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Wasted assets:

The cost of excluding Ohioans with a record from work

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Executive Summary

Photo: Ohio Department of Rehabilitation & Corrections



Executive Summary

The consequences of a criminal conviction extend far beyond the sentence imposed in court. Once-convicted Ohioans face legal restrictions—called collateral sanctions—that can block access to housing, civic rights and jobs. As explored in this paper, Ohio’s expansive collateral sanctions limit access to more than one in four jobs statewide, cost individuals an estimated \$3.4 billion in foregone wages in 2017, and artificially constrain access to talent for businesses. Unchecked, the consequences to people and businesses will only grow. With increased criminalization in recent decades, an estimated one in 11 adult Ohioans is living with a felony conviction and as many as one in three has a criminal record of some kind.

Used narrowly with best practices, collateral sanctions may help protect public safety and vulnerable populations. However, limiting economic prospects for Ohioans with convictions may undermine the very safety collateral sanctions were designed to protect. With fewer opportunities for legitimate work, the likelihood of re-offending increases. And the cost of overbroad restrictions for Ohioans with a record is high: for those workers and for employers.

Decreasing the economic cost of collateral sanctions calls for action on several fronts.

RECOMMENDATIONS

Collateral sanctions are far-reaching. Fixes at various levels of policy and practice include:

- The state legislature should eliminate excessive and arbitrary collateral sanctions against licensing and hiring.
- The Certificate of Qualification for Employment (CQE) process should be made both better understood and more widely available: Workforce development organizations can help their clients to navigate the CQE

process. The state supreme court should issue uniform guidelines, and the process should be simplified with a \$50 fee cap and movement toward an automated granting of CQE after 10 years.

- Prosecutors and criminal defense attorneys should account for collateral sanctions in reaching plea deals, and defense attorneys should fully advise clients.
- Hiring managers should use Equal Employment Opportunity Commission (EEOC) guidelines to weigh all the relevant factors when a prospective employee has a criminal conviction
- The state legislature should ban the box for all Ohio jobs while allowing managers to consider convictions later in the hiring process.
- Licensing boards should track the number and cause of criminal records-based denials.

Key findings

Collateral sanctions hold Ohioans - and Ohio - back

- Some 850 laws and administrative rules limit job opportunities for Ohioans with convictions who have already served their time.
- Around 1 in 4 Ohio jobs (1.3 million) is blocked or restricted for those with a conviction.
- Jobs affected by collateral sanctions pay \$4,700 more on average and are growing at twice the rate of other jobs.
- The typical Ohioan out of work after serving time for a felony conviction lost \$36,479 in wages in 2017. Total lost wages reached an estimated \$3.4 billion across the state.
- Collateral sanctions prevent Ohioans with convictions from pursuing higher education.

Otis's story

A grandfather still pays the price for a 30-year-old offense

Otis thinks he was 20 years old when he got the call that changed the course of his life forever.¹

It was 1986. He and his live-in girlfriend were set to start a family, with their baby on the way. He was working at a food processor in Lorain when he got her call: her ex-boyfriend, just out of prison, had learned she had moved on. Now he was on their porch, kicking in the door and shouting that he would kick the baby out of her.

Otis didn't call the police, didn't even clock out. When he pulled up to the house, the man took off running. Otis chased him down and tackled him in a laundromat.

When police arrived, shotguns drawn, Otis heard an officer chamber a round.

"I'll blow your brains out!" the officer shouted, with racial expletives.

The judge sentenced both men on the same assault charge, a felony. Otis spent 18 months in prison.

Afterward, determined to avoid more legal trouble, Otis sought out a career. His advisor at Cuyahoga Community College steered him toward the medical field, which would boom over the next 25 years. Otis would start with a State Tested Nursing Assistant certification and work up from there. Otis spent 18 months in the program (and still owes \$5,000).

But when he finished, he couldn't find work. Human resources managers looked no further than his conviction. They told him he'd never work in the medical field. Several Ohio laws limit access to nursing careers for Ohioans with a criminal record, some triggered by far less serious issues than the altercation that led to Otis's conviction. The most expansive can cost a Medicaid provider their license for employing a worker with any conviction.²

Today Otis is 51 and raising his three grandchildren alone. He has held together a life for them working construction—the only line of work, it seemed, where his conviction didn't result in a closed door. But his age and a bad knee mean he can't carry on there much longer.

A few months ago, Otis and his grandkids—eight, nine and 11 years old—moved from Cincinnati to Cleveland so the kids could be closer to their dad. When their Section 8 rental fell through, they were left homeless, a place Otis never thought he would be.

Otis has not had a run-in with the law in 32 years.

With better second chance policy, Otis could have been a nurse assistant, and maybe, by now, a nurse. Instead he is raising his family in a shelter.

¹ From interviews conducted by Policy Matters Ohio with individuals participating in workforce development classes hosted by Passages, and who have a criminal record that has hurt their work lives. Otis's story is a transcription of his memories and views. Policy Matters has verified through public records that Otis's criminal history is consistent with his telling. However, Policy Matters and its partners cannot guarantee the accuracy of Otis's memories as recounted here.

² See *Table 2*

Introduction



Photo: Ohio Department of Rehabilitation & Corrections

INTRODUCTION

In the world of work, a conviction for a felony - sometimes less - carries a type of life sentence, placing one in four jobs officially or practically out of reach, and countless others off limits at the discretion of the employer. A conviction is a life-altering event that can change a person's course forever, knocking them out of the running for good jobs with financial security and a career ladder, and in times of economic hardship, for any job. Because a lifetime on the economic fringe can push people toward desperate or illegal acts, our current treatment of Ohioans with convictions also puts our communities at greater risk of crime. The intersection of economic opportunity and the criminal justice system is the focus of this report.

Criminal convictions can be a **life sentence** even after someone has paid their debt.



Employment opportunities become **severely limited**.



They are often **locked out** of renting apartments.

It is **harder to obtain**

- ✗ educational grants,
- ✗ licensure,
- ✗ property rights, and
- ✗ financial independence



They're punished long after serving their time.

Ohio needs policies that **help people** get a **second chance.**



Learn more at PolicyMattersOhio.org

Photo: Ohio Department of Rehabilitation & Corrections

Collateral sanctions

COLLATERAL SANCTIONS

WHAT ARE COLLATERAL SANCTIONS?

Collateral sanctions are state laws and administrative rules that restrict access to jobs, housing and civic rights for Ohioans with convictions. The Ohio Justice and Policy Center has identified nearly 1,100 collateral sanctions in the Ohio Revised Code. More than 850 restrict access to jobs, including more than 250 that restrict employment in specific occupations and 600 that restrict licensing, contracting and other paths to livelihood. In addition to collateral sanctions defined in law, in practice, businesses screen out candidates with criminal records due to perceived hiring risk.

Many collateral sanctions apply to jobs that require proximity to vulnerable populations (e.g., health care and support, childcare and teaching), could put public safety at risk (e.g., truck and bus driving), or give workers substantial power (e.g., policing jobs). Narrowly defined, specifically relevant sanctions can make sense; there is a public interest in minimizing the risk posed to vulnerable clients or to the public at large.

