (1301:5-7-07)	Discretionary
Registered nurse trainer or instructor certification from DODD (5123.452)	Discretionary
Social worker license or trainee registration (4757.36)	Discretionary
Teaching license or other school license (3319.31)	Discretionary
Terminal distributor of dangerous drugs, license or employment (4729.55, -.57 + rule)	Discretionary
Veterinarian license or vet tech registration (4741.22)	Discretionary
Wholesale distributor of dangerous drugs, license or employment (4729.53 + rule)	Discretionary

