


January 8, 2025

To: Mayor and Members of City Council  
From: Sheryl M. M. Long, City Manager   
Subject: HR Department's Response to Motion 202400694

202500001

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REFERENCE DOCUMENT # 202400694

On March 19, the Public Safety and Governance Committee referred the following for a report:

MOTION, submitted by Vice Mayor Kearney and Councilmember Johnson, Individuals who already are struggling financially can be further harmed by old, low-level misdemeanor crimes that can prevent them from obtaining employment and/or housing, and sometimes result in the loss of custody of their children. According to the Center for Community Change, two-thirds of people detained in jails report an income of less than \$12,000. We request a report within 90 days on the feasibility and next steps for City Council to take the following actions: 1. Unilaterally, automatically and annually purge and dismiss capiases and warrants that are seven years old for low-lying, non-violent misdemeanor crimes. (BALANCE ON FILE IN THE CLERK'S OFFICE) (BALANCE OF MOTION ON FILE IN THE CLERK'S OFFICE).

The Motion requested information about three potential actions. First, the feasibility and next steps for City Council to “unilaterally, automatically and annually purge and dismiss capiases and warrants that are seven years old for low-lying, non-violent misdemeanor crimes.” Second, the feasibility and next steps for City Council to “repeal city laws that call for mandatory sentencing for crimes for which the state does not require the same punishment.” Finally, the feasibility and next steps for City Council to “overturn the city’s current policy of delaying employment for all candidates until five years after their conviction, and narrow this requirement to specific crimes. This report addresses each of these items in turn.

**I. Purging and dismissing certain capiases and warrants**

Background

The City prosecutes all misdemeanor offenses that occur within the City limits. The City Charter provides that “The solicitor shall act as prosecuting attorney in the municipal court.” Charter, Article IV, Section 5a. When a defendant is charged with a crime and served with a citation or warrant, but then does not appear in court on the court date, the case is in “capias” status. If a case is in capias status, it has been assigned to a judge. Warrant status means that a defendant is charged with a crime but has not yet been issued a citation or served with a warrant. If a case is in warrant status, it has not been assigned to a judge.

When a case is stale, meaning that it has not moved forward for many years, the likelihood of successful prosecution plummets. In addition, if a warrant was not served for a time under certain circumstances, a defendant’s right to a speedy trial might be violated, which can result in dismissal of the charges. Therefore, examining whether certain types of capiases or warrants should be purged is within the public’s interest.

Feasibility of automatically purging and dismissing capiases and warrants

Under the Charter, any action regarding misdemeanor prosecutions must be taken by the City Solicitor or her assistants. The motion identifies capiases or warrants for low-level, non-violent misdemeanors that are seven years or older for purging. The Solicitor’s office has been engaged with the Clerk of Courts on this topic to identify all outstanding capias and warrant cases. The current approach has been to compile the case information; identify which cases implicate Marsy’s Law, a victim’s-rights law; further sort the cases between cases that are in warrant status versus capias status; and make a determination on an appropriate outcome. To date, the Solicitor’s office has identified a list of over 11,000 cases that were in warrant or capias status from the 1970s through 2011. The data can be updated to include cases through 2017. Marsy’s Law requires that victims receive notification and an opportunity to be heard about the outcome of a case. A variety of misdemeanor offenses can implicate Marsy’s Law, including some traffic offenses. Further analysis must be done, but a previous review suggested that approximately 75% of the cases did not implicate Marsy’s Law.

The Motion does not identify exactly which misdemeanor offenses would be considered “low-lying” or “non-violent.” The Solicitor’s Office recommends moving forward on purging capiases and warrants that do not implicate Marsy’s Law – in other words, cases that do not have a person that fits the definition of “victim.”

For cases that do not implicate Marsy’s Law, the Solicitor’s Office can dismiss them via an omnibus court entry if the Municipal Court judges agree to accept a single entry that lists all the key information about the various cases. In the alternative, the cases could be dismissed via individual entries, though this is not the recommended process due to additional time and expense.