However, collateral sanctions in Ohio are not consistently narrowly defined or specifically relevant to targeted jobs. Many collateral sanctions are broad, apply to the entire place of employment rather than to particular work activities, and allow for unguided discretion in enforcement. For example:

- All 644,200 state and local government jobs in Ohio are restricted for Ohioans with convictions.^{3 4} A person can have his or her application to take the Civil Service Exam denied for any felony.⁵
- Sanctions that restrict employment in nursing homes exclude even workers with limited patient contact, like food service workers, janitors and other support staff; and
- A criminal background check is required to obtain a

state license for professions like physician, registered nurse (RN), and licensed practical nurse (LPN). The state licensing board has the power to reject any applicant whose record includes a felony, a drug offense of any kind, or a crime involving “moral turpitude” (a term the law does not define). Rejection can be based not only on a conviction but on an offense for which the person was not convicted after successfully completing an intervention or diversion program.⁶

SANCTIONS VARY IN SEVERITY AND TRIGGERS

Collateral sanctions vary greatly in scope and severity. Factors that determine how deeply a sanction will affect residents with a conviction include:

- the scope of crimes that trigger it;
- the range of jobs it affects;
- whether the sanction is mandatory or automatic versus discretionary;
- the severity of the sanction itself – ranging from a background check to an outright ban on employment or required licensure; and
- how long the restriction is in effect

Sanctions vary in severity, likelihood of being invoked, and the type of crime that triggers them. Some sanctions require use of a background check, with no specific bar to employment if a conviction is found; others bar employment outright or access to a required license. Some sanctions are triggered by funding source, like the administrative rule that says the indictment of any employee for any criminal offense can lead to denial or revocation of a provider’s Medicaid contract.⁷ Finally, sanctions might be triggered by specific and narrowly defined conviction types or may be as broad as having any felony conviction.

³ Quarterly Census of Employment and Wages March 2018, <https://data.bls.gov/PDQWeb/en>

⁴ Federal sanctions outside the scope of this report limit access to another 78,000 jobs.

⁵ <http://codes.ohio.gov/orc/124.25v1>

⁶ Ohio Revised Code 3721.121 literally restricts hiring for positions that “involve[s] providing direct care to an older adult.” O.R.C. 3721.121(A)(2). The statutory language is ambiguous. In practice, some employers simply bar anyone with a disqualifying criminal record from applying for any position at all. See, e.g., MetroHealth System Policy No. II-60 “Eligibility for Employment in Long-Term Care/Skilled Nursing Facilities,” available at <https://www.metrohealth.org/about-us/key-metrohealth-policies/human-resources-policies>.

⁷ OAC 5160-1-17.6(G)(2).

Sanctions can be broad in some ways and narrow in others. They can apply narrowly to specific crimes, and cover an enormous array of jobs, or vice versa. For instance, a person convicted of bribery is automatically barred from working in the public sector for life.⁸ Restricting access to positions of power makes logical sense in this case, yet the sanction is likely overbroad, because the public sector employs many workers in positions that command little power and who are in no position to take bribes.

Many sanctions are triggered by a wide array of crimes—often by any felony—but apply only narrowly to a small number of jobs. Any felony conviction, for example, bars a person from ever being appointed as Ohio Inspector General, which seems reasonable.⁹ Still, there are at least 284 sanctions triggered by any felony committed ever, as well as others triggered by any felony committed in a specified time frame. Taken together, these “any felony” restrictions potentially place a significant share of Ohio’s legitimate jobs beyond reach of the 994,000 Ohioans with felony records.

Collateral sanctions are appropriate in some circumstances. The problem arises when they are applied in general and overbroad ways to jobs for which a particular applicant’s conviction is not relevant. Using a one-size-fits-all standard to exclude people with criminal records is harmful in the first instance because a criminal record does not actually predict who will be a trustworthy worker and who will not.¹⁰ Nor do such exclusions assure

safety in the community: such sweeping restrictions can close off so many avenues to those with a crime in their past that the person is unable to find legitimate work and reverts to crime.¹¹

Reducing barriers to work cannot prevent every crime.¹² But smart second-chance hiring policies can reduce repeat offenses that are motivated by financial hardship.

Another major policy concern is that due to excessive policing and racism in the criminal justice system, people of color face conviction at such a higher rate that ruling out applicants with a criminal background amounts to racial discrimination.¹³ We discuss below how the criminal justice system catches up Ohioans of color at much higher rates at each point of interaction.

From a business perspective, firms that can’t or won’t consider an applicant with a conviction are cut off from a significant (and highly motivated) segment of Ohio’s workforce. Such employers in Ohio are increasingly likely to take a hit to their bottom line as the economy grows and the labor market begins to tighten.

HOW WE GOT HERE

The criminal justice approach over recent decades has expanded the scope of criminalized activities and prioritized punishment over treatment.¹⁴ In Ohio, the prison population has seen a more than three-fold increase with no corresponding population growth or surge in crime.¹⁵

⁸ <http://codes.ohio.gov/orc/2921.02>

⁹ Ohio Rev. Code §124.49(B).

¹⁰ Recent research studies have produced such conclusions as the following: Employees with criminal records in the private sector have longer average tenures than employees without records, are less likely to leave voluntarily, and are no more likely to be terminated involuntarily. (Dylan Minor, Nicola Persico, and Deborah M. Weiss, “Criminal Background and Job Performance” (Chicago: The Society of Labor Economists, 2017), available at <http://www.sole-jole.org/17537.pdf>). A 2018 academic survey of 1,052 managers and regular employees reported that “82 percent of managers think employees with criminal records perform as well or better than workers with a clean sheet.” (A Survey by the Society for Human Resource Management (SHRM) and the Charles Koch Institute (CKI), <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/SHRM-CKI%20Workers%20with%20Criminal%20Records%20Issue%20Brief%202018-05-17.pdf>). One study that compared on-the-job performance of military enlistees with felony records to other enlistees found that those with felonies were just as likely to execute their contracts and were no more likely to be terminated. (Jennifer Lundquist, Devah Pager, and Eiko Strader, “Does a Criminal Past Predict Worker Performance? Evidence from America’s Largest Employer,” *American Sociological Review* (forthcoming), available at <https://paa.confex.com/paa/2016/mediaprofile/ExtendedAbstract/Paper2871/ASRDraft01222016.pdf>). Evolv, a data provider that uses analytics to study employee retention, found workers with criminal convictions were actually 1.1 percent more productive than those without a criminal record. (Vivian Giang, Why Criminals Might Make Better Employees, (Dec. 4, 2012), <https://www.businessinsider.com/a-criminal-record-might-increase-productivity-2012-12#ixzz2vCNIOrnl>).

¹¹ See National Employment Law Project (NELP) Fact Sheet, Research Supports Fair-Chance Hiring Policies (August 2016), <https://www.nelp.org/wp-content/uploads/Fair-Chance-Ban-the-Box-Research.pdf>.

¹² The City of Cleveland’s second chance hiring policy fell under scrutiny in November 2018 when the community was rocked by the alleged murder of Shaker Heights teacher Aisha Fraser, by her ex-husband Lance Mason. Mason served nine months in prison for brutally assaulting Fraser in 2014 and lost his position as a common pleas judge. After release, Mason was appointed Minority Business Development Director for the City of Cleveland. As a well-connected figure in local and state politics, Mason’s story may be more about privilege than about second-chance hiring. <https://bit.ly/2EtJncN>

¹³ See, e.g. Rand Paul, Op-Ed: Fighting racial bias in the federal judicial process, *Louisville Courier Journal* (June 13, 2013), available at <https://bit.ly/2UD-NuHZ>.

¹⁴ <https://assets.documentcloud.org/documents/3479617/StatehouseToPrisonPipeline2017.pdf>

¹⁵ <https://bit.ly/2BeLOH9>

Ohio's state prison population grew from fewer than 14,000 in 1980 to 50,000 by 2018.¹⁶ This growth has not followed any increase in criminal behavior, but rather a decades-long policy shift toward criminalizing more activities and stiffening penalties. The American Civil Liberties Union of Ohio reviewed all 1,004 bills introduced before the Ohio legislature in the 2015-2016 legislative session and found that nearly one in 10 would have created a new crime.¹⁷ The United States is an extreme outlier, accounting for 5 percent of the world's population, but 25 percent of its inmates. Among states, Ohio ranks 14th, with 444 of every 100,000 residents in prison.¹⁸ If Ohio's combined jail and prison population were a city, it would be the state's eighth largest.¹⁹

These policies have not improved public safety.^{20 21 22} One reason may be that getting caught in the criminal justice system weakens an individual's chances of making a legitimate living afterward, and can trigger a cycle of repeat offenses, often as a means of subsistence. Criminal involvement disrupts career and educational paths, through the trial process and incarceration that severs existing work relationships or delays school completion, and later, through parole obligations that limit opportunities by making it harder to maintain a regular work or class schedule.

