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TO: Drug Chapter Workgroup Members

FROM: Sara Andrews, Director

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RE: Drug Chapter Workgroup Conclusion

At the December 2018 Sentencing Commission meeting Members heard details on a number of proposals to reform Ohio’s drug sentencing laws and practices. In an effort to further evaluate and harmonize the various ideas, this workgroup was formed to bring together stakeholders and interested parties from throughout the criminal justice system, with an eye toward identifying priorities necessary for meaningful reform and developing consensus recommendations to advance those priorities. After frank and honest discussions at its initial meeting, the workgroup developed consensus on a number of reform goals:

1. Diminishing or eliminating the stigma of a felony conviction
2. Reducing the use of, demand for, and trafficking of illegal drugs
3. Developing a structure that includes accountability, flexibility, and simplicity
4. Using or revising the civil commitment process to provide treatment access without criminal justice system involvement
5. Appropriately addressing relapse
6. Addressing threshold amounts and defining “low level possession” offenses

Workgroup participants further debated these consensus topics as well as recently introduced legislation such as House Bill 1 and Senate Bill 3 at a series of meetings in 2019. Those conversations have proved invaluable to the work of the Commission and helped to inform the discussions around potential legislation in both testimony and interested party meetings. The Commission is tremendously grateful for your time and contributions in this work. However, recognizing the fluid nature of these topics and that much of our discussion is already included in pending legislation we’ve opted to discontinue meetings of the workgroup.

Please find below a synopsis of consensus topics, including current status.



Diminishing or Eliminating the Stigma of a Felony Conviction

Recognizing quickly that the subject of defelonization of possession offenses was not likely to generate a consensus opinion, and that myriad felony charges often accompany drug possession when an individual suffers from a substance abuse disorder, the workgroup focused much of its time and effort on examining ways to reduce the collateral consequences of a felony conviction. These discussions were framed around 1) expanding treatment options for charged individuals and 2) expanding their ability to have a record of conviction sealed, expunged, or their rights otherwise restored.

Expanding Treatment Options

Members were supportive of expansion of drug court programs, an idea also included in the Governor’s budget request passed in HB166. They also supported expansion of the concurrent jurisdiction of municipal and common pleas courts to operate drug courts. These discussions were shared with the legislature and contributed to an amendment of the jurisdictional provisions of SB3 to allow for such concurrent jurisdictions.

Having heard the Chief Justice’s proposals for expansion of Intervention in Lieu of Conviction (ILC) at the December Commission meeting, members discussed that expansion as proposed in HB1, and were strongly supportive the presumption ILC be granted and of requirements that judges make findings on the record when denying ILC. Judge Selvaggio presented a draft of a statutory simplification of ILC provisions and members endorse drafting changes that make the provisions of the criminal code clearer and easier to digest. Commission staff will look to harmonize that simplification draft with the provisions of HB1 and discuss that simplification as the legislature further considers the bill.

The treatment of probationers with substance abuse disorders was also discussed in relation to probation violator caps in R.C. §2929.15 and the definition of “technical violation.” Practitioners felt frustrated by an inability to direct probationers into long term treatment when the offender is aware they can only serve an additional 90 or 180 days for a probation violation under current law. Offenders often ask that the judge sentence them to a term in local jail rather than engage in treatment. Furthermore, offenders who abscond from community control entirely were benefitting from the lack of clarity on what constitutes a “technical violation”. These discussions have informed interested party meetings and an amendment to SB3 for the proposed definition of technical violation. Articulated or repeated refusal to participate in the terms of community control is excluded from consideration as a “technical violation,” subjecting violators who have abandoned the goals of their community control sanction to their suspended prison sentence.



Expanding Rights Restoration

The subject of simplifying and expanding access to record sealing procedures, expungement, and Certificates of Qualification of Employment (CQE's) was also at the forefront of workgroup discussions. As HB1, SB3, SB160 and similar legislation proceeds through the legislative process, the ideas discussed by the workgroup will inform their consideration.

Record Sealing

The proposals put forth by the Chief Justice in December 2018 were discussed at length by the workgroup and formed the basis of HB1. Members strongly support the reduction in the waiting period to seal low level offenses from three years to one year and expanding the number of such low-level convictions that can be sealed. Provisions in SB3 allow for immediate sealing of a drug conviction upon completion of a drug treatment program or ILC were also favorably discussed, as were its provisions treating prior convictions for low level possession offenses as misdemeanors for sealing purposes, as this would allow individuals with multiple possession offenses a greater ability to see their convictions sealed. HB1 also increases the ability for individuals with a conviction for a felony of the third degree to have their record sealed, a concept supported in workgroup discussions.

While these pending bills do not revise or simplify the sealing statutes for clarity and ease of administration, Commission staff will continue to advocate for legislation to address that desired reform.

Expungement

SB160 was introduced in June 2019 and establishes one of the consensus reforms discussed by the workgroup – providing a method to expunge convictions after a substantial waiting period with no new criminal offenses. Members discussed and supported similar timelines at the April 2019 meeting, and that discussion will inform consideration of the provisions of SB160 moving forward.

Certificates of Qualification of Employment

The process for obtaining a CQE, particularly for misdemeanor offenses, as well as the wide variance in filing and application fees was another topic that workgroup members felt should be addressed. As employers struggle to find workforce candidates, there is a high value in an individual being able to obtain a CQE from both the employer's and the job seeker's perspective. Commission staff have reached out to other interested parties from the business community and will work to draft language making it easier and less costly to obtain a CQE.



Expand Civil Commitment Process to Provide Treatment Access

Recognizing the need to provide a path to treatment that eschews the criminal justice system entirely, the workgroup also focused on potential expansion and reform of the civil commitment process. This would allow families, loved ones, or even law enforcement to request an involuntary commitment to a treatment facility for someone suffering from a substance abuse disorder. Current statutes require the posting of a bond of half the expected cost of treatment – a financial barrier that often too difficult to overcome, necessitating criminal charges and placement through probation, ILC, or a diversion program.

SB3 introduced several provisions aimed at addressing this issue, including allowing evidence of revivals by an opioid antagonist to be considered by the probate judge and allowing proof of insurance to serve as the cost of treatment bond. These provisions were discussed by the group and concerns that the process should not be limited to opioid disorders and that proof of insurance still created a two-tiered system were relayed to the bill sponsors. Amendments to SB3 address these concerns, including that the provisions are not limited to a specific type of substance abuse disorder and that evidence of intention to pay for part of drug treatment would suffice for the bond requirement. Commission staff will continue to work with interested parties to move these recommended changes to the civil commitment process forward.

Members also noted the need for more treatment facilities and placement options for individuals, whether placed there through civil or criminal proceedings. To that end the possibility of expanding use of Community Alternative Sentencing Centers was discussed. While no legislation has been introduced as of yet, Commission staff will continue to monitor these provisions and advocate for greater access to treatment facilities throughout Ohio.