

Ohio House Criminal Justice Committee Testimony

TO: House Criminal Justice Committee

FROM: John Cutler, Director of State Policy, Alliance for Safety and Justice
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RE: Criminal Justice Reforms

To Chair Lang, Vice Chair Plummer, Ranking Member Rep. Leland and members of the House Criminal Justice Committee, my name is Shakyra Diaz, Ohio State Director, for the Alliance for Safety and Justice, and I am joined by John Cutler, Director of State Policy, for the Alliance for Safety and Justice. We are a multi-state organization that aims to advance criminal justice reform and effective approaches to public safety in states across the country. ASJ also brings together diverse crime survivors to advance policies that help communities most harmed by crime and violence. We center the dual goals of savings and safety in a manner that ensures dollar for dollar investments in public safety net positive collateral impacts.

There is no more important role of our justice system than promoting public safety. For the past decade, Ohio lawmakers have been taking important steps to improve the state's justice system, keep people safe, and make better use of limited resources. Policymakers have begun to recognize that sending people to prison means worse outcomes for those suffering from addiction, their families, their communities, and the state budget.

Bipartisan support for criminal justice reforms such as 2011's Justice Reinvestment Initiative (HB 86), Targeted Community Alternatives to Prison (T-CAP) and probation reforms in the last bi-annual budget (HB 49), and SB 66 from the last general assembly allowed the state to minimally reduce the prison population and take steps to increase the use of local sentencing options. These efforts, and reducing the use of confinement for juveniles, have garnered well-earned national attention for Ohio, helped the state avoid or end costly litigation, and saved hundreds of millions of dollars on new prison construction.

This year, the General Assembly has an opportunity to build on recent reforms to ensure our safety investments help Ohioans suffering from addiction become contributing members of society while potentially saving the state hundreds of millions of dollars every year. In order to do so, we encourage Ohio's legislative leaders to support legislation that would:

- Change simple drug possession to a misdemeanor offense;
- Reduce the number of people in prison for minor violations of probation;
- Provide relief for people living with a past conviction.

These kinds of law changes will help lawmakers contain prison spending, and focus sentencing and criminal justice investments on the most effective ways to keep Ohio communities safe.

Looking Back: What important steps have Ohio lawmakers taken to build a better corrections system?

Over the last decade, Ohio legislators have revised criminal sentencing statutes around a vision that people with addiction problems who are convicted of low-level drug offenses are best served through treatment programs in their communities. In 2011, the Ohio legislature passed HB 86, which made a number of changes designed to reduce the number of people entering prison for low-level offenses and probation violations.

Some key changes from HB 86 include:

- Changes to sentencing for particular offenses, especially low-level felony drug offenses;
- Stronger laws requiring initial non-prison sentences for Felony 4 and Felony 5 cases in certain circumstances;
- The reclassification of some low-level property crimes from felonies to misdemeanors;
- Expanded access to the intervention in lieu of conviction program;
- The creation of a probation incentive grant program designed to reduce the number of people sent to prison because their probation was revoked;
- The creation of a new “risk reduction” sentencing option that allows for early release upon program completion while in prison; and

A new judicial release option available once someone has served 80 percent of their sentence.

In the years since HB 86, lawmakers have continued to pass legislation in line with these values. Some of these significant law changes since 2011 included:

- *HB 49, 2017*: HB 49 both created T-CAP, which sends DRC dollars to counties that voluntarily rehabilitate people convicted of low-level nonviolent offenses, and included amendments to the Community Control statute intended to cap how long people can spend in prison for technical violations of community supervision. Felony 4 violators were capped at 180 days and Felony 5 violators were capped at 90 days.
- *SB 66, 2018*: In SB 66, lawmakers explicitly added rehabilitation as one of the purposes of felony sentencing. The law also increased opportunities for pretrial diversion for people charged with low-level drug offenses, increased access to intervention in lieu of conviction, and expanded judicial discretion to limit the length of probation terms where appropriate. SB 66 also increased access to record-sealing remedies and reduced the number of people entering prison due to technical parole violations.

Did HB 86 and other law changes impact Ohio’s prison population as projected?

With the passage of HB 86 in 2011, the general assembly took important steps towards stabilizing Ohio’s rapidly growing prison population and averting the need for thousands of new prison beds.