Successful reentry after a prison or jail sentence hinges on the ability to secure legitimate income.²³ Failed reentry can be as innocuous as a missed parole appointment, or it can mean the person commits a new crime. That means there is a public safety interest in ensuring that Ohioans with a criminal record have the opportunity to remake their lives. Gainful work is a critical component of that.

Much of the challenge in finding work post-conviction

is not based on the sentence itself, but instead is the result of an expansive array of laws that restrict where an Ohioan with a criminal conviction can work. Some even extend to Ohioans without convictions but with some involvement in the criminal justice system.

Certain convictions may merit exclusion from some jobs, but Ohio's expansive and, at times, arbitrary collateral sanctions exclude a large and growing population from significant sectors of the labor market. Collateral sanctions reduce opportunities for once-convicted Ohioans to participate in the legitimate economy, and mean that Ohio businesses forego the productive potential of a significant portion of the labor force. Compounding the problem, many private business owners follow suit, and overlook Ohioans with a past conviction, even when no law says they must.

CRIMINAL CONVICTIONS ARE NOT AS CLEAR AS THEY SEEM

Criminal convictions are a poor indicator of workforce performance, as we discuss in further detail below. One reason may be that a conviction – or the lack of a conviction in an applicant's background check – carries tangled information not only about the individual's actions, but also about how they navigated the criminal justice system. That process often plays out very differently based on the accused person's resources and race.

Interaction with the criminal justice system entangles Ohioans in a complex web of encounters. The process lies outside the core focus of this report, but a short overview shows how, at each step, factors including race and poverty can compromise access to justice. Compounded,

¹⁶ Ohio had 49,512 inmates in state prisons as of January 2018, Bennie, Craig R. 2018. January 2018 Census. The Ohio Department of Rehabilitation and Correction.

¹⁷ <http://www.acluohio.org/wp-content/uploads/2017/02/StatehouseToPrisonPipeline2017.pdf>

¹⁸ <https://bit.ly/2JVoSEy> . Ohio ranks 15th including the nation as a whole, and 14th among states.

¹⁹ Ahead of Canton, 2018 population 70,239. <http://worldpopulationreview.com/states/ohio-population/cities/>

²⁰ In an extensive review of more than 30 studies of the impact of sentencing on crime, including replication of several regression analyses, David Roodman found a net impact of incarceration on crime of zero. While incarceration prevents repeat crime during the sentence, longer prison stays increase the likelihood of recidivism post-release, fully offsetting the reduction during time of sentence https://www.openphilanthropy.org/files/Focus_Areas/Criminal_Justice_Reform/The_impacts_of_incarceration_on_crime_10.pdf

²¹ Using the fact that Seattle defendants were randomly assigned to more or less punitive judges to perform a control study, Roach and Schanzenbach found that longer sentences resulted in less recidivism, but that the effect only lasted one year http://www.americanbarfoundation.org/uploads/cms/documents/specific_deterrence_abf_presentation.pdf

²² Noting that nationally, prison sentences for the same crime increased an average of 36 percent from 1990 to 2009, Pew Trusts found little to no impact on recidivism <https://bit.ly/2QMH1vd>

²³ Bruce Western, author discussion of Homeward: Life in the Year After Prison, at Case Western Reserve University, October 26, 2018.

they produce a population of residents marked with a criminal record that skews heavily toward people of color and others with limited means of advocating for themselves. This process has such a disparate effect on Ohioans of color that the Equal Employment Opportunities Commission has issued guidance to employers discouraging over-reliance on a criminal background as a means to evaluate job candidates.²⁴

Most Ohioans with a criminal record never see their day in court. Just 2.4 percent of criminal convictions in Ohio are actually reached through a trial.²⁵ Pretrial detention creates major life disruptions that can cost individuals their jobs, homes and children.²⁶ This places immense pressure on them to navigate the process quickly. Ohioans routinely plead to charges they don't fully understand, with overworked and under-resourced counsel by their side. Accused Ohioans may not even be aware of the collateral consequences that will follow them long after they've served their time, dogging their efforts to get onto a career path that would make it possible to turn a new leaf in their lives.

Because they affect the work opportunities that are the focus of our report, we explain some of the key touch points in the criminal justice system Ohioans encounter when charged with a crime through this brief *flow chart*.²⁷ It is not comprehensive, and the process is not truly linear.²⁸ Prosecutors wield tremendous discretionary power to halt the process at any point by accepting a plea deal or dropping charges.

The process leaves those who encounter the justice system less secure, with fewer avenues to participation in civic and economic life. These factors have in turn exposed communities to heightened risk of repeat crimes from offenders who find themselves with few alternatives to crime as a means of subsistence.

UNEQUAL BEFORE THE LAW

Black Ohioans are treated more severely at every stage of the criminal justice process

Police Arrive on Scene

Some police encounters begin with random stops, others begin with a complaint. Communities of color are more heavily policed than white communities. For example, in 2016, about 5 percent of Ohio State University students were black, as were about 8 percent of people in the surrounding community – but about 33 percent of people stopped by campus police were black.



Arrest is Made

Black Ohioans are arrested at four times the rate of white Ohioans. Ohio ranks 16th among states for racial disparities in arrest rates.



Charges are Filed

Federal prosecutors charge black people twice as often as white people arrested for similar reasons. A study of state prosecutors found they more frequently charge black people with crimes that carry mandatory minimum sentences.



Detained Pre-trial

Black people are three times more likely than similarly charged white people to be held in jail pre-trial. Pretrial incarceration can cost jobs, and lead to loss of homes and children. Being held pre-trial increases the likelihood the person will plead to any charges, especially more serious ones, to end their ordeal.



Case Goes to Trial

Just 2.4 percent of Ohio's 2014 criminal cases went to trial – most ended in plea bargains. A Wisconsin study of 48,000 cases found that white defendants were 25 percent more likely than black defendants to have their charges reduced or dismissed by prosecutors. Among misdemeanors only, white defendants were 75 percent more likely to have all charges dropped.



²⁴ EEOC Enforcement Guidance No. 915.002, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (4/25/2012), available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

²⁵ <https://www.supremecourt.ohio.gov/Publications/annrep/150CSR/summary/20150CS.pdf>

²⁶ Conversation with Dorianne Mason of Ohio Justice and Policy Institute, October 2018.

²⁷ Citations for the findings in the flow chart include: Ohio State University police stops <https://bit.ly/2G7qkVu>; Ohio ranked 16th in marijuana arrest disparities, 4 to 1 <https://bit.ly/2MCZ3f3>; black residents more likely to be arrested controlling for seriousness of crime <https://bit.ly/2DEt2QX>; federal prosecutors nearly twice as likely to charge black men with charges carrying mandatory minimum sentences for similar crimes <https://bit.ly/2MDuyp9>; black people detained pretrial at 3 times rate of white <https://bit.ly/2RZlKA8> p. 18; those held pretrial are 25 percent more likely to plead guilty <https://bit.ly/2CRrLEw> p. 4; 2.4 percent of Ohio cases resolved through trials <https://bit.ly/2G7LSSc>; Wisconsin prosecutors more often dropped charges for white defendants <https://bit.ly/2DEk9a1>.

²⁸ For instance, an arrest follows a grand jury indictment when a person is detained in connection with an investigation and police obtain an advance warrant. But when a person is arrested in a sweep or random stop, the officer or prosecutor must take the case to the grand jury afterward to establish sufficient evidence to move forward.

WHO IS AFFECTED?

