



## Work and Wages

### Testimony on HB 263 before the Senate Transportation, Commerce and Workforce Committee

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Good afternoon, Chair McColley, Vice Chair Johnson, Ranking Member Antonio, and members of the Committee. My name is Michael Shields and I am a researcher at Policy Matters Ohio, a nonprofit, nonpartisan research organization with the mission of creating a more vibrant equitable, sustainable and inclusive Ohio. Thank you for the opportunity to testify in support of House Bill 263.

House Bill 263 would eliminate arbitrary barriers that limit opportunities for Ohioans with a criminal record to work, while thoughtfully preserving those that protect public and client safety.

Most Ohioans who serve time will return to our cities and towns. When they do, whether they reenter as productive community members, or pose new safety risks to their neighbors is largely up to us. Successful reentry hinges on the ability to find legitimate work.

For the estimated one in three Americans with a criminal record, it can be challenging to find a job that offers fair wages and a career pathway.<sup>1</sup> For many, this past record limits their options to low-wage jobs with little or no security or upward mobility – even if they were never convicted.

Ohio law includes some 850 laws and administrative barriers that curtail employment options of Ohioans who have already served their time. Some 630 limit access to occupational licenses, while another 36 limit drivers' license privileges or the ability to register a car.<sup>2</sup> Some do not even require a conviction: licensing entities must pull licenses of parents who fall behind on child support payments if the enforcement agency sends notice. Others are legally ambiguous, citing "moral turpitude" and "moral character requirements." A December 2018 report by Policy Matters Ohio found that collateral sanctions affect as many as one in four Ohio jobs, and set a tone that encourages other employers to default to excluding people. According to testimony by bill sponsor Representative Koehler, nearly one in five Ohioans need a license to work in their field.<sup>3</sup> Overbroad laws that severely limit career prospects for Ohioans with a record make it more likely they will commit a crime again.

#### Creating pathways to work

House Bill 263 would require licensing bodies to provide a clear justification for excluding applicants for new licenses, showing that the conviction limits ability to safely perform the job. Licensing bodies could no longer have blanket restrictions triggered by any type of conviction.

<sup>1</sup> <https://www.policymattersohio.org/research-policy/fair-economy/work-wages/wasted-assets-the-cost-of-excluding-ohioans-with-a-record-from-work>

<sup>2</sup> <https://civicc.opd.ohio.gov/>

<sup>3</sup> <https://ohiochannel.org/collections/ohio-house-commerce-and-labor-committee>

When assessing candidates with a record, managers would have to consider other factors, including the time passed since the crime occurred.

HB 263 would help people with past convictions rebuild their lives. The bill would standardize the licensing process for licensed professions, requiring the various state licensing authorities to specify which offenses would disqualify a candidate to each specific license. After five years, if a person's crime wasn't sexual or violent, they could not be excluded for it. In addition, licensing boards would be required to tell applicants why their application was denied, and if applicable, the amount of time they must wait to re-apply. As amended, the bill would create data tracking requirements.

HB 263 would affect those seeking initial licenses who have a prior criminal record but have not violated terms of parole or re-offended in the five years following their latest incident. It should be amended to encompass those seeking license renewals as well. The bill does not apply to anyone convicted of a sexual or violent crime.

### **Preserves public and client safety**

HB 263 allows licensing entities to exclude applicants whose specific convictions are cause to believe that the applicant may put clients or the public at risk. Violent and sexual crimes would remain cause for exclusion. For licensing bodies to exclude candidates on the basis of another conviction, they would have to provide a clear justification stating how that conviction type calls into question the ability of the worker to safely perform the job. This requirement recognizes that having a criminal record is not a catch-all indicator of job skills or trustworthiness. Rather, blanket exclusions limit the range of legitimate earnings opportunities for Ohioans with a record, making it more likely that they will commit a new crime motivated by financial hardship.

### **Education**

Ohio employers increasingly complain of difficulty finding candidates with the skills to match the positions they need to fill. This is a complex story: slow recovery from the Great Recession conditioned employers to expect to recruit highly skilled applicants without having to raise wages; and long-term job separation let workers' skills stagnate. What is clear is that involvement in the criminal justice system disrupts education and job-skill development, and collateral sanctions exacerbate that disruption.

The typical Ohioan entering prison has reached a lower level of education than the typical adult Ohioan who has never served time. Interviews Policy Matters conducted for recent research indicated that collateral sanctions cause some Ohioans with a record to opt out of educational programs when they perceive career opportunities as closed to them. Others make deep investments in time and limited financial resources, only to have those never pay off.

Collateral sanctions disrupt skill formation among the prospective workers most prone to turning to crime out of financial hardship. Licensing reform to open new job opportunities is likely to increase participation in credentialing programs among those with a crime in their past, and result in a more skilled workforce.

