



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Interested Party Testimony for HB215 Reagan Tokes Reentry House Criminal Justice Committee

Chair Lang, Vice Chair Plummer, Ranking Member Leland and members of the Ohio Criminal Justice Committee. My name is Joe Medici, and I'm the Chief Counsel for the Legal Department of the Office of the Ohio Public Defender (OPD). Thank you for the opportunity to provide testimony regarding Substitute House Bill 215 (HB215).

The OPD shares the same goals as this committee – to make Ohio as safe as possible by ensuring the right people are in prison for the right amount of time. There are portions of HB215 that move Ohio towards this goal. There are also portions that take Ohio in the wrong direction.

I. Provisions in HB215 that will Result in Further Prison Overcrowding

This committee knows that Ohio prisons are over capacity by more than 10,000 individuals. As Chair Lang recently pointed out, the prison population needs to be reduced by about 20%.¹ This crisis has forced the Ohio Department of Rehabilitation and Correction (DRC) to request almost \$500 million in the capital budget for state and local facilities, "more than twice the amount it received in the current capital bill."² Despite the challenges of Ohio's current prison population and outdated facilities, two provisions in HB215 seek to arbitrarily increase prison stays resulting in more individuals in prison and more overcrowding.

A. Disparate Treatment of Sentences based on Prosecutorial Charging

First, HB215 will result in disparate prison sentences for the same behavior. When an individual is convicted of multiple charges, they may receive sentences that are ordered to be served consecutively – whether those charges are brought under one indictment or multiple indictments. In both circumstances, the court decides whether the sentences for each charge should run concurrent or consecutively. Under HB215, if the person has consecutive sentencing resulting from one case, the maximum prison term is 50% of the longest minimum prison term.³ However, when the individual has consecutive sentences resulting from multiple indictments, the court is

¹ *Criminal Justice Chair Looks to Use Panel to Reduce Prison Population*, Gongwer Ohio Report, January 29, 2020.

² Randy Ludlow, *DeWine pondering his agencies' ambitious requests for construction dollars*, The Columbus Dispatch, February 4, 2020, https://www.dispatch.com/news/20200203/dewine-pondering-his-agenciesrsquo-ambitious-requests-for-construction-dollars?utm_source=SFMC&utm_medium=email&utm_campaign=Columbus%20Dispatch%20politics%202020-02-04&utm_content=COLD_CD&utm_term=020720

³ Lines 2048 - 2055

to determine a maximum prison term for each offense and aggregate them into one maximum prison term.⁴

Therefore, if an individual is convicted of three aggravated robbery offenses in one indictment and receives three years on each offense to run consecutively, the individual's sentence would be 9 – 11.5 years. However, if an individual is convicted of the same charges and receives the same sentence, but the charges were brought in separate indictments, this individual's sentence will be 9 – 13.5 years.

This provision of HB215 will result in disparate prison sentences for the same behavior, and effectively allow prosecutors to increase the maximum sentence by bringing charges through multiple indictments. It takes the sentencing authority out of the hands of judges and gives it to a prosecutor – based on charging decisions that happen well before guilt is determined and all parties are heard regarding an appropriate sentence.

B. Automatic Rebuttal of Release on Consecutive Sentences

The second provision of HB215 that will increase Ohio's prison population is the change to current law regarding ODCR's administrative duties when considering an inmate for release.⁵ Under current law, when an individual is serving one sentence or concurrent sentences, that individual is entitled to a presumption of release when they have served their aggregate minimum prison term. ODCR has the option to rebut the presumption of release under certain circumstances. However, HB215 would require ODCR to rebut the presumption of release when the individual is serving consecutive sentences. This requirement will increase the minimum sentences Ohioans can receive. While the court has discretion to give an individual the maximum prison term for each offense as their aggregated minimum prison term, because ODCR is required to rebut the presumption of release, these individuals will serve longer minimum sentences than currently available by law. The purpose of indefinite sentencing is to incentivize positive behavior by allowing shorter sentences when individuals work hard at rehabilitation, and longer sentences when they do not. However, by the mere fact that an individual has consecutive sentences, HB215 would require these individuals serve longer sentences regardless of their behavior while incarcerated.

II. Provisions in HB215 that Address Re-Entry

Ensuring that the right people are in prison for the right amount of time also means ensuring that our reintegration and monitoring systems work to positively transition people back into society from prison, by providing them with the time and the tools they need to be successful and holding them accountable if they violate their supervision. The OPD has significant experience working with the post-release control system, as our agency is statutorily obligated to provide legal representation in parole and probation revocation matters when requested by the court, county public defender, or Director of Rehabilitation and Correction. O.R.C. 120.06. As a result, the OPD

⁴ Lines 1806 - 1816

⁵ Lines 3627 – 3637.