The population affected by collateral sanctions in Ohio is significant and growing. An estimated 994,000 Ohioans are living with a felony conviction—approximately one in 11 adults in the state—and as many as one in three Ohio adults has a criminal record of some kind.²⁹ Each year, an estimated 10,000 adults are incarcerated for the first time in Ohio’s prisons.³⁰

A growing number of Ohioans

The number and share of Ohioans caught up in the criminal justice system has surged over recent decades. Ohio’s state prison population grew from fewer than 14,000 in 1980 to nearly 50,000 by 2018.³¹ This growth has not followed any increase in criminal behavior, but rather a decades-long policy shift toward criminalizing more activities and stiffening penalties.³²

Mostly men – but women’s share is growing faster

Men comprise the vast majority of incarcerated Ohioans (84.4 percent in 2016), but women are more likely to be first-time offenders³³ and the number of incarcerated women grew by 7 percent between 2014 and 2016.³⁴

Black Ohioans

Black Ohioans are six times more likely to have a criminal conviction than white Ohioans and are more likely to serve time. One study found that black residents in the San Francisco Bay Area were 12 percent more likely to be convicted when charged with a felony than white defendants.³⁵ Nationally, those convicted are 11 percentage points more likely to serve time.³⁶ In 2017, an estimated 405,800 black Ohioans had felony convictions, nearly one in four black residents. That same year, an estimated 588,000, or one in 17, non-black residents had felony records.

Because black Ohioans are treated so differently by our criminal justice system, collateral sanctions fall much more heavily on black communities. They can steer black Ohioans to the bottom of the workforce, or lock them out of jobs altogether. Barring job candidates on the basis of a conviction can even amount to racial discrimination. The 1964 Civil Rights Act outlaws discrimination on the basis of membership in a protected group, including race, even if the discrimination was not malicious or intentional on the part of the employer. Practices that disproportionately harm a class of people based on race are said to have a disparate impact on them. The Equal Employment Opportunity Commission finds that the use of criminal convictions as a screening tool carries a disparate impact because African Americans face higher rates of criminal conviction. The EEOC has issued guidelines, discussed below, to help employers navigate hiring decisions when an applicant has a conviction.³⁷

Less educated Ohioans – and criminal justice involvement can disrupt education

Educational attainment rates are lower among incarcerated Ohioans than the general population. In 2013, 37.7 percent of Ohioans admitted to Ohio prisons never finished high school, compared to 10.5 percent of the over-25 statewide population. More than a third of Ohioans over age 25 have a bachelor’s degree or higher, compared to only three percent of Ohioans with prison time. A negative feedback loop exists between educational attainment and incarceration. Once incarcerated, options to continue educational attainment are limited. Following release, many jobs requiring training and education are barred by collateral sanctions, which provides a disincentive for continued education. We detail this issue below.

²⁹ Policy Matters Ohio. See methodology section, *Appendix A*.

³⁰ https://drc.ohio.gov/Portals/0/FY2018%20COMMITMENT%20REPORT_1.pdf

³¹ <https://bit.ly/2ErruLB>

³² <https://bit.ly/2BeLOH9>

³³ In 2016, 73.1 percent of incarcerated women were first time offenders, vs. 48.2 percent of incarcerated male first-time offenders.

³⁴ <https://www.drc.ohio.gov/reports/institution-census>

³⁵ <https://www.law.upenn.edu/live/files/6792-examining-racial-disparities-may-2017-summary>

³⁶ <https://bit.ly/2atNJBu>

³⁷ EEOC Enforcement Guide No. 915.002, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (4/25/2012) available at http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

Ohioans with a drug charge

Drug abuse accounts for a major share of Ohioans with convictions, especially for women. Many Ohioans face obstacles to careers despite having nothing worse on their record than a drug charge. The Ohio Justice and Policy Center has identified 524 distinct laws that limit Ohioans' work opportunities based on a drug conviction. Nearly half, 44 percent, penalize not only felonies, but also misdemeanors. Even participation in a diversion program, a reasonable step for someone making a proactive effort to avoid drug use, can trigger exclusion from jobs.³⁸

Drug-related crimes constituted 25.5 percent of all felonies resulting in prison sentences in Ohio in 2014.³⁹ Drug convictions accounted for 38.9 percent of all Ohio women sent to prison in 2015, and 25 percent of men. Drug offenses were the most common reason for women and the second most common reason for men to be sent to prison, after crimes against persons.⁴⁰

Reported drug use in Ohio is on the rise; an Ohio Department of Public Safety report found an increase of 57.8 percent in the rate of drug possession crimes from 2004 to 2014.⁴¹ But a punitive policy response to drug use also contributes heavily to the number of Ohioans with drug convictions. In 2015, The Ohio

Sentencing Commission identified "War on Drugs"-era sentencing changes from the 1980s and '90s that made penalties more severe for drug-related offenses than same-level crimes in which drugs weren't involved – and recommended dialing back those policies.⁴²

While opioids get substantial attention due to their growing use and potentially catastrophic health impact, marijuana possession exceeded incidents for all other drugs combined, and grew by 72.5 percent. Drug addiction can compromise job performance if a drug is used at or before work. Yet it is difficult to justify exclusion from work over minor drug possession on safety grounds. This is an area where sanctions are likely overly expansive.

Drug convictions exclude many Ohioans from jobs that could help them to overcome past drug abuse. Reducing their opportunities to work in turn increases the likelihood of recidivism. Virgil, featured in Policy Matters' blog, was on track to become a gym teacher when a marijuana possession conviction derailed him. Since then, Virgil has worked odd jobs instead. But he has run into more legal trouble too, nearly all stemming from financial hardship: a conviction for a bad check and defaults on child support payments.

³⁸ See *Table 2*.

³⁹ <https://bit.ly/2Pzp8R>

⁴⁰ <http://www.ciic.state.oh.us/docs/Population%20Brief%202016.pdf>

⁴¹ http://www.publicsafety.ohio.gov/links/ocjs_DrugCrimesReportedOIBRS2016.pdf

⁴² <https://www.supremecourt.ohio.gov/Boards/Sentencing/Materials/2015/April/commissionPriorities.pdf>

In-demand jobs restricted



IN-DEMAND JOBS RESTRICTED

More than 1.3 million—or nearly one in four—Ohio jobs are specifically restricted by one or more collateral sanctions.⁴³ Sanctions restrict at least 147 distinct occupation types in some of Ohio’s largest and fastest-growing industries. This estimate is based on a new analysis that links Standard Occupation Classification-coded jobs from the Bureau of Labor Statistics to the CIVil Impact of Criminal Convictions (CIVICC), an online database of collateral sanctions developed by the Ohio Justice and Policy Center. The open, searchable database is the first comprehensive mapping of Ohio’s collateral sanctions and affected jobs. You can find it at: <https://civicc.opd.ohio.gov/Home.aspx/Agree>. A listing by job title is included in *Appendix B* of this report as an attachment for conciseness.

This is a conservative estimate of the number of jobs affected because the methodology underestimates job exclusion for Ohioans with convictions in two important ways:

- The analysis relies on occupation codes, but many sanctions apply to the entire workplace, not to occupations within the workplace. For example, linking job codes to sanctions that restrict school employment captures teaching and child care occupations but does not capture food preparation workers, janitors or other support staff who work in a school but whose occupation code does not specify education.
- Employers make individual decisions and may screen out candidates with criminal records based on either real or perceived risk. Some of these

voluntary choices have roots in the legal restrictions. For example, a contractor who does business in workplaces with legal restrictions (e.g., schools or health care settings) may refuse to hire individuals with records for any position at all. Occupation codes do not allow for quantification of this impact.

Even so, the number of known impacted jobs is staggering. While previously convicted Ohioans aren’t uniformly barred from all 1.3 million jobs, some of the most sweeping restrictions include are described here.

The next sections detail how sanctions impact job accessibility in some of Ohio’s largest and fastest growing sectors, including health care and public sector jobs.