### **Guidance for employers**

The licensing reforms posed under HB 263 will benefit Ohio job-seekers and businesses alike. As the labor market tightens after a long, slow recovery, employers are increasingly faced with unfilled positions. Considering candidates who may have been overlooked in the past can help

employers fill those jobs. Many thousands of positions within Ohio's health care industry are projected to open in the near future, and unless this reform passes, critical jobs could go unfilled, leaving patients and aging Ohioans without enough caretakers.<sup>4</sup> Recognizing these needs, communities around the country are making similar reforms. Maryland's largest employer, Johns Hopkins Medical Center, adopted a similar policy and hired 115 people with a conviction in their backgrounds at various Baltimore City locations.<sup>5</sup> Illinois enacted licensing reform that expands access to over 100 previously restricted job types for residents who have gone five years without a criminal offense and who have been out of prison for at least three years if they served time.<sup>6</sup>

Currently, hiring managers have wide discretion in most cases, but that can be a double-edged sword. Discretion can help candidates when a manager takes the time to review their full qualifications; but lack of guidance for managers means that hiring decisions can be made arbitrarily, and a conviction could even be used as cover for discrimination. Research shows that white candidates with a felony get called back more often than black candidates with no criminal record.<sup>7</sup> Some employers use higher conviction rates among people of color as a license to discriminate.

In other cases, well-intentioned employers pass over applicants who have committed a past crime out of fear that they would be held liable if the person committed a crime while at work. A case study from Johns Hopkins Medical Center found that no workplace crimes were committed among 500 former offenders it hired. Instead, they were among the most loyal employees on the hospital staff. In fact, because the criminal justice system has treated people of color more punitively, using a record to exclude applicants can put employers on the wrong side of Equal Employment Opportunity law. By relaxing overbroad hiring restrictions, licensing bodies can help employers to recognize prospective staff members, even those with a conviction, as assets.

HB 263 could provide tools to help employers use their discretion to give fair consideration to applicants and maximize their hiring pool, while doing diligence to protecting their clients. The bill should direct licensing bodies to issue guidance to managers on how to evaluate candidates in consideration of time passed and restitution or rehabilitation activities. This guidance should adopt Equal Employment Opportunity Commission guidance, and licensing bodies could provide more instruction on specific job performance criteria.

## **Need to address ongoing eligibility and license renewals**

HB 263 would clear barriers to work for thousands of Ohioans. Some language changes could ensure that it benefits more. In its current form, HB 263 would only affect those seeking initial licenses. The bill should be modified to cover not just initial licenses, but ongoing eligibility for existing licenses and renewals.

## **Conclusion**

Reducing barriers to work cannot prevent every crime. But smart second-chance hiring policies can reduce repeat offenses that are motivated by financial hardship.

HB 263 contains vital provisions that will clear pathways for many Ohioans with a past conviction to work. Some language changes would mean it reaches even more.

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<sup>4</sup> [http://ohiolmi.com/proj/Projections/Ohio\\_Job\\_Outlook\\_2016-2026.pdf](http://ohiolmi.com/proj/Projections/Ohio_Job_Outlook_2016-2026.pdf)

<sup>5</sup> <https://csjusticecenter.org/wp-content/uploads/2019/06/Fact-and-Myths-webinar-PART-TWO-PDF.pdf>

<sup>6</sup> <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=5973&GAID=13&DocTypeID=HB&LeqId=95473&SessionID=88&GA=99>

<sup>7</sup> <https://www.themarshallproject.org/2018/11/13/the-inspiring-life-and-career-of-devah-pager>

## Policy features now in HB 263

- Elimination of arbitrary exclusions from occupational licensing
- 5-year time limit of consideration of most conviction types as basis for exclusion
- Requirement that licensing bodies notify rejected applicants of reason for rejection, provide an appeal process, and notify applicants of when they are eligible to reapply

## Recommended amendments to enhance the scope of the bill

- Expand coverage to ongoing eligibility for current license-holders and renewals
- Direct licensing entities to adopt Equal Employment Opportunity Commission guidance in licensing determination and provide written guidance for employers on factors to consider when evaluating an applicant with a criminal record. These should include
  - Whether the conviction type specifically limits the applicant's ability to safely perform the job
  - What steps the applicant has taken to recover or make restitution for the crime
  - Time elapsed since the crime took place

House Bill 263 would be life changing for the many Ohioans who have made mistakes in the past but have worked hard since then to get on track – and for those who share their communities with them. The ability to find legitimate work can be the pivotal difference in whether a person successfully moves past a conviction or commits another crime.

I ask committee members to amend the bill so that it will cover more of the Ohioans it is intended to reach; and to direct licensing boards to issue uniform guidance to employers on how to consider applicants with a record.

I urge the committee to pass HB 263 with these changes.

Thank you.