The challenge lawmakers face today is that, for a variety of reasons, HB 86 did not also lead to the projected reductions in the prison population, down to a stable population of roughly 48,000

beds. In the years following HB 86's passage, a number of different entities, including those that helped lawmakers and the executive craft HB 86, and the Department of Rehabilitation and Corrections, have revised their estimates of the law's impact. In the years immediately following the passage of HB 86, the Department of Rehabilitation and Corrections had to twice revise their prison population projections in part to account for limited implementation of key HB 86 programs and reforms.

Similarly, HB 49 has not yet resulted in the full prison population reductions. HB 49's effort to grow local alternatives to sending someone back to prison for a technical violation and limits on how long someone could spend in prison for a non-criminal technical probation violation were intended to reduce the prison population to 47,500 by FY 2019 based on full implementation. Limited county uptake and implementation has dampened HB 49's projected reduction of the prison population, which is currently off by more than 1,500.

To be clear, the fact that various projections imprecisely predicted the impact of reforms does not mean that lawmakers' efforts made no difference. Early estimates held that without HB 86 Ohio taxpayers may have had to spend a up to \$500 million dollars more on new prison construction and over \$70 million more annually in operating costs.

But as these sentencing changes are not resulting the full anticipated impact on the prison population, Ohio continues to face untenable prison crowding and is spending more money on corrections than budgeted. In order to respond to a higher-than-expected prison population and the higher costs associated with them, DRC has requested to use the \$25.6 million in unspent funds meant to support community-based alternatives to prison to, instead, fund prison operations through the end of the budget cycle.

Beyond the costs to taxpayers, if the laws passed are not impacting practice in the way that was originally projected, lawmakers' goals of ensuring local responses, treatment, and accountability for people involved in low-level criminal activity is not being fully realized.

Why are Ohio's sentencing reforms not leading to deeper drops in the prison populations?

There is no way to definitively know precisely why HB 86 and other changes to Ohio sentencing laws, policies, and practices are not having the expected impact on the prison population. Between the legislation's complexity, data limitations, varying degrees of implementation, and other changes in criminal justice practice over the intervening years, it is difficult to construct a clear, concise, and authoritative narrative about why HB 86 as a whole did not fully meet projections for containing and reducing Ohio's prison population.

But for lawmakers to make effective choices around a budget that may continue to contribute to growing prison costs, they can infer a couple of key reasons from local practice and authoritative sources.

Close examination of certain elements – like those identified by the Ohio Department of Rehabilitation and Correction, the Ohio Sentencing Commission, and by corrections executives – should inform lawmakers’ decisions to improve upon existing reforms. Some analyses point to local practices around implementation that may be undermining legislative intent.

A May 2018 study of HB 86 and other criminal justice laws commissioned by the Ohio Sentencing Commission found that local implementation of laws is playing a role in Ohio not realizing the projected declines in imprisonment. It appears that in the years following the passage of HB 86, changes designed to encourage judges toward using probation or other community control sentences for low-level felonies showed unpredictable and, at best, mixed results. Similarly, legislation designed to move Felony 5 drug offenses away from prison showed no effect on admissions, and the same was true for legislation authorizing judges to sentence someone to community control without waiting for a presentence report.

The most recent prior head of the Department of Rehabilitation and Correction reported early on in the wake of HB 86’s passage that there was limited success in shifting some low-level felonies onto probation; however, the following years saw an increase in the number of people sent to prison for community control violations. It is possible that local practices around managing probation violations increased the number of prison admissions, and depressed HB 86’s effectiveness as a prison population control measure. Since HB 86 passed, the number of people entering prison because of supervision violations has remained high.

Initial reports from the Department of Rehabilitation and Correction have suggested that limited local implementation of HB 49’s caps on probation revocations for technical violations is having a significant impact on the legislation’s projected impact on the prison population and the department’s growing budget needs.

This is separate from and in addition to limitation on projected impacts from HB 49 attributable to limited county agreeing to work with the state to receive funds to develop targeted community alternatives to prison chose not to do so. As of January 2019, 56 of 88 counties are participating in T-CAP on either a mandatory or voluntary basis, consistent with the law and local choices.

In summary, local interpretation and implementation of the legislature’s reforms makes a big difference in whether the laws truly redirect people convicted of low-level felonies to local options rather than prison.

In sharp contrast, where the law changes have been clearer – giving less room for local discretion on interpretation and implementation – the impact on prison admissions has been more pronounced.