PUBLIC SECTOR JOBS

Some of the most sweeping collateral sanctions apply to all public sector jobs: the most severe bar eligibility entirely. Ohio has about 644,200 state and local government jobs.

Residents can have their application to take the Civil Service Exam denied on the basis of any felony.⁴⁴

Besides these catch-all laws, Ohio has an array of laws that limit entry to specific public sector jobs. Any felony is an absolute bar to any “peace officer” job, including work as a tax investigator, or village volunteer firefighter, even if the felony occurred more than 20 years in the past.⁴⁵

⁴³ Our jobs estimates match Standard Occupation Classification coded jobs from the Bureau of Labor Statistics with a state database of collateral sanctions, the Civil Impact of Criminal Convictions (CIVICC), developed by the Ohio Justice and Policy Center. Sanctions are written into Ohio Revised Code and Ohio Administrative Code. They are not part of the court-imposed sentence for an individual’s crime, but are broadly applied to all Ohioans who have a conviction of the type they reference and who seek to work in the occupation or setting they cover. We have matched SOC occupation codes to legal sanctions based on descriptions of the jobs affected in the Ohio Revised Code as listed in CIVICC. Because many sanctions are based not on job title, but on the workplace, our estimates underreport the true number of jobs to which sanctions apply. For example, sanctions that restrict school employment capture many teaching and child care jobs, reported in our estimates, but also cover food preparation workers, janitors or other support staff who work in a school. They are not captured in this report. The report thus forms a conservative estimate of the share of the labor market that is restricted for those with a criminal record.

⁴⁴ <http://codes.ohio.gov/orc/124.25v1>

⁴⁵ <https://civicc.opd.ohio.gov/Home.aspx/DoSearch>

Sweeping collateral sanctions

A handful of laws block access to hundreds of thousands of jobs

- One sanction exposes workers with any felony to exclusion from the Civil Service Exam – potentially barring them from most of Ohio’s 644,200 state and local government jobs.⁴⁶ This sanction is one of the broadest in Ohio law. The measure is discretionary, which carries a trade-off: while this makes it potentially less onerous and captures fewer job seekers, it also provides cover for administrators to exclude applicants based on race, religion, or other suspect factors without raising scrutiny.
- Health care professions are among the state’s most common and fastest growing occupations, with 412,700 jobs in 2017, projected to add 53,000 through 2024. All are subject to collateral sanctions, often connected with licensure. Qualifying for a license nearly always requires a criminal records check, and certain findings require exclusion.
- For the most highly educated professions, most grounds for exclusion are broad but discretionary. The state licensing board and medical board have power to reject any applicant whose record includes a felony, a drug offense of any kind, or any crime involving “moral turpitude” (a term the law does not define). Rejection can be based not only on a conviction but on an offense for which the person was not convicted after successfully completing an intervention or diversion program.
- Ohio’s Medicaid law tightly restricts eligibility for work in home health care and community-based services. These jobs are an entry point into medical professions. They are among the state’s poorest quality jobs: many leave workers in or near poverty.⁴⁷ However, these jobs are important career prospects for Ohioans with convictions because they have lower educational requirements, which more closely match the educational profile of that group than most jobs with sanctions do. One-hundred-and-twenty-seven statutes bar access to these jobs for periods ranging from five years to life. Ohio has 260,300 affected jobs.
- Ohio’s Medicaid rules additionally discourage health care providers from employing anyone with any criminal record, no matter how minor, by stipulating that a Medicaid provider contract can be denied or terminated if the provider, or “any ... employee of the provider, has been indicted or granted immunity from prosecution for, or has pled guilty to, or has been convicted of, any criminal offense...”⁴⁸
- Commercial driving jobs, including 193,500 truck and bus drivers, are all subject to a host of collateral sanctions. The harshest apply to school bus and “special client” drivers, in a field projected to face particularly high demand for workers in the next decade. These drivers must undergo criminal background checks in addition to driving record checks. The lists of mandatory disqualifiers include offenses such as passing bad checks that have little if any relevance to the work these jobs require.

⁴⁶ <http://codes.ohio.gov/orc/124.25v1>

⁴⁷ http://ohiolmi.com/proj/Projections/Ohio_Job_Outlook_2016-2026.pdf

⁴⁸ Ohio Admin. Code §5160-1-17.6(G)(2).

HEALTH CARE JOBS

Health care jobs are among the fastest growing in Ohio, and hospitals support a number of other jobs not related to direct care. Many sanctions apply to health care jobs, including licensing barriers and broad prohibitions against Medicare contracts that can trigger when facilities employ workers with a record in any capacity, even when they are not in contact with patients.

Health care is a field in which foreclosed opportunities not only restrict access to good jobs for individuals, but also reduce access to workforce for providers facing a tightening labor market. That can hurt both providers and patients. The need for health care workers has become so severe that some direct care providers, especially in nursing homes, have been cited for understaffing under new Affordable Care Act inspection procedures that provide more accurate staffing reports.⁴⁹

Despite the web of laws that separate prospective workers from health care providers that need them, there are ways providers can navigate hiring in communities with high rates of conviction. The National Employment Law Project has created a manual to guide healthcare employers through the process.⁵⁰ Noting the pervasive scope of Americans carrying a criminal record, it recommends that employers consider mitigating factors. Many of the sanctions that apply to workers in hospitals and residential facilities give hiring managers discretion to use a conviction as grounds for exclusion, but do not require them to do so.

Individuals can also take steps to re-qualify for jobs that exclude them based on their conviction history by petitioning the courts for relief from sanctions through a Certificate of Qualification for Employment (CQE). A CQE lifts the automatic bar of a collateral sanction, and creates a legal presumption that the person's conviction history does not make them unfit for a job or license. CQE's are especially relevant to health care jobs, but also extend to other jobs walled off by legal restrictions. Employers who hire workers with CQE's gain immunity from civil liability for negligent hiring. This means the CQE can increase the applicant's chance of being hired even for jobs where there is no sanction, but where an employer may hesitate to hire the person.

⁴⁹ https://www.leadingageohio.org/aws/LAO/asset_manager/get_file/147860?ver=14775

⁵⁰ <https://bit.ly/2QMHuOc>

⁵¹ <https://www.youtube.com/watch?v=7QnMW2gIErk>

⁵² <https://bit.ly/2QMHuOc>

Johns Hopkins

A pioneering hospital shows the way

Johns Hopkins Medical Center (Johns Hopkins) was a pioneering employer in expanding hiring practices to recruit workers with a criminal record. Their policy of non-exclusion dates to the 1990s, when the hospital began running background checks. Johns Hopkins discovered that given the number of residents in Baltimore and the surrounding area who had a criminal record, exclusion would result in chronic staffing shortages. Johns Hopkins continues to run background checks but not until after extending an employment offer. The hospital does not automatically exclude those with records, but instead considers length of time since the conviction and other factors. Human Resources Vice President Pamela Paulk reported in a 2012 web-based lecture that Johns Hopkins had no incidents of theft, drug diversion or other crime involving an employee with a criminal record that warranted termination.⁵¹ In a three-year study of almost 500 employees with convictions, the hospital found higher three-year retention rates for these employees than those with no record, saving on recruitment and training.⁵²

CERTIFICATES OF QUALIFICATION FOR EMPLOYMENT

Ohio's Certificate of Qualification for Employment (CQE) program, implemented in 2013 and expanded through a 2016 amendment, gives individuals with a conviction relief from sanctions that restrict entry to a given field. CQEs are awarded through the courts on an individual basis once the person has demonstrated that she is unlikely to commit a new crime and is qualified to work in the field.

The process of obtaining a certificate is challenging to navigate, because each certificate must be awarded through a court on the basis of individual petition. The process can be intimidating and costly, and the procedure varies by county. These factors create space for

workforce development organizations, universities, and career training programs to help clients enter careers by alerting them to and helping them to obtain CQE's.

