

TO: Senate Committee on Judiciary
FROM: Stacy Michaelson, Government Affairs Administrator, MESD
DATE: February 28, 2023
RE: SB 524

Chair Prozanski, Vice-Chair Thatcher, Members of the Committee:

For the record, my name is Stacy Michaelson and I am the Government Affairs Administrator for the six school districts in East Multnomah County, as well as Multnomah Education Service District (MESD). A few years ago, I was asked by the MESD Board of Directors to look into Oregon's employment standards governing the K-12 system. In my comments, I'd like to provide you with some background, an overview of SB 524, and some examples of why we believe this bill should pass.

Background

In roughly 2018, MESD was forced to terminate a newly-hired custodian who failed a background check due to a decades-old conviction for delivery of a controlled substance that he thought had been expunged. This individual had come highly recommended by our Facilities Manager, who had worked with him previously, and he was highly regarded in the local community. No matter how good a fit he might have been for our agency, we had no choice but to terminate. Current statute is quite clear that anyone who has ever had a conviction for delivery of a controlled substance, may *never* work in an Oregon public school (see ORS 342.143).

MESD serves a number of students in the juvenile justice system, and our Board realized that our own students might one day be impacted by this policy. We have students who could graduate and turn their lives around, and they would not be allowed to come back and work with students like themselves.

So, frustrated by the forced termination and concerned with our own justice-involved students' career prospects, in 2021 we explored removing non-violent, non-person offenses from the disqualifying crimes list. In doing so, we learned a great deal, namely that our current system of employment standards and background checks is far more complex than it might seem at the outset. As it turned out, simply making modifications to the disqualifying crimes list had the potential for unintended consequences and downstream effects.

SB 524 takes those lessons learned and proposes a different approach.

Current Measure: SB 524

Rather than making any changes to our employee vetting process, this bill calls for a study that is *actually* a study. It directs the Criminal Justice Commission (CJC) to convene an advisory

council made up of folks with education and public safety/criminal justice expertise to review our current disqualifying crimes list and associated systems/processes. The aim of the study is to reduce any unnecessary barriers to post-conviction employment, *while maintaining student safety*. To be clear, student safety is always our number one priority.

We believe that given their access to the latest data and research on criminal justice policies and recidivism rates, the CJC is the best body to convene this discussion. It ensures the conversation stays grounded in facts, not just anecdotes. By allowing the space for thorough vetting, we can make sure that any recommendations account for downstream impacts of any updates to the disqualifying crimes statute, as I'll discuss below.

Based on the language of the bill, named advisory council participants (*and likely participants where not expressly named) include:

Oregon Department of Justice

Teacher Standards and Practices Commission

Oregon Department of Education

*Oregon District Attorneys' Association

*Oregon Criminal Defense Lawyers Association

*Coalition of Oregon School Administrators

*Oregon School Boards Association

*Oregon School Personnel Association (made up of HR directors)

*Oregon Education Association

*Oregon School Employees Association

The advisory council is capped at 20 members, but only 15 seats are prescribed in the bill. This gives the CJC some flexibility to appoint additional experts and community members as necessary.

The bill offers guidance on the types of modifications the advisory council might consider, for example: timelines for how long particular convictions count as a disqualifiers, whether standards should be different based on level of access to students, and whether standards should be different for individuals with prior convictions versus current employees/license holders who are convicted of a crime, among others.

The also provides certain criteria for the advisory council to consider when evaluating potential recommendations. Those are:

- Standards for student safety
- Licensing and hiring standards of other states for educators and school staff
- Available data on recidivism rates and risk factors, including any correlation with age at the time the offense was committed
- Outcomes of stringent policies versus case-by-base licensing and hiring decisions
- Current background check and candidate evaluation processes, and the capacity of the Teacher Standards and Practices Commission, the Department of Education and school districts to enact different processes

- School district risk for changes in the process and ability to access insurance coverage based on any changes
- Ongoing changes to the criminal justice system, including the expungement process.

We have called out the above items largely in response to lessons learned in 2021. Some of the questions and challenges that came up then are outlined below.

Challenge: Background Checks

Our goal in 2021 was simply to give school districts the *discretion* to hire individuals with such prior convictions, if and when they felt comfortable doing so. But we learned that our vision for a “case by case” vetting system wasn’t really possible because school districts currently have limited ability to vet applicants, period.

When the Teacher Standards and Practices Commission (TSPC) reviews candidates for licensure, they run a full FBI background check. As a state agency, they have access to the full report and they vet candidates against not only the disqualifying crimes list, but any other convictions they may have on their record as well.