The analysis of HB 86 compiled for the Ohio Sentencing Commission found that the reclassification of low-level thefts from felonies to misdemeanors had a bigger impact on trends;

as a percentage of all new admissions to prison, the number of people being admitted for felony theft property crimes dropped more than 30 percent. Researchers did not find clear reductions in prison admissions attributable to other property crime provisions that maintained felony status but established a preference or presumption that the judge use community sentences.

It is difficult to say with certainty why judges or courts in Ohio have declined to use the increased discretion that the law changes have provided and not fully taken advantage of the new sentencing presumptions.

While again, the complexity of the system and the law changes escape easy answers, we can discern a couple trends. When the legislature has given more direction and led local justice systems on a policy course, like when it changed felony property offenses to misdemeanors, more significant reductions in prison admissions have occurred. Also, the ways local courts and counties interpret and implement law changes have made a difference in whether people convicted of low-level felonies are sentenced to local options, and prison admissions are reduced.

Lawmakers can build on the progress from sentencing changes, and contain prison crowding and prison spending.

If lawmakers want to build on the progress they have made through various sentencing changes in the past decade and avoid spending even more money on corrections, further changes to law, policy, and practice need to be made. The Ohio legislature is poised to take the next set of important steps on these issues.

Laws changes are being considered this year that could build upon Ohio's history of reform efforts to prioritize local programming, treatment, and accountability -- instead of prison time -- for people facing low-level criminal charges.

- **Change simple drug possession to misdemeanors.** Under HB 86 and subsequent law changes, lawmakers recognized that low-level drug felonies, in general, should be treated differently, so that people convicted of these crimes could be sentenced locally, and connected to treatment. By changing the law so that simple drug possession is a misdemeanor-level crime, Ohio would fulfill the vision that treatment, not incarceration, be prescribed when someone's core issues with crime are due to addiction, and ensure this policy approach is the norm statewide.
- **Reduce the number of people in prison for minor violations of probation.** While HB 86, HB 49, and SB 66 helped reduce the number of people sentenced to probation whose supervision ends in failure, too many people are still going to prison, and spending too much time incarcerated, in Ohio due to technical violations of supervision, not new convictions. There is a need for lawmakers to further strengthen laws directing responses to these low-level violations that direct people toward local programs so someone sentenced to probation can get treatment and navigate a process that will

most likely involve relapse, instead of responding to low-level violations with revocation and prison time.

- **Provide relief for people living with a past felony conviction.** Lawmakers recognized that recovery is a process when it passed SB 66 to provide opportunities for record sealing and rehabilitation programs to Ohioans with multiple criminal convictions. Changing low-level drug possessions from felonies to misdemeanors will help expand this type of relief by applying changes to people living with past convictions for these crimes. A felony conviction results in stigma and a maze of legal barriers that impede rehabilitation – including barriers to employment, housing, and education.

Clear Bipartisan Consensus on These Issues in States Across the Country

Finally, looking outside of the state, we can see a bipartisan consensus for reform developing in states across the country. The region is no stranger to this kind of new consensus on criminal justice reform. **Illinois** has, over the last several years, adopted significant sentencing reforms focused on scaling back harsh mandatory minimum sentences for drug possession. **Michigan** recently passed legislation streamlining it's parole process through the adoption of objective standards for making those determinations. **Iowa** and **Indiana** have also both adopted sentencing reform measures over the last several years.

Further, states across the country have also already acted on several of the key issues facing Ohio and under consideration for reform this session. States across the country, including **Alaska, Utah, Oklahoma, Iowa, and Tennessee** already treat simple, low-level drug possession as a misdemeanor in some or all circumstances. Dozens of states across the country have adopted reforms designed to reduce the flow of people entering prisons due to technical violations of their probation. These reforms include the adoption of graduated sanctions at the officer level, the authorization of short jail stays, and caps on prison time for technical violations. These reforms have passed with bipartisan support in states from **Louisiana, Mississippi, and Alabama, to Missouri, Idaho, Nebraska, and Pennsylvania.**

As Ohio approaches the \$2 billion in corrections spending the General Assembly has an opportunity to build on the success of recent reforms and implement costs savings efficiencies. A balanced approach to public safety will allow law enforcement and incarceration resources to focus on serious crime, allowing more resources to go towards prevention often reflected via a variety of health and human services efforts and rehabilitation to make our collective communities safer.