

**Community-Wide Ex-Offender Reentry Task Force Final Report**

**Legal Issues/Advocacy Work Group  
Summary of Findings & Recommendations  
June 2009**

Co-Chairs: Judge Connie S. Price, Montgomery County Common Pleas Court  
John White, Dayton Circles Campaign Coordinator (began January 2009)  
Branford Brown, Legal Aid of Western Ohio (resigned Dec. 2008)

**Charge**

- Identify intended and unintended collateral sanctions in the Ohio Revised Code and other legal barriers to reentry and provide recommendations for correcting/eliminating identified sanctions or barriers;
- Make recommendations to establish a process to coordinate reentry efforts throughout the community with all aspects of the criminal justice system;
- Establish oversight process for the criminal justice community to ensure coordination between the “continuum of care” and criminal justice system; and,
- Research and assess all legal barriers / challenges preventing the successful reintegration of the formerly incarcerated individuals reentering Montgomery County.

**Work Group Membership**

<b>Name</b>	<b>Organization</b>
Judge Connie S. Price, Co-Chair	Mont. Co. Common Pleas Court
John White, Co-Chair	Dayton Circles Campaign Coordinator
Lori Brookhart	MonDay Correction Institution
Branford Brown	Legal Aid of Western Ohio
General Mwesi Chui	NAACP
Jeff Clemmer	Ex-Offender Caucus
Tim DePew	MonDay Correction Institution
Judge Mary E. Donovan	2 <sup>nd</sup> District Court of Appeals
Judge Jeffery Froelich	Mont. Co. Common Pleas Court
Tracy Gearon	U.S. Probation Office
Jamie Gee	Adult Parole Authority
Tommy Howard	Mont. Co. Child Support Enforcement
Judge Dennis Langer	Mont. Co. Common Pleas Court
Peggy Lehner	Ohio House of Representatives
Deirdre Logan	City of Dayton Chief Prosecutor
Julia Martin	Legal Aid of Western Ohio
John Menke	U.S. Probation Office
Amber Music	Ex-Offender Caucus
Phil Plummer	Montgomery Co. Sheriff
Tamico Pulliam	Ex-Offender Caucus
Tamara Reeves	Legal Aid of Western Ohio
Lynne M. Solon	Ex-Offender Caucus
Joe Stan	Ex-Offender Caucus
Roland Winburn	Ohio House of Representatives

## **Overarching Themes of the Group's Recommendations**

“More than 630,000 people are released from state and federal prisons every year and hundreds of thousands more leave local jails. Rather than helping them successfully transition from prison to community, many current state and federal laws have the opposite effect, interfering with the rights and obligations of full citizenship in nearly every aspect of people’s lives. These laws diminish public safety and undermine the nation’s commitment to justice and fairness, creating roadblocks to basic necessities for hundreds of thousands of individuals who are trying to rebuild their lives, support their families, and become productive members of communities.”<sup>1</sup> This statement is the basis for the work of the Legal Issues/Advocacy Work Group.

In Ohio, one in 25 adults is in prison, in jail, on probation or on parole, ranking the state behind only Georgia, Idaho, the District of Columbia, Texas and Massachusetts for the number of adults in the system.<sup>2</sup> At the time of incarceration, 42% of inmates from Montgomery County lacked a high school diploma or GED, 54% were unemployed, 75% abused drugs and 40% abused alcohol. Montgomery County’s high recidivism rate, 44% (the highest among Ohio’s six largest urban counties), is one costly result. In 2008, 72% (or \$115 million) of the county’s General Fund budget was spent on criminal justice services. On average, thirty adults were released from Ohio prisons to Montgomery County each week during 2007 and all of those people were in need of employment and housing and needed to reconnect with their families. While it is extremely important for communities to look at employment, housing, and family dynamics when people return, oftentimes their efforts are hindered due to collateral sanctions that are in affect when they arrive.

