

Criminal justice; Work and Wages

## RECLASSIFYING DRUG FELONIES WOULD OPEN CAREER PATHWAYS - RETROACTIVITY WOULD MAXIMIZE REACH

Michael Shields

For too long, Ohio has taken a punitive approach to criminal justice. Today the state holds 50,000 people in over-crowded prisons that are unsafe for both prisoners and the guards who oversee them. Once released, they face a web of laws that restrict access to work based on their conviction. These barriers make it harder to overcome past mistakes. Drug possession is [the top reason Ohioans are sent to prison](#), accounting for 14.5% of commitments in Fiscal Year 2019. Ohioans with addiction need treatment and a clean slate.

Senate Bill 3 is [a step in the right direction](#). It would reclassify certain low-level drug offenses from felonies to misdemeanors, providing treatment for Ohioans who would otherwise face time in prison. Reforms in [other states show this approach can have a positive impact](#).

SB 3 would reduce the number of people charged with felonies. For those affected, it would also remove 268 legal barriers to employment.

Restrictions known as collateral sanctions limit employment opportunities for Ohioans with convictions, even years after they've been released. Because many of those restrictions are triggered by felonies—but not misdemeanors—SB 3 would eliminate many barriers to employment for reclassified Ohioans. A separate bill, [House Bill 263, takes direct aim at those rules](#).

This is an important aspect of SB 3's reclassification because getting and keeping a stable job is a vital component of recovery. High unemployment rates among formerly incarcerated people hurt not only those aspiring workers but their families and communities as well. For businesses, overlooking these workers is a [wasted asset](#).

### Reclassification

SB 3 would reclassify felonies for minor, non-violent drug possession charges as misdemeanors. Ohio law contains [527 known work restrictions](#) for people with these types of low-level felonies on their record. Reclassification would eliminate more than half (268), opening new opportunities for affected Ohioans and improving their chance of recovery.

### Retroactivity

Reclassification under SB3 would give more Ohioans battling addiction new opportunities for treatment, but in its current form the bill contains a major omission that should be amended. As written, SB3 would reclassify only charges currently pending or filed after the bill passes. That means everyone previously convicted of a possession-related felony would not benefit from the change - even though their crime would become a misdemeanor under the law.

Most Ohioans with a drug conviction that would be eligible for reclassification under SB 3 have already served their time, but the web of laws that limit access to work can be a life sentence. To help them, reclassification must be made retroactive.

Separate legislation – House Bill 1 – provides for additional record sealing which could be used by Ohioans convicted of a drug felony in the past, but the process is arduous and requires an individual court petition. While HB 1 opens an important strategy for Ohioans with a drug conviction to navigate the job market going forward, SB 3 recognizes that over-charging Ohioans with addiction as criminals was a mistake in the first place. House Bill 1 also takes the important step of dropping drug-related charges for Ohioans who successfully complete a treatment program.

Without retroactivity, two people caught with the exact same amount of the exact same drug would face different penalties based exclusively on the date of their arrest. Those convicted before SB 3 would face harsher punishment and more stringent employment barriers than those convicted after its passage. Because past drug war policies targeted black and brown communities, these distorted consequences disproportionately harm them. Since today's opioid crisis has largely affected white Ohioans in rural communities and suburbs, a non-retroactive SB 3 would disproportionately benefit them.

## Five Rs

Policy Matters Ohio has identified “Five Rs” of successful criminal justice reform.

- **Reclassification** of minor drug possessions from felonies to misdemeanors;
- **Retroactive** application of that reclassification to ensure communities over-targeted by past drug prosecution are included in the benefits of reform;
- **Reform** of the probation-to-prison pipeline, reserving reincarceration only for those who commit new crimes;
- **Reduction** of sentences for incarcerated Ohioans who earn credit by participating in education, behavioral programming or work activities while in prison; and
- **Reemployment** for those who've served their time, by eliminating or reducing barriers to work known as collateral sanctions.

## Policy Recommendations

Senate Bill 3 will help Ohioans fight addiction, not only by directing them to treatment instead of incarceration, but also by making it easier for them to find jobs when they are ready to return to work.

For reclassification to reach the most Ohioans, it should be made retroactive. Retroactivity will make it more likely that Ohioans are treated the same under the law, regardless of when they were arrested. Failing to make reforms retroactive would create new disparities between black communities over-targeted by past drug war policies, and mostly white Ohioans consumed by the wave of opioid addiction.

Senate Bill 3 contains key provisions that will help Ohioans with addiction get the treatment they need and stop branding them with convictions that limit their job prospects for life. It's a smart policy that, with modification, could be made more equitable and broader in scope.