Although beyond the scope of this Motion, the Solicitor’s Office will also analyze certain stale cases that do implicate Marsy’s Law. However, any potential dismissal process would need to comply with a victim’s right to be notified, as well as engage in an analysis about any speedy trial implications. This involves a case-by-case analysis.

Next Steps

There are no next steps for City Council on this matter at this time. The Solicitor’s Office will continue to pursue the dismissal of cases that are over seven years old that do not implicate Marsy’s Law, including engaging with the Clerk of Courts and the Municipal Court Judges and Administrators.

**II. Repealing city laws that require mandatory sentencing for crimes**

City Council has authority to amend municipal criminal violations. The following charts identify crimes where the Cincinnati Municipal Code penalty has a mandatory component that the analogous state crime does not. Please note that offenses are not always charged under the CMC as opposed to the ORC. If Council desires to amend any of these provisions, the City Solicitor’s office can draft the appropriate legislation upon request.

**Permitting Drug Abuse, C.M.C. 911-5 and R.C. 2925.13**

	C.M.C. 911-5	R.C. 2925.13
Level of Offense	M1 or M3	M1 or F5
Punishment	M1 – mandatory jail of at least 30 days M3 – mandatory jail of at least 10 days	No mandatory minimum jail time

**Trespass on the Land or Premises of a Medical Facility, CMC 907.5 and R.C. 2911.21, Criminal Trespass (no Ohio medical facility trespass statute)**

	C.M.C. 911-5	R.C. 2911.21
Level of Offense	M1	M4 or M1
Punishment	<p>M1, but <u>three consecutive days shall be served</u> and may be sentenced to a longer term of imprisonment <u>and shall be fined not less than \$150 nor more than \$1000.</u></p> <p>M1, but <u>six consecutive days shall be served</u> and may be sentenced to a longer term of imprisonment and <u>shall be fined not less than \$300 nor more than \$1000</u> if, within five years of the offense, defendant was convicted of one violation of 907-5.</p> <p>M1, but <u>twelve consecutive days shall be served</u> and may be sentenced to a longer term of imprisonment and <u>shall be fined not less than \$600 nor more than \$1000</u> if, within five years of the offense, defendant was convicted of more than one violation of 907-5.</p>	No mandatory minimum jail time; fine of up to \$1000

**Storage of Unlicensed or Inoperable Vehicles in Residence or Commercial Districts, C.M.C. 511-31 and R.C. 4513.64, Willfully leaving abandoned junk motor vehicle**

	C.M.C. 511-31	R.C. 2911.21
Level of Offense	Civil Offense, or MM, M4, or M1	MM
Punishment	<p>MM on the first offense</p> <p><u>Previous Conviction within the past year, M4</u></p> <p><u>Two Previous Convictions within the past two years M1 and fined not less than \$500 and imprisoned not less than 30 days</u></p>	

**Traffic Code Violations – C.M.C. 512-1 provides for enhancements for repeat violations where the state code does not:**

Except as written pleas of guilty are accepted as provided by rules of the Hamilton County Municipal Court, every person convicted of or found guilty of a violation of any of the provisions of the traffic code for which another penalty not provided shall,

For a first offense thereof, be fined not more than \$100;

For a second offense within one year thereafter, not more than \$150 or imprisoned in the Hamilton County Justice Center for not more than 10 days, and

For a third or subsequent offense within one year after the first offense, shall be fined not more than \$200 or imprisoned in the Hamilton County Justice Center for not more than 30 days, or both.

Additionally, when a person is found guilty of a first offense for a violation of Section 506-8 upon a finding that the person operated a motor vehicle faster than 35 miles an hour in a business district or faster than 50 miles an hour in other portions, or faster than 70 miles per hour on an interstate highway, or faster than 35 miles per hour while passing through a school zone during recess or while children are going to or leaving school during the opening or closing hours, the court may, in addition to the penalty herein provided, sentence such offender to the Hamilton County Justice Center for not more than five days.