While ex-offenders now live in every community within Montgomery County, two-thirds of them are concentrated in neighborhoods already challenged with significant pockets of poverty and high unemployment. Although employment is a key component to successful reentry, it is not a standalone strategy. Research has shown that the family, friends and community of the ex-offender can play an important role in helping to create a stable social environment that leads to successful reintegration. Reducing recidivism benefits the ex-offender, their families, as well as the community, by reducing criminal justice costs, reduces crime resulting in safer communities and safer schools, and enables ex-offenders to become productive taxpaying citizens.

Laws, regulations, and systemic practices can create barriers for ex-offenders as they return to the county and try to reestablish their lives. Credit checks can reveal a criminal record from 10 or 20 years ago which can block housing and employment opportunities. Many occupations are restricted to felons. Driver’s licenses may be suspended. Unpaid child support payments may have accumulated during incarceration. These issues can have a dramatic affect on whether our returning citizens have a successful transition back into our community.

In December 2008, the Ohio General Assembly passed House Bill 130 which offers a framework for long-term investment in the state’s economy by addressing legal and other barriers to

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<sup>1</sup> After Prison: Roadblocks to Reentry, A report on state legal barriers facing people with criminal records, Legal Action Center.

<sup>2</sup> One in 31, the Long Reach of American Corrections, March 2009, The PEW Center on the States.

employment for people released from prison. A key component of the bill is the removal of non-relevant prohibitions or collateral sanctions to employment. The legislation states that a felony conviction does not by itself constitute grounds for denying employment. The Legal Issues/Advocacy Work Group felt that through some additional changes in legislation related to collateral sanctions and the sealing of records many of the obstacles could be lessened or eliminated. By providing our returning citizens the opportunity to be productive members of our society, all members of the community will benefit.

## **Part I: What We Know and What We've Learned**

### Employment

- Employers in most states can deny jobs to people who were arrested but never convicted of any crime.
- Employers in most states can deny jobs to – or fire – anyone with a criminal record, regardless of individual history, circumstance, or “business necessity.”
- States have the power to offer certificates of rehabilitation but few issue them.

Employers often judge people for having a record without knowing the details surrounding their conviction. Employers need to look past the conviction to find out what type of felony they committed. In some cases employers are concerned about their liability if they hire an ex-offender, e.g., if they know the person was convicted of assault and they end up assaulting someone on the job, the employer may be sued. Other employers may find that the cost for malpractice insurance (e.g. social work) is higher for someone with a conviction. Federal bonding is available; however, the amount is only \$5,000 which is very low and doesn't act as much of an incentive to employers. In addition, the paperwork is very complicated. Most low level service jobs such as construction or warehouse positions are available to ex-offenders.

### Occupational Licensing/Certification/Barriers

Most licensing prohibitions to convicted felons apply to three areas: healthcare, law enforcement and financial occupations. Professions in which license revocation or application rejection is mandatory include auctioneers, construction contractors, motor vehicle salvage dealers, and nursing home administrators. If the felony occurred within the past 20 years, the ex-offender cannot be a private investigator or security guard. There is a long list of professions in which license revocation or application rejection is discretionary.

The Ohio Department of Rehabilitation and Correction (ODRC) is providing occupational training in the prisons and the inmates get their certifications. In some cases, however, once released they learn that, because of their conviction, they can't get a job in that field. This is particularly true in the health field. However, Miami Valley Hospital and Good Samaritan Hospitals do have a Second Chance Program where returning citizens can work in janitorial services for one year and then begin to move into other jobs.

The Work Group requested the Ohio Legislative Service Commission to research historic data that might support the sanctions that create barriers to specific professions. They determined the date sanctions were established for several professions: Barber – 1933; Emergency Medical

Services Provider – 1976, Insurance Agents – 1987, Motor Vehicle Salvage dealer – 1980, telephone solicitor – 1996 and the Nursing Board’s authority to deny a license for felony conviction dates back to 1956. The only profession of those they investigated that appears to provide an expressed statement of intent or purpose is the law authorizing the attorney general to issue a certificate of registration to a telephone solicitor which is to “protect purchases from telephone solicitors and salespersons that commit unfair, unlawful, deceptive, or unconscionable acts or practices and to encourage the development of reasonable and fair telephone solicitation sales practices.” It is safe to assume that the other laws have the unstated intent and purpose of subjecting licensees to disciplinary action for the conviction of a felony, other crimes, and the commission of other bad acts so as to protect the public from persons of questionable character who may be inclined to engage in unscrupulous behavior.