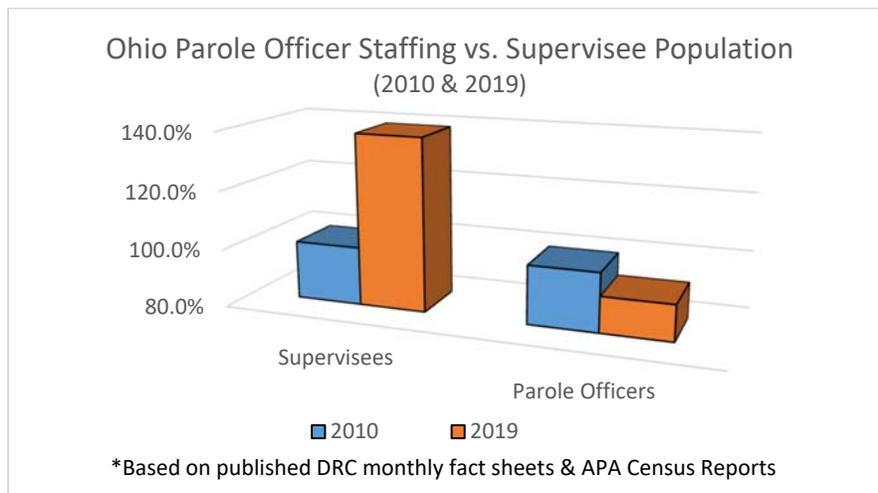


Prison Legal Services Section provides most, if not all, representation for clients facing revocation – representing clients in more than 800 hearings each year.

A. Adult Parole Authority Caseloads and Staffing

OPD supports the portions of HB215 that address the heavy caseloads and staffing levels of the Adult Parole Authority (APA). The current levels effectively do not allow for the targeted support needed for positive reentry and the supervision needed to identify problems before a supervisee reoffends.

The American Probation & Parole Association (2006) and the Commission on Law Enforcement and the Administration of Justice (1967) recommended 50-1⁶ and 35-1⁷ supervisee-to-officer ratios, respectively. Ohio APA caseload standards have moved dramatically out of line with these national standards and with DRC’s own historical practices. The Ohio APA currently maintains an average of 76 supervisees to each parole officer. That means, in a standard 40-hour work week, parole officers are unable to provide more than 31 minutes of attention to their average supervisee (before even considering other job duties). The 1967 Commission noted that a ratio similar to Ohio’s current system results in a caseload so heavy there is almost no supervision⁸ and instead “takes the form of occasional phone calls and perfunctory visits instead of the careful, individualized service that was intended.”



The current officer-to-supervisee ratio is the product of a decrease in staffing and an increase in the number of people who are on supervision over the past ten years. In 2010, DRC employed 528 parole officers to supervise approximately 26,500 supervisees.⁹ In 2019, DRC had 487 parole

⁶ For Moderate to High Risk Supervisees - American Probation and Parole Association – Caseload Standards for Probation and Parole (September 2006), pg. 7 https://www.appa-net.org/eweb/docs/APPA/stances/ip_CSPP.pdf

⁷ The Challenge of Crime in a Free Society, The Commission on Law Enforcement and the Administration of Justice, February 1967, pg. 12, 167.

⁸ Id. at 11.

⁹ Compare DRC Monthly Fact Sheet, December 2010 with APA Census Report 2010.



officers (a 7.7% decrease) to supervise a population of 36,850 people on supervision (a 39% increase).¹⁰ These numbers reflect a 50% increase in parole officers' caseloads in the last nine years; from 50-1 in 2010 to 76-1 in 2019.

As noted by Utah's Sentencing Commission in 2018, research has shown that supervision can do more harm than good in three specific ways:

1. If the supervision is overly focused on deterrence and compliance rather than rehabilitation;¹¹
2. If the level of intensity is not matched to the risk of recidivism;¹²
3. If the release conditions are more restrictive than necessary for public safety.¹³

HB215 requires setting specific caseload standards and creates a State Criminal Sentencing Commission Offender Supervision Study Committee. These changes are desperately needed to give the supervision system what is needed to make Ohioans safer. The creation of the Study Committee, along with the increased attention officers could provide to each supervisee, would also help to improve the level and type of supervision.

B. GPS Monitors for Law Enforcement Purposes

HB215 also requires that most individuals released from DRC on parole or post-release control be placed on GPS monitoring with inclusionary and exclusionary zones. At its core, GPS usage is designed around the hope of improving public safety and reducing recidivism risk. Even GPS proponents, however, admit that there is a scarcity "of research directed toward rigorously assessing the impact of electronic monitoring on reducing recidivism, and . . . increasing officer workload."¹⁴ The University of Cincinnati's recent report, conducted pursuant to the Governor's Working Group on Post-Release Control, found that "there is only limited evidence to suggest more real-time GPS tracking of convicts" would reduce recidivism and improve public safety. Additionally, the report found that real-time GPS tracking is "highly unlikely to be attainable at this time."¹⁵ Without sufficient data regarding whether GPS in community supervision actually

¹⁰ Compare DRC Monthly Fact Sheet, November 2019 with APA Census Report 2019.