Conversely, when the Oregon Department of Education (ODE) runs a background check for an unlicensed staff member, they have access to the FBI background check as well, but the agency *only* vets against the disqualifying crimes list. Furthermore, ODE is not allowed to share the report with local school districts. This means, so long as a candidate has supplied truthful information in the background check process, they may have any other prior conviction not on the disqualifying crimes list, and the district will not be informed by ODE.

This level of information-sharing (or lack thereof) complicated the notion that all we needed to give school districts greater hiring discretion was to modify the disqualifying crimes list.

It is also worth noting that some school districts pay for secondary background checks in order to receive a level of detail not currently available through background checks performed by ODE. This is generally a redundant process and does not represent the most efficient use of public dollars.

Challenge: TSPC Authority

Even though ORS 342.175 gives the Commission the authority to discipline license holders for offenses other than those on the disqualifying crimes list, case law dictates that they may only do so when there is a direct nexus to the work. Because of this high standard, the disqualifying crimes list has served as the ultimate back-stop.

In 2021, TSPC flagged that removing offenses from the disqualifying crimes list might inhibit their ability to sanction license holders convicted of such offenses. That was not our intent.

We believe that there is a difference between a prior conviction from years in the past versus a new conviction against a current school employee, and we believe TSPC should have whatever authority is necessary to appropriately discipline licensees. But our current disqualifying crimes list offers no distinction between active school employees and folks who have prior convictions from years in the past. This single standard can make it challenging to ensure we have appropriate safety measures in place.

For instance, also in 2021, TSPC had a proposal to add domestic violence convictions to the disqualifying crimes list. My understanding from TSPC is that this was in response to a situation where a license holder had been convicted on domestic violence charges, but the Commission was unable to sanction the individual as they could not establish a direct nexus to the work. The solution they put forward was to add such convictions to the disqualifying crimes list, which would ensure they could take action against license holders convicted of such offenses. A list that keeps folks from *ever* working in schools is a pretty heavy-handed tool to use in response to such a specific situation.

The bill was amended to include only a three-year lookback period for domestic violence convictions, which would have been the first time a specific time frame was attached to a disqualifying crime. However, the bill was in a conference committee at the close of the 2022 session.

As we move forward, we want to make sure that TSPC has all the tools and authority necessary to sanction licensees as appropriate, and this needs to be a factor as any updates are considered to the disqualifying crimes list.

Question: Lookback Periods

As mentioned above, our current disqualifying crimes list does not include any time lines for how long a conviction may be counted as a disqualifier. They are, in colloquial terms used by ODE, “forever crimes.” We believe that it makes sense to have a list of disqualifying crimes for vetting employees. But we also believe that disqualifying crimes should not necessarily be forever crimes.

This is not a novel concept. For example, current statute only requires a 10-year lookback for manufacture/delivery convictions for individuals seeking to work in residential care homes. These are positions working with some of our most vulnerable citizens, and it has been deemed appropriate to use a time-specific ban rather than a forever ban.

Additionally, in 2021, many legislators acknowledged that perhaps “forever” was too stringent a standard, but they also felt that some amount of time should pass before an individual with a prior conviction be allowed to work in a school setting. We discussed various lookback periods ranging from three to ten years. But these discussions were legislative negotiations, and in all honesty, they were not based on any data.

As we consider things like lookback periods, it's important that those decisions be made in light of the best science and information available about recidivism rates and risk of reoffense. CJC has access to the best data and research to inform such discussions.

Conclusion

At MESD we serve many students who have been involved in the criminal justice system directly and others who have family members in the system. We believe people can change and that those with lived experience are sometimes the best messenger to reach our at-risk youth. Our current system limits the ability of these students to see themselves reflected in someone else's redemption story. And it also limits the options some of our students may have in their own futures.

We hold student safety as our number one priority, *and* we believe that we can enact improved processes and criteria for ensuring our students are safe, while also doing away with barriers that keep those who have turned their lives around from working with students in any capacity. We know that this discussion requires thorough analysis and needs the input of both those in the education sector as well as those who work in criminal justice.

After 2021, we recognize the need for a slower, methodical process that accounts for unintended consequences and downstream effects. SB 524 dedicates the time and resources to ensure a thoughtful approach to the work. And any future changes to our background check or employee review process still remain fully in the hands of the Legislature.

We believe this is a conversation worth having, and we request that you pass SB 524. Thank you.