As a result of the passage of H.B. 130 (signed by the Governor on January 6, 2009 and effective April 7, 2009), Section 4743.06 requires that boards, commissions, and agencies that may deny licensure or certification without a Chapter 119 hearing for specific criminal offenses, and intends to add offenses to the list, must promulgate Chapter 119 rules within 180 days (approximately 6 months) that state the basis for which the offenses substantially relate to the person’s fitness or ability to perform the job. If a board or commission under Title 47 determines there are certain felonies that should be an absolute bar from obtaining a license for that profession they must promulgate rules and present the rule(s) before the Joint Committee on Agency Rule Review (JCARR) for approval. The work group will request copies and review their justifications for the sanctions. If there are some sanctions that the work group feels are no longer valid, they will approach the legislators to pass legislation to lift the sanctions.

#### Driver’s License Suspension

License suspensions affect a person’s ability to find and maintain employment. The originating judge at the time of sentencing sets the limits and can modify the ruling to allow for occupational driving privileges. Currently people must travel to Columbus or Cincinnati to have their licenses reinstated. Arranging transportation to these cities can be difficult. There are discussions going on to provide locations in Montgomery County where people can have this done. H.B. 130 requires that ODR, before releasing a prisoner from a state correctional institution, attempt to verify the prisoner's identification and Social Security number. If ODR cannot identify them, if the prisoner has no other documentary evidence required by the Registrar of Motor Vehicles for the issuance of an ID card under R.C. 4507.50 (that section, not in the act, provides for nondriver ID cards), and if ODR determines that the prisoner is legally living in the United States, ODR must issue to the prisoner upon the prisoner's release an identification card that the prisoner may present to the Registrar or a deputy registrar of motor vehicles to obtain an ID card.

A driver’s license can be suspended as a result of vehicular homicide, vehicular assault, DUI, drugs and non-support convictions. There are specific sanctions required for DUI and drug convictions. Am. S.B. 17 from the 127 General Assembly put into place a number of items related to driver’s license suspensions and granted limited driving privileges including installation of a certified ignition interlock device on all vehicles the offender operates and use of continuous alcohol monitors. The bill also specifies fees and how those fees will be used. There is evidence that the suspension, used as an administrative enforcement tool, is effective. Local agencies set up the criteria for license reinstatement so if they comply the license is reinstated.

### Child Support Orders

Child support orders are set before a person goes to prison. When they are released they are likely to be in arrears and unable to make payments until they obtain employment. In addition the amount of the payment was set based on the position they held before being incarcerated. Finding employment at that level immediately after release is unlikely, and due to collateral sanctions, the profession they were in before incarceration may no longer be a viable option. Our Second District Appellate Court defines going to prison as voluntary (although there are some districts that see it differently) so support orders cannot be changed while a person is in prison. There are some states that allow child support payments to be suspended during incarceration or will eliminate the arrears upon release. Ohio is not one of those states. The Work Group did learn that the Administrative Review of the Support Order contains a provision for modifying child support payments due to incarceration. They also learned, however, that reviews from people trying to modify their obligation while in prison are denied on the grounds that going to prison is seen as “voluntary”.

The members of the work group recognized that child support must be paid; however, they also recognized that setting a realistic payment level that could be paid is better than having a larger order in place that cannot be made.