Streamlining the CQE process would also help more Ohioans get relief from sanctions that blockade their entry or progress on a career path. While counties have authority to structure their CQE processes, the state Supreme Court could issue guidance to encourage standardization of the process. And because non-recidivism over a number of years is a good indicator that a person will not commit new crimes, the state legislature should automate it so that individuals with no repeat offense after 10 years receive a CQE without having to petition the court.

COLLATERAL SANCTIONS CLOSE OFF ACCESS TO BETTER JOBS

Not only do sanctions considerably shrink the number of jobs available to Ohioans with a conviction and the pool of workers available to employers, the sanctions specifically wall off good jobs in fast-growing sectors. Closing good quality career pathways for those with convictions relegates them to lower paying and less predictable positions. In 2017, Ohio jobs restricted by collateral sanctions paid 10.3 percent more than those without: \$50,453 versus \$45,757.⁵³

Jobs available in legally restricted fields are expected to grow at twice the rate (11.0 percent) of those without sanctions (5.4 percent) through 2024. The state is expected to add 144,000 jobs with restrictions linked to job type. Another 205,700 jobs are projected where no sanction attaches to the type of job, but workers in those fields could face sanctions depending on the place of work.⁵⁴ Of the 10 occupations projected to add the most jobs in Ohio by 2024, four are subject to collateral sanctions (home health aides, registered nurses, nursing assistants, and childcare workers).⁵⁵

Table 1 summarizes the 15 fastest growing jobs with collateral sanctions. In general, jobs with collateral sanctions offer better careers and have higher

educational attainment requirements than jobs without such hurdles.

As shown, sanctions can be either mandatory or imposed at the discretion of the hiring manager or licensing board. Among sanctions that apply to the jobs in *Table 1*, mandatory sanctions are generally triggered by specific lists of offenses, which comprise a minority of offenses committed and currently listed in Ohio law. The 11 felony barriers often listed by name as barriers to high level professional jobs include violent and sexual crimes. The majority of convictions fall outside of these crimes. This means that, for most Ohioans with a record, employers can and should give individual consideration to each applicant, taking the presence of a criminal record into account alongside other aspects of the application that could mitigate any risk suggested by the conviction.

Some sanctions are both sweeping and puzzling. A worker can lose any license to practice – including a Commercial Driver's License, cosmetology license, or social work license – for alleged nonpayment of child support. This sanction is itself often the result of indigency: then it locks the affected Ohioan out of work opportunities, creating a destructive cycle that makes it less likely that the person will be able to pay child support.

Perhaps the most concerning type of obstacles are those that arise even when the person has not been convicted of anything. Participation in a diversion program, a method the individual can pursue to get treatment and overcome a past mistake, can close off work opportunities.

Table 2 describes some of Ohio's most far-reaching and common sanctions. This information sheds further light on what makes public sector and healthcare occupations such large categories of restricted jobs, and details more specifics of jobs facing many work obstacles (from *Table 1*, below). *Table 2* is an overview of some of the most affected areas in the labor market, limited by space and not comprehensive.

⁵³ We group data and derive weighted averages. However, since averages are skewed upward by high earners, the median is generally a more accurate indication of what the typical worker earns. For 2017 the statewide median—the earner in the very middle of the spectrum—made \$36,500, while the average earner made \$46,950. This means our average estimates likely overstate true earnings, but they still provide a good illustration of the earnings premium for jobs that are subject to sanctions. In fact, because jobs with collateral sanctions tend to cluster in the public sector, where earnings are more uniform, the bias of averages is likely more pronounced for non-sanctioned jobs, and thus our reported wage gap may be under-stated.

⁵⁴ Occupations for which there is a lack of clarity about whether sanctions apply are projected to add 40,400 jobs by 2024.

⁵⁵ See *Appendix B* for a list of Ohio's 10 occupations adding the most new jobs through 2024.

Table 1
Occupations adding the most jobs with collateral sanctions

Job title	2017 jobs	Projected 2026 jobs	Growth	Percent Growth	Median wage 2017	Sanctions		
						Mandatory	Discretionary	PLUS Table 2
Home health aides	62,447	94,098	31,651	43.7%	\$10.33	127 statutes, exclusions form 5 years to life		X
Registered nurses	129,954	148,344	18,390	14.2%	\$30.43	11 listed felonies or registered sex offender	Any felony, drug charge, or "Moral turpitude"	X
Personal & home care aides	30,913	42,182	11,269	36.5%	\$10.61	127 statutes, exclusions form 5 years to life		X
Medical Secretaries	34,390	40,237	46,182	16.3%	\$15.52			Depends on employer
Medical Assistants	23,153	27,790	4,637	20.0%	\$14.72			Depends on employer
Licensed practical nurses & Vocational nurses	40,254	44,069	3,815	19.5%	\$20.21	11 listed felonies or registered sex offender	Any felony, drug charge, or "Moral turpitude"	X
Nursing assistants	68,537	72,119	3,582	5.2%	\$12.54			Depends on employer
Hairdressers, stylists & cosmetologists	30,193	33,609	3,416	11.3%	\$10.68	Human trafficking, violation of cosmetology laws or rules; offense committed on salon premises		X
Teacher assistants	34,956	38,166	3,210	9.2%	\$25,520 ¹	80 listed statutes barring license, 12 barring employment	Intervention/diversion for an offense on mandatory exclusion list + any felony, drug offense, theft offense + others	X
Truck drivers ²	76,084	79,093	3,009	4.0%	\$20.09	Outstanding arrest warrant, license suspension or disqualification	"Adverse information" on driving record	X
Child care workers	41,155	43,936	2,781	6.8%	\$9.86	100 listed statutes or child removed from home, possible exceptions for "rehabilitation"	violating child care laws or rules	X
Medical & health services managers	16,073	18,607	2,534	15.8%	\$43.67			Depends on employer
Accountants & auditors	47,433	49,962	2,529	5.3%	\$31.02	Any felony: felony record places burden on applicant to show "good moral character" based on conduct since conviction.		X
Elementary school teachers ³	45,363	47,844	2,481	5.5%	\$9,560 ¹	80 listed statutes barring license, 12 barring employment	Intervention/diversion for an offense on mandatory exclusion list + any felony, drug offense, theft offense + others	X

¹ Annual salary ² Heavy equipment and tractor-trailer ³ Except special education teachers, its own category

Source: Policy Matters Ohio from Ohio Job Outlook, by Ohio Department of Job and Family Services Labor Market Information; and CIVICC by Ohio Justice and Policy Center