*Note: current practice is to treat each offense as a minor misdemeanor and not enforce enhancements.*

### **III. City process for hiring candidates with criminal records**

The following report from the Department of Human Resources addresses bullet three of the referenced motion, which reads: "Overturn the City's current policy of delaying employment for all candidates until five years after their conviction and narrow this requirement to specific crimes." The report also clarifies the City's existing policy language, outlines state law requirements, details current departmental efforts to support "ban-the-box" initiatives and offers options for consideration by the City Manager.

#### **CURRENT CITY POLICY**

The City's current policy, HR P&P 2.11, requires that all candidates vying for employment undergo criminal background checks if the positions are classified as sensitive. According to Civil Service Rule 15, sensitive positions are those involving the following:

1. Access to a private home
2. Handling of money and/or negotiable instruments
3. Inspections for granting licenses, approval of work being done, etc.
4. Contact with children.
5. Access to chemicals, drugs and/or medications
6. Exposure to possibility of bribery or extortion
7. Opportunity for pilferage
8. Concerned with community security (e.g., police and fire protection, water supply, computer programs)
9. Access to sensitive information.
10. Possession of weapons, e.g., firearm, chemical irritant, batons, etc.
11. Any other factor which is determined by the Commission to be a job-related concern is sufficient to consider the classification as sensitive.

Civil Service Rule 15 also stipulates that the Civil Service Commission shall maintain a list of sensitive job classifications or positions for which background investigations shall comprise a portion of the selection process. This list is also available on page five of HRP&P Chapter 2.11 (attached).

For the Police and Fire Departments, background checks are integral to the selection process. For other positions, criminal background checks are conducted after the department determines that an applicant is qualified and extends a conditional offer of employment.

For roles not classified as sensitive, only a Hamilton County record check conducted through Police Records is required. The applicant or employee must fill out a Cincinnati Police Department Personal Information Release form, which is then submitted to Police Records. The resulting report (RCIC Response) is sent directly to the requesting department.

HR P&P 2.11 prohibits employment for any misdemeanors or felonies related to sexual crimes, drug offenses, violent crimes, or domestic violence within the past five years, as well as any felony during the same period.

When a conviction exceeds five years, the Human Resources Department evaluates its relevance to the job duties to decide on the candidate's eligibility. If deemed unsuitable due to their criminal history, such as a theft conviction for a job involving home entry, candidates are issued a rejection letter detailing the reasons.

## **CINCINNATI AS A BAN-THE-BOX EMPLOYER**

The "Ban the Box" movement aims to remove the checkbox that asks about criminal history from job application forms. This initiative began in the United States with Hawaii implementing the first such law in 1998. The goal is to prevent initial discrimination against applicants with criminal records, allowing them a fair chance to present their qualifications before their criminal background is disclosed.

The City of Cincinnati adopted a "Ban the Box" policy in April of 2010. This initiative was part of a broader movement aimed at removing the checkbox asking about criminal history from job applications, thus helping to reduce employment barriers for individuals with past convictions.

HR policy and procedure chapter 2 section 11 aligns with "ban-the-box" practices by not including conviction questions on initial job applications and making hiring decisions based on a detailed review of the candidate's background relative to the job's requirements. Further, "Ban-the-box" practices are supported through the policy's approach of delaying criminal history questions until after a preliminary decision of qualification has been made, ensuring initial assessments are based on merit rather than criminal background. This approach is designed to reduce bias in the hiring process and increase employment opportunities for individuals with prior convictions, thereby aiding in their reintegration into society.

## **OHIO STATE LAW REQUIREMENTS**

Under Ohio Administrative Code Rule 3701-13-05, background checks are mandatory for public employment, especially in positions involving vulnerable populations such as in schools, healthcare, and daycare centers and certain crimes, such as severe violent offenses or specific sexual offenses, permanently bar individuals from holding these sensitive classifications positions.<sup>1</sup> Further, under Ohio Administrative Code Rule 3701-13-05, certain drug-related convictions are listed as criteria that can disqualify an individual from being employed in a position that involves providing direct care to an older adult. The specific drug-related offenses that can bar employment include corrupting another with drugs, trafficking or aggravated trafficking in drugs, possession of controlled substances, permitting drug abuse, deception to obtain a dangerous drug, and illegal processing of drug documents, among others.