The Child Support Collaborative Report which was released in January 2009 by the Office of Child Support/ODRC, Ohio CSEA Directors' Association Collaboration, includes several recommendations related to dealing more effectively with the establishment or modification of a child support order when the obligor is incarcerated that fall in line with the discussions of the Legal Issues/Advocacy Work Group:

- Draft and promote legislation to include incarceration as a reason to request an administrative review of a child support order for eligible obligors;
- Draft and promote legislation to require the use of the obligors income during incarceration when establishing or modifying a child support order for eligible obligors, and to consider the obligor’s status as a convicted felon when estimating the potential income of a formerly incarcerated obligor ;

*The state workgroup favored recommending issuing minimum \$50-per-month orders relating to the two items above.*

- Draft and promote legislation for compromising child support arrears that are assigned (owed) to the state (for all qualifying obligors – not just those formerly incarcerated); and
- Draft and promote legislation to authorize the CSEA to deviate from the guideline calculations when issuing a child support obligation any time that the parents agree with the deviation, as long as the deviation does not violate state or federal law.

There was a pilot Non-Support Program set up by ODRC about three years ago which was very successful. Senator Bill Seitz had advocated for this to be part of H.B. 130 but was unsuccessful.

### Sealing of Record of Conviction (Expungement)<sup>3</sup>

A criminal record can follow a person for their entire life. Even after a person serves their time, fulfills his/her probation/parole requirements and never reoffends, that conviction can be used as the basis for decisions by potential employers or landlords. It can prohibit returning citizens from working in certain professions even though they are qualified to do so. Over and over the Work Group heard from returning citizens who have been out of prison for ten or twenty years without any additional incidents, yet still cannot pursue their life goals because of the obstacles in their paths related to that earlier conviction. The Work Group felt compelled to look at how, and in what circumstances, convictions can be sealed. The Ohio Justice & Policy Center in Cincinnati prepared a guide as a practical tool for helping their clients understand their criminal record, the possibility of expungement, and what to do if they cannot get an expungement.<sup>4</sup> Generally, you are NOT eligible to have your records sealed if you have traffic or sexual offenses, are not a first time offender, the victim of the crime was under 18 years old (includes non-support convictions), it was an offense of violence, have any charges pending against you, and/or it has been less than one year since the final discharge (paid fine, finished jail/prison term, discharged from probation/parole) of a misdemeanor; 3 years for a felony. Even if you are eligible, the judge may still deny the application if the prosecutor objects.

### Certificates of Rehabilitation

There are other options being used around the country and in Canada. The original conviction can be reinstated if they reoffend. This also relates to the levels of licensure required by some facilities. The first level is when the facility is licensed by the state. The second is when licensing is at the discretion of the employer. A Certificate of Rehabilitation (CR) can allow someone to work at a state licensed facility. Canada does pardons. Ex-offenders are eligible after 3, 5, or 7 years depending on the felony. If they fulfill their requirements they can apply for a pardon and most get it. Some are conditional and some are unconditional. In the United States you can apply but few are approved. In the United States ex-offenders have lost hope. They never really stop paying for their crimes even after they have served their time. Returning citizens don't have the incentive to succeed when they are forever penalized for their crime. If they had the hope of a pardon in 3 or 5 or 7 years they could focus on their education or set long term goals.

A Certificate of Rehabilitation (CR) could be a tool to help prove an ex-offenders' rehabilitation. With such an official documentation, employers will feel more comfortable offering employment to an ex-offender. This would assist in case by case reviews. CR's are being used in New York and Illinois. New York has the most far reaching legal effect compared to six other jurisdictions who administer Certificates of Rehabilitation. New York offers two types of Certificates based on the measurement of eligibility of each applicant. A Certificate of Relief is offered for those who are first time felony offenders and can be awarded any time after sentencing by a court where no prison time was given or after release from confinement by the State Parole Board. The second certificate is a Certificate of Good Conduct, which is issued by the Parole Board to repeat

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<sup>3</sup> In the current Ohio Revised Code, Expungement is no longer a term used related to the sealing of an adult's criminal record (§2953.43 was repealed in June 1988). ORC § 2953-31 – 2953.55 refer to Sealing of Record of Conviction. Expungement is still used by Juvenile Court (§ 2151.358).