Table 2	
Sample criminal record restrictions based on employer type or workplace	
Example	Obstacle
ANY work requiring a license (including a driver's license)	Mandatory: Notice of default from a child support enforcement agency to any licensing board requires denial or suspension of license.
ANY Medicaid provider	Discretionary: Any criminal offense by an employee can lead to denial or loss of provider's contract.
ANY public (civil service) employer	Discretionary: Any felony can lead to exclusion from civil service exam.
Autism program, any position	Mandatory: 51 listed offense statutes [97 offense statutes for worker licensed by Dept. of Education]
Community-based long-term care (provider or employee)	* Mandatory: 127 listed offense statutes; exclusion from 5 yrs. to forever depending on offense + others
Community health, certified community health worker	Mandatory: 11 listed offenses (violent felonies); sex offender required to register * Discretionary: any felony or drug law violation; offense involving moral turpitude (undefined); offense in the course of practice; violation of Nursing Board statute. Possible exception based on "rehabilitation" and/or restitution
Developmental Disabilities provider (public or private), nearly all jobs and facilities	Mandatory: 127 listed offense statutes; exclusion from 5 yrs. to forever depending on offense
Developmental Disabilities provider (private) • certificate to administer meds + perform health-related activities • RN trainer certificate	Discretionary: 130 listed offense statutes
Driver, school bus	Mandatory: Specified driving violation in past year; > 6 pts or > 1 serious traffic violation in past 2 years; Listed non-traffic offense in last 5 years; Listed "major mv offense" incl. DUI in last 6 years; Listed drug or theft offense in last 10 years; Listed "violence-related offense" in last 20 years; Any of 29 listed offenses ever
Driver, special clients or wheelchair van	Mandatory: 6 or more points on DL + (depending on employer): Mandatory: 102 listed offense statutes, possible exception based on "personal character standards" OR 127 listed offense statutes; exclusion from 5 yrs. to forever depending on offense
Elder Care (hospice, nursing home or adult day program), direct care position	Mandatory: 55 listed offense statutes; possible exception based on "personal character standards"
Foster care	Mandatory: 65 listed offense statutes, possible exception based on "rehabilitation standards"
Home health agency, direct care position	* Mandatory: 127 listed offense statutes; exclusion from 5 yrs. to forever depending on offense
Medicaid School Program, direct contact position	Mandatory: 130 listed offense statutes
Medication Assistance, certified medication aide	Mandatory: 11 listed offenses (violent felonies); sex offender required to register * Discretionary: any felony or drug law violation; offense involving moral turpitude (undefined); offense in the course of practice; violation of Nursing Board statute. Possible exception based on "rehabilitation" and/or restitution
Mental health care, licensed residential facility, any position with unsupervised access to residents	Mandatory: 127 listed offense statutes; exclusion from 5 yrs. to forever depending on offense
Ohio Dept. of Mental Health & Addiction Services (ODMHAS), any position	Mandatory: Any felony or offense that is M1 on first conviction and a felony on later conviction, if the offense "bears a direct and substantial relationship to the position being filled"
"Out-of-home care" for child(ren) (including coach or other person supervising after-school activities)	Mandatory: 65 listed offense statutes, possible exception based on "rehabilitation standards" S6, 2151.86
Pain management clinic, any position	Mandatory: Felony drug offense or felony theft offense
Pediatric respite care, direct care position	Mandatory: 55 listed offense statutes, possible exception based on "personal character standards"
Public children's agency, direct-care position	Mandatory: 65 listed offense statutes, possible exception based on "rehabilitation standards"
School, any position	Mandatory: 51 listed offense statutes, possible exception based on "rehabilitation standards"
School, teaching position	Mandatory: 92 listed offense statutes, possible exception based on "rehabilitation standards"

* indicates exclusion can be based on completing intervention or diversion program with no conviction.
SOURCE: Ohio Justice and Policy Center, CIVICC database.

Photo: Ohio Justice & Policy Center



The cost to individuals & communities

THE COST TO INDIVIDUALS & COMMUNITIES

The average formerly incarcerated Ohioan who sought but couldn't find work due to criminal history lost \$36,479 in wages in 2017. Total lost wages reached an estimated \$3.4 billion across the state.

Of the estimated 994,000 Ohioans living with a felony, 734,431 have been to prison.⁵⁶ Of these, an estimated 552,000⁵⁷ are now working or seeking work. A 2018 report by the Prison Policy Initiative found that the average 2008 unemployment rate of formerly incarcerated individuals was 4.7 times higher than the national rate. Extrapolating to Ohio in 2018 yields an estimated unemployment rate for formerly incarcerated Ohioans of 21.2 percent.⁵⁸

Accounting for working age population and labor force participation rates, an estimated 117,000 formerly incarcerated Ohioans are likely unemployed, 92,000 more than would be expected if their unemployment rate mirrored that of the general public.⁵⁹

Those 92,000 sidelined Ohioans are wasted assets: workers left untapped by growing businesses and potential earners unable to contribute to their families.

How much of the \$3.4 billion lost goes to other workers and how much is lost to the state economy from positions going unfilled is difficult to estimate. However, broad exclusions apply to growing sectors where firms report hiring shortages. In those markets, collateral sanctions may be artificially shrinking the pool of workers available. If firms are leaving positions unfilled due to collateral sanctions, that translates into lost business revenue as well.

Table 3

Ohioans with convictions lack needed education for better jobs

	Ohioans with prison time	All Ohioans age 25+	Jobs with collateral sanctions
Less than 9 th grade	6.1%	3.0%	7.0%
Some high school, no diploma	31.6%	7.5%	7.0%
High school diploma or GED	59.1%	54.4%*	19.4%
College degree or higher	3.2%	35.1%**	33.2% Associates, 40.4% Bachelors+

*Includes both high school only (33.8%), and some college, no degree (20.6%)

**Includes associate's, Bachelor's and advanced degrees

Source: Policy Matters Ohio from Ohio Job Outlook, by Ohio Department of Job and Family Services Labor Market Information

⁵⁶ See methodology section, *Appendix A*.

⁵⁷ See methodology section, *Appendix A*.

⁵⁸ A 2018 report by the Prison Policy Initiative compared the 2008 national unemployed rate to the 2008 unemployment rate of formerly incarcerated individuals (the only year for which data are available on unemployment rates of formerly incarcerated individuals). The 2008 national unemployment rate was 5.8 percent; the rate for those formerly incarcerated was 27.3 percent, or 4.7 times higher; those who had served time were more likely to be looking for work. In July 2018, the unemployment rate in Ohio was 4.5 percent. If this relationship holds, an estimated 21.2 percent of Ohioans who have been to prison are jobless.

⁵⁹ See methodology section, *Appendix A* for full details.

SANCTIONS DISCOURAGE EDUCATIONAL ATTAINMENT

Involvement with the criminal justice system disrupts education. As a result, there is an educational attainment mismatch between Ohioans with convictions and the jobs limited by collateral sanctions—which tend to be better jobs – and the achievement of Ohioans who have convictions.

This mismatch has two main effects. First, it makes it difficult to fully quantify the economic cost of collateral sanctions, since many sanctions apply to jobs that individuals with a criminal record could not otherwise qualify for. Where this analysis estimates lost earnings, we use a wage weighted to the educational attainment of Ohioans who have been incarcerated.⁶⁰

More troubling, collateral sanctions serve as a disincentive for Ohioans with a criminal conviction in their past to pursue education going forward. This challenge came up in interviews Policy Matters conducted in connection with this research. Otis, whose story introduces our study, did obtain a certification in nursing. However, he was never able to work in the

field, and now owes student debt he has been unable to repay. Another Clevelander, Virgil, featured on Policy Matters' blog, planned to work as a gym teacher and was enrolled in a program at Cuyahoga Community College when he was arrested for possession of marijuana.⁶¹ He served six months in jail, but he knew his felony conviction meant he could probably never work in a school. So Virgil never went back to college.

Collateral sanctions are among the many challenges that complicate a successful reentry. But while some challenges can be mitigated over time, the fact that collateral sanctions discourage Ohioans with a conviction from pursuing education reinforces a system that sorts them into the bottom of the labor market, and can keep them there for life. This makes collateral sanctions—not imposed by a judge, and lingering long after an individual has served his or her sentence—one of the most festering aspects of our criminal justice system.

To enhance public safety and avoid unintended damage, sanctions must be reimagined to apply narrowly and specifically to relevant crimes, and must account for mitigating circumstances including non-recidivism and time elapsed since a crime.

⁶⁰ This data point is chosen due to availability: We have educational attainment information for those admitted to prison, but not for all Ohioans with a conviction.

⁶¹ <https://www.policymattersohio.org/blog/2018/10/16/a-case-for-issue-1-virgils-story>



Photo: Ohio Justice & Policy Center

Conclusion & Recommendations

CONCLUSION & RECOMMENDATIONS

Collateral sanctions limit access to a quarter of Ohio jobs for nearly a million Ohioans with a felony conviction, and potentially many others who have lesser convictions and even charges with no conviction. These jobs pay better than the average Ohio job, relegating those with a record to the bottom of the labor market, or pushing them out completely. Black Ohioans are at heightened risk. Collateral sanctions mean a criminal conviction at a young age can derail a person's career prospects for life.