¹¹ See Lowenkamp, C. T., Flores, A. W., Holsinger, A. M., Makarios, M. D., & Latessa, E. J. (2010). Intensive supervision programs: Does program philosophy and the principles of effective intervention matter? *Journal of Criminal Justice*, accessed via:

http://www.d.umn.edu/~jmaahs/Correctional%20Continuum/Online%20Readings/ISP_rehab_lowenkamp%20and%20friends.pdf

¹² Lowenkamp, C. and Latessa, E. (2004). Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low Risk Offenders. *Topics in Community Corrections*. 3-8.

¹³ See <http://www.pewtrusts.org/~media/assets/2008/12/13strategies.pdf>

¹⁴ GPS Monitoring Practices in Community Supervision and the Potential Impact of Advanced Analytics, The National Criminal Justice Technology Research, Test, and Evaluation Center, John Hopkins University 2016, p 21, 25. <https://www.ncjrs.gov/pdffiles1/nij/grants/249888.pdf>

¹⁵ *Electronic monitoring of released criminals has flaws, researchers say*, Holly Zachariah, The Columbus Dispatch, January 6, 2020.



improves public safety or supervisee reentry, it is difficult to justify the incredible cost associated with such a program.

GPS units are quite expensive, costing \$800-\$1,500 or more per unit. This is in addition to the ongoing cost for monitoring. That monitoring also requires additional personnel (one Wisconsin community uses 1 specialist per 110 supervisees¹⁶); this would equate to 56 full-time staff just to monitor Ohio's current "high" risk supervision population or 167 staff to monitor high and medium-risk supervisees.¹⁷ Equipment loss is another issue, with one Wisconsin county reporting \$35,000 worth of lost equipment in a single year in a county of only about 100,000 people.¹⁸ That risk could become a serious financial burden.

Limited use of GPS can be effective, particularly as it allows setting up restriction zones and curfews. However, most supervisees have no meaningful geographic restriction or curfews. In this context, GPS merely adds cost and unnecessary complexity to an already complex system.

While it is tempting to believe that GPS could help avert serious crimes from occurring, current research does not support that claim. As the University of Cincinnati's study noted, malfunctioning devices are commonly reported, causing false alarms in an already overtaxed system.¹⁹ The study also noted that GPS simply is not at a place to be able to identify and help law enforcement address serious crime in real time as it effectively serves only as a tool to look back in time after an issue has already occurred.²⁰

HB215 changes the purpose of GPS monitors beyond compliance monitoring to a tool of perpetual investigation of supervisees, without any of the protections Ohioans are normally entitled to during a law enforcement investigation. The bill allows law enforcement to access the tracking data of all individuals on a GPS monitor without a warrant, without probable cause, and even without reasonable suspicion that the supervisee was involved in the crime. At best, this provision of HB215 is legally problematic. At worst, it results in law enforcement wasting valuable investigation time looking at supervisees whose national re-incarceration rate is only 25%.²¹

Therefore, OPD does not believe that increased use of GPS would create significant improvement in the system. The way to improve the system is to ensure that parole offices have manageable caseloads. That means both increasing the amount of parole officers and reducing the supervisee

¹⁶ <https://www.govtech.com/public-safety/GPS-Ankle-Bracelet-Monitoring-of-Low-Risk-Offenders-Costs-More-than-Anticipated.html>

¹⁷ Compare APA Census Report 2019 with 110 supervisees per support staff person.

¹⁸ See FN. 16.

¹⁹ *The Feasibility of Implementing Global Position System Monitoring with Crim Scene Correlation in the State of Ohio*, 25.

²⁰ *Id.* 25-26

²¹ Bill Keller, *Seven things to know about repeat offenders*, The Marshall Project, March 9, 2016, <https://www.themarshallproject.org/2016/03/09/seven-things-to-know-about-repeat-offenders>.



population. Under the current system, many supervisees face mandatory three or five-year periods of supervision that cannot be shortened. This legislature should allow parole officers increased deference to release supervisees early if they are performing well.

III. Conclusion

Ensuring that the right people are in prison for the right amount of time is the clear goal of HB215. To do that, we must invest in our parole system by adding more officers who can truly work with their supervisees and successfully transition them back into their communities. We must limit one-size-fits-all approaches for varying risk levels to create the path forward for making Ohio safer. Arbitrarily placing supervisees on GPS monitors and increasing prison sentences does not make us safer. If anything, it will only place an even higher tax on an already overburdened system.

Thank you for the opportunity to testify as an interested party. I'm happy to answer any questions.