<sup>4</sup> Criminal Records & Expungement: A Guide for Hamilton County Service Providers, Ohio Justice & Policy Center.

offenders and requires a waiting period of 1 to 5 years of good conduct, dependant on the seriousness of the offense(s). Both have the same legal effect - relieving the recipient of any forfeiture or disabilities, removing any barriers to employment automatically imposed by law due to convictions, and creating a presumption of rehabilitation. Essentially a CR allows:

- employers to use their discretion to assess each applicant's ability to satisfy the job requirements and do not have to deny such applicant due to any laws or regulations that may exclude them based on their criminal record(s).
- criminal records to remain accessible and open to the public.
- the burden to shift to the employer and licensing agency to demonstrate that the individual is not suitable for the job or license for which the returning citizen has applied.
- for creation of clear guidelines for occupational licensing agencies or employers when considering any applicant's suitability for particular license or jobs. These guidelines could consist of the following:
  - a. Specific duties of the job
  - b. Relevance of the crime(s) with the position/job sought.
  - c. Time elapsed since the last conviction
  - d. Seriousness of the offense(s)
  - e. Evidence submitted in regards to the applicant's rehabilitation and good conduct
  - f. Safety and welfare of the general public.

The work group felt that a Certificate of Rehabilitation or Certificate of Relief (CR) could provide employers objective evidence / measurement and could be a powerful tool. It is important to note that a CR is not permanent. It can be retracted if the person commits another offense.

#### Warrant Identification Process

The Reentry Coalition of Northwest Ohio in Lucas County goes into the prisons 6 months prior to release and identifies the inmate's primary needs. They focus on developing a plan and identifying the agencies that will assist. They discovered that many inmates return with outstanding / pending warrants which cause them to be rearrested shortly after release. This creates big barriers and is costly. In response, the Coalition developed a Warrants Identification Process about four years ago. They have entered into Interagency Agreements with the prosecutor's office, the courts, Child Support, BMV, and others. The person is still held accountable but it helps save tax payers money. They have dealt with 88 general warrants so far and that does not include any 2008 or 2009 warrants. The Legal Issues/Advocacy Work Group recognizes that this is an issue that also affects inmates returning to Montgomery County.

## **Part II: Team's Recommendation**

### ➤ **Occupational Licensing/Certification/Barriers:**

- Per H.B. 130, if a board or commission under Title 47 determines there are certain felonies that should be an absolute bar from obtaining a license for that profession they must promulgate rules and present the rule(s) before the Joint Committee on Agency Rule Review (JCARR) for approval. The work group will request copies of any rules submitted and review their justifications for the sanctions.
- If there are some sanctions that the work group feels are no longer valid, approach the legislators to pass legislation to lift the sanctions.

### ➤ **Driver's License Suspension:**

- Advocate that legislators modify the laws related to driver's license suspensions to state that the license is only suspended when the offense involves the operation of a vehicle or if a vehicle is used to commit the offense. The judge would not automatically suspend the driver's license unless there is a determination that a vehicle was used in the crime.
- Advocate that if a person is on parole and/or PRC they should be able to apply to the sentencing judge to vacate the suspension. An exception to this provision would be if the conviction was for vehicular homicide, vehicular assault or DUI.

### ➤ **Child Support Orders:**

- Advocate that, only as it relates to child support, incarceration be viewed as "involuntary". This would allow individuals to request Administrative Review of their Child Support Order. Currently requests are automatically denied because incarceration is viewed as "voluntary". Anyone convicted of felony criminal non-support would be exempt from this stipulation.
- Support the following recommendations included in the Child Support Collaborative Report which was released in January 2009 by the Office of Child Support/ODRC, Ohio CSEA Directors' Association Collaboration, related to dealing more effectively with the establishment or modification of a child support order when the obligor is incarcerated:
  - Draft and promote legislation to include incarceration as a reason to request an administrative review of a child support order for eligible obligors;
  - Draft and promote legislation to require the use of the obligors income during incarceration when establishing or modifying a child support order for eligible obligors, and to consider the obligor's status as a convicted felon when estimating the potential income of a formerly incarcerated obligor;
  - Draft and promote legislation for compromising child support arrears that are assigned (owed) to the state (for all qualifying obligors – not just those formerly incarcerated); and

- Draft and promote legislation to authorize the CSEA to deviate from the guideline calculations when issuing a child support obligation any time that the parents agree with the deviation, as long as the deviation does not violate state or federal law.