While the state does not specify a uniform period for barring employment but requires that the relevance of a conviction be evaluated based on the nature of the job and the time elapsed since the conviction. The Ohio Revised Code Section 124.34 outlines the regulations for forfeiture of public employment due to felony convictions. According to this code, individuals convicted of a felony immediately lose their status as a classified employee in public employment from the date of conviction. This applies specifically to felonies that include offenses of violence, felony drug abuse, crimes of moral turpitude, felonies involving dishonesty, theft, fraud, and certain felonies related to obstruction of justice, such as having an unlawful interest in a public contract or retaliation.

Further, if an individual is convicted of a felony involving the same conduct for which they were previously removed, they are barred from receiving any compensation after their removal, unless the felony conviction is later reversed or annulled. Those removed due to felony convictions are entitled to a cash payment for any accrued but unused sick, personal, and vacation leave as authorized by law.<sup>2</sup>

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<sup>1</sup> [Rule 3701-13-05 - Ohio Administrative Code | Ohio Laws](#)

<sup>2</sup> <https://codes.ohio.gov/ohio-revised-code/section-124.34>

Given the stipulations outlined in the Ohio Revised Code Section 124.34, convictions for specified felonies including those related to violence, drug abuse, moral turpitude, dishonesty, theft, fraud, and particular acts of obstruction of justice necessitate the immediate forfeiture of public employment. Consequently, to maintain compliance with state law and ensure integrity within its workforce, the City as an employer incorporates these felony convictions as criteria that bar individuals from employment, aligning local hiring policies with the rigorous standards mandated at the state level to uphold public trust and safety in civil service.

## **PROPOSED REVISION OPTIONS TO HRP&P 2.11**

Given the flexibility in state law regarding the relevance and recency of convictions, it is proposed that the City, with approval from the City Manager, revises HR P&P 2.11 to:

1. Shorten the blanket restriction period from five years to a more tailored timeframe based on the type of conviction, which considers the nature and gravity of the offense and the responsibilities of the position.

However, the Equal Employment Opportunities Commission (EEOC) does recommend that specific time periods during which a conviction, especially for violent crimes, may impact employment eligibility. More severe crimes, especially violent offenses, often carry longer periods during which they are considered relevant to employment decisions.<sup>3</sup>

Consideration of shortened time periods of convictions barring employment (misdemeanor for any drug offense, crime of violence or a crime of domestic violence knowingly causing the victim harm and any felony conviction in the last five years) requires further research in conjunction with the City Solicitor's Office.

2. Narrow the scope of drug-related crimes that result in automatic disqualification from employment to specifically include those offenses outlined by the Ohio Administrative Code Rule 3701-13-05. This adjustment could encompass convictions such as Corrupting Another with Drugs, Trafficking or Aggravated Trafficking in Drugs, Possession of Controlled Substances, Permitting Drug Abuse, Deception to Obtain a Dangerous Drug, and Illegal Processing of Drug Documents.

Such narrowing of drug-related crimes barring employment also requires further analysis and legal opinion by the City Solicitor's Office.

## **SUMMARY**

In conclusion, the Department of Human Resources recognizes that revising HRP&P 2.11 to specify disqualifying drug-related offenses or to adjust the blanket restriction period for felonies and violent crimes would meet the requirements of the Council's motion. However, further analysis is needed in collaboration with the City Solicitor's Office to ensure that these changes adhere to state law, promote fair employment practices while upholding workforce safety considerations. Any decision to amend the existing policy, HR P&P 2.11, remains at the discretion of the City Manager. Additionally, any changes to Civil Service Rule 15 must receive approval from the Cincinnati Civil Service Commission.

cc: Latisha Hazel, Director Human Resources Department  
Emily Smart Woerner, City Solicitor, Law Department

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<sup>3</sup> [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](https://www.eeoc.gov/enforcement/guidance/consideration-arrest-conviction-records-employment-decisions)