When good workers are overlooked due to a conviction, firms lose earning potential, the state economy is smaller, and communities are left less safe. Access to a job can be the deciding factor in whether a person with a previous conviction leaves that part of his or her past behind to enter the workforce, or turns back to crime as a source of income. Below are our recommendations for mitigating the negative impact of collateral sanctions.

1 **The state legislature should eliminate excessive, arbitrary collateral sanctions against licensing and hiring.**

Today in Ohio, around 850 laws and rules create barriers to more than 1.3 million jobs for people with criminal convictions. They restrict some categories of work, jobs in certain locations, licensure and government contacting. Ohio's General Assembly and regulatory agencies should replace blanket restrictions with narrowly defined, targeted provisions designed to protect the public in ways that make sense. New rules should account for factors including the number of convictions, time since the offense, age of the person at the time of a crime, and demonstrated recovery. Sanctions should be time limited. All blanket rules that extend to all felonies should be eliminated, as should rules that cover the vague concept "moral turpitude" – which is not a crime defined in Ohio Revised Code.

2 **Criminal lawyers and judges should account for collateral sanctions in plea negotiations and sentencing.**

Just 2.4 percent of criminal cases in Ohio go to trial: most are resolved through plea deals.⁶² Accused people face enormous pressure to plead guilty, especially when they are jailed while waiting, so that they can return to their lives and work as soon as possible. But the aftermath of a criminal conviction may be far from mind when the decision is being made. Defense attorneys should be aware of the workforce hurdles their clients will face when they agree to a plea deal. Prosecutors should know that in pursuing a charge, they may be locking a person out of certain career opportunities and making the communities they serve less safe by increasing the likelihood that the person will reoffend.

3 **Hiring managers and employers should use EEOC guidelines to weigh all relevant factors when a prospective employee has a criminal conviction.**

Following these guidelines protects businesses from running afoul of the law through inadvertent discrimination. Recognizing that a conviction does not mean a candidate will be an ineffective employee broadens the pool of available workers and could enable an understaffed organization to fill tough vacancies.

⁶² <https://www.supremecourt.ohio.gov/Publications/annrep/15OCSR/summary/2015OCS.pdf>

4

The legislature should ban the box for all Ohio jobs, while allowing managers to consider convictions later in the hiring process.

Ohio is among 31 states with some sort of “ban-the-box” policy.⁶³ Such policies do not prevent managers from considering criminal convictions in hiring decisions. They do prohibit the use of a check-box or other requirement that applicants disclose criminal convictions in their initial applications. Banning the box delays discussion of any criminal record until the candidate has had the opportunity for fair consideration alongside other candidates.

Without such a policy, employers can and often do use a check-box to sort job applicants with convictions to the rejection pile without considering any of their qualifications. The potential for such blanket exclusion may discourage many applicants from even approaching such businesses when seeking work.

Two recent studies criticized “ban the box” efforts as leading employers to bypass black men generally in hiring, regardless of each applicant’s criminal record.⁶⁴ The National Employment Law Project (NELP) responded that “The core problem raised by the studies is not ban-the-box but entrenched racism in the hiring process, which manifests as racial profiling of African Americans as ‘criminals.’”⁶⁵ NELP concludes: “The studies highlight the need for a more robust policy response to both boost job opportunities for people with records and tackle race discrimination in the hiring process—not a repeal of ban-the-box laws.”

Ohio’s 2015 “Fair Hiring Act” and statewide policy for state agency hiring practice creates a useful model for all employers, both public and private.

5

State government, employers and service organizations should expand the use and availability of Certificates of Qualification for Employment (CQE).

Ohio passed the CQE law in 2012 to grant exemptions from specific collateral sanctions that bar workers from a given job or field.⁶⁶ Each CQE also serves as validation from a court, assuring employers that the candidate is considered safe to hire, and providing immunity from civil liability for “negligent hiring” when an employer hires on the strength of a CQE.

Fewer than 900 Ohioans have obtained CQEs since the law was enacted. This is partly because acquiring a CQE requires petitioning the court and puts the onus on each individual to navigate a technical legal process with few resources, all while overcoming other hurdles to landing a job. Compounding the challenge is the courts themselves, which have been slow to systematize the process for filing and granting CQE petitions as they navigate a new form of legal relief.

⁶³ <https://www.nelp.org/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf>

⁶⁴ Amanda Agan and Sonja Starr (“Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment”), Univ. of Mich. Law & Econ. Research Paper No. 16-012 (June 14, 2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795. Jennifer Doleac and Benjamin Hansen (“Does Ban the Box Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Records Are Hidden”) (July 2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2812811.

⁶⁵ Maurice Emsellem & Beth Avery, Racial Profiling in Hiring: A Critique of New “Ban the Box” Studies (National Employment Law Project, August 2016).

⁶⁶ <http://drc.ohio.gov/cqe>

cont...

Multiple players can contribute to making the CQE system more effective:

- **Workforce development organizations** can educate employers about the benefits a CQE provides, and they can help workers navigate the application process to obtain certificates. **Community service and advocacy organizations** can do the same.
- **The State Supreme Court** can issue guidance to streamline the CQE process and make it uniform across the state.
- **The legislature** can automate the CQE process for individuals who have not had a repeat offense in 10 years.

6

Ohio government should work to improve data collection and integrity.

Criminal record data. No comprehensive data exist on the number of Ohioans with criminal convictions, or who have served time. Ohio's 88 counties vary widely in what data they collect, how they organize it, how long they retain it, and when (if ever) they transmit it to state or federal recordkeepers. Uniform anonymized data collection and central reporting of the number of individuals with new and first-time offenses, broken down by offense type and level, would improve measures of the true costs and effectiveness of our criminal justice system.

Licensing data. Licensing entities should track license denial and discipline decisions where criminal record is a factor, identifying the relevant offenses and reasons for denial. Over time such records would help to inform policymakers and the public about the value of collateral consequences in licensed occupations.

Most Ohioans with a conviction will return to our communities someday. Whether they come back to gain a foothold in productive jobs or cycle back into the system, is in many ways up to us.

Appendices

APPENDIX A

REPORT METHODOLOGIES

Despite the overall increase in the numbers of people with criminal records, there are no comprehensive data on the number of Ohioans or Americans living with felony convictions, much less a criminal record of any kind, including misdemeanor convictions, and arrests or criminal charges that did not lead to convictions. This paper draws on a small but growing body of research to estimate the affected population in three ways:

1. Following Bucknor and Barber (2016), and the method developed by Schmitt and Warner (2010), we estimate the population of Ohioans with felony convictions, based on those who have served time in prison.⁶⁷

This method results in an estimate of 807,000 first-time felony convictions over the past 30 years.

2. Using Shannon et. al., we take an estimate of Ohioans with convictions through 2010 and extrapolate to today based on population and demographic change since then.⁶⁸

This method results in an estimate of 994,000 Ohioans with a felony conviction, and 734,000 who have served prison time.

3. Following the Urban Institute, we compare court cases reported in Ohio courts (they studied DC), to the share of the national population with a record.

APPENDIX B

IMPACTED JOBS

To view and/or download a comprehensive spreadsheet of Ohio jobs impacted by collateral sanctions, please visit:

<https://www.policymattersohio.org/files/assets/copyofcollateralsanctionsappendixcembed.xlsx>

⁶⁷ Bucknor and Barber give US estimates <http://cepr.net/publications/reports/the-price-we-pay-economic-costs-of-barriers-to-employment-for-former-prisoners-and-people-convicted-of-felonies>, Schmidt and Warner, <http://cepr.net/documents/publications/ex-offenders-2010-11.pdf>

⁶⁸ http://users.soc.umn.edu/~uggen/Shannon_Uggen_DEM_2017.pdf

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