Modifications should not apply to anyone who is incarcerated for felony non-support.

➤ **Sealing of Record of Conviction (Expungement):**

- Work with legislators to discuss reasonable expungement reform...
  - Allowing a judge, at his/her discretion, to seal a record if there have been no offenses in “x” number of years (probably 10 years).
  - Enacting penalties to third party, non-governmental, vendors who fail to delete information when a record has been expunged.
- Educate businesses and employers on how to word the question about past convictions on applications so that applicants can answer honestly when the record of their conviction has been sealed. Suggested wording would be “Do you have any prior convictions that have not been vacated, pardoned or sealed?”
- Develop a process of follow up after the records have been sealed to ensure that all records are sealed to ensure that when a judge seals the records, all records are sealed by the courts and police and any other pertinent agency. ORC 2953.35 states that divulging confidential information is a misdemeanor of the fourth degree. It only applies to any officer or employee of the state, or a political subdivision of the state. Often it is the third party vendors that don’t update their records. The ORC does not address notification of third party vendors.

➤ **Certificates of Rehabilitation**

- Create a subcommittee of the Legal Issues/Advocacy Work Group to draft a Certificate of Rehabilitation (CR) program for Ohio (note that several options for program name are under consideration such as Certificate of Relief). This would include development of a joint pilot program that might include Montgomery, Lucas, and Hamilton Counties. Lucas and Hamilton counties already have reentry efforts underway so they are the logical choice for collaboration. Cooperation of a local court might also be sought. Initial meetings have already begun with several organizations that could be advocates for this idea
- Approach the Ohio Department of Rehabilitation and Correction, Ohio Chamber of Commerce, Ohio Criminal Defense Association, Ohio Association for Justice, Miami Valley Trial Lawyers Association, and Ohio Bar Association – Criminal Subcommittee and other interested parties, including Senator Seitz from Cincinnati, to garner support for bringing this issue before the Ohio Legislators.
- Present a pilot Certificate of Rehabilitation project for Ohio to legislators. The subcommittee could also seek out state, federal, and private grants to fund this pilot.

➤ **Warrant Identification Process**

- Work with Legal Aid of Western Ohio and other appropriate parties to develop a Warrant Identification Process similar to the process developed in Lucas County that will include developing a way to address outstanding /pending warrants prior to an inmate’s release. This could include entering into Interagency Agreements with the appropriate parties so that arrangements can be made that will keep the person from being rearrested shortly after release.

**APPENDICES**

Appendix A	Collateral Sanctions
Appendix B	List of professions restricted
Appendix C	Ohio Legislative Service Commission Research <ul style="list-style-type: none"> <li>- Barbers</li> <li>- Emergency Medical Services</li> <li>- Insurance Agents</li> <li>- Motor Vehicle Salvage Dealers</li> <li>- Telephone Solicitors</li> <li>- Nurses</li> </ul>
Appendix D	House Bill 130 from the 127th General Assembly
Appendix E	Am. S.B. 17 from the 127th General Assembly
Appendix F	Senate Bill 22 from the 128th General Assembly
Appendix G	Child Support Collaborative Report
Appendix H	Criminal Records and Expungements, A Guide for Hamilton County Service Providers, Ohio Justice & Policy Center
Appendix I	ORC 2953.31 – 2953.55 (Sealing of Record of Conviction)
Appendix J	<ul style="list-style-type: none"> <li>- “Certificates of Rehabilitation” to Remove Occupational Bars Arising from a Conviction Record (National HIRE Network)</li> <li>- Draft Certificate of Relief (document prepared by Joe Stan on State Issued CR)</li> </ul>