

OHIO PROSECUTING ATTORNEYS ASSOCIATION

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HB-49; Budget Bill
Interested Party Testimony
April 5 2017
House Finance Committee

Our association opposes the provision in the budget bill that would preclude sentencing a fifth degree felon to prison for less than twelve months, except for an offense of violence, a sex offense, an offense requiring a mandatory term, or if the person has a conviction for a prior felony of violence or any felony sex offense.

First, while this change would no doubt have a budgetary impact, this is a substantive change in criminal sentencing law and should not part of a budget bill.

Second, the legislature should not tie the court's hands in this way. It is almost unheard of for a court to sentence a fifth degree felon to prison without first trying some other sanction. When the defendant repeatedly fails on community control, which is common, the court has to have the prison option available. It doesn't help respect for the court to try one community sanction after another and have no prison option to encourage compliance by the defendant. If this were to pass, the defendant could in effect ignore the judge, knowing that the court does not have the prison option. We understand DRC's frustration, but sometimes the court has no alternative.

We realize there is an amendment that would qualify a fifth degree felon for a prison sentence if he has been convicted of a felony or completed the sentence for a felony within the last two years, if he has violated community control sanction for this offense two or more times, or has been convicted of two or more felonies at the same time or part of the same act. This is an improvement, but we still believe that these restrictions should not be placed on the court's sentencing authority. These provisions in the budget bill should simply be removed.

We agree that many offenses now categorized as fifth degree felonies should be misdemeanors. We have routinely opposed increasing the penalty for some of these offenses. But now that they are on the books, we must not take from the court the authority to deal with them effectively.