



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

## **Testimony for the House Criminal Justice Sentencing Subcommittee on Criminal Justice Reform**

Chair Galonski, Chair Grendell, and members of the House Criminal Justice Sentencing Subcommittee. My name is Joe Medici, and I'm the Chief Counsel for the Legal Department of the Office of the Ohio Public Defender. Thank you for the opportunity to provide testimony to this subcommittee.

The Office of the Ohio Public Defender (OPD) shares the same goal as this subcommittee and all Ohioans, to make Ohio as safe as possible. That means ensuring the right people are in prison for the right amount of time. The obvious question is how do we determine who are the right people and what is the right amount of time? Instead of relying on emotion and grief that ensues after a tragedy befalls a fellow Ohioan, OPD encourages this legislature to make that determination based on research, data, and empirical evidence. As public defenders, we understand that we cannot come to this legislature with "pie in the sky" ideas about reform. We must bring solutions that have empirical support. The challenge for this legislature is that the answers research and data provide are often contrary to the "tough on crime" reforms that have previously dominated our politics.

For example, the best way to reduce crime is not to invest in prisons, or jails, or longer harsher penalties, but rather to invest in other areas of our society. The data shows us that investing in people is far more likely to reduce crime and to protect the public. Unfortunately, Ohio has a long history of investing in criminal sentencing instead of the social services that support Ohioans. It was only in the past budget that Ohio started investing state funds to

support domestic violence victims. Instead, of treating drug addiction as a public health crisis, Ohio increased the penalties for drug offenses as recently as the last General Assembly through Senate Bill 1 and this General Assembly through SB55. Historically, Ohio law has viewed every issue as a criminal justice matter to be addressed with penalty enhancements and longer prison sentences. This approach is expensive and ineffective. The old adage is true, “when all you have is a hammer, everything looks like nail.” OPD knows that this legislature has more than just a hammer and using every tool in the tool belt will ensure that the right people are in prison for the right amount of time.

Obviously, the goal of the 133<sup>rd</sup> General Assembly, and every prior general assembly, is to reduce crime. The best way to achieve this worthy goal this legislature needs to invest taxpayer dollars in children. Providing social services to developing children has been shown to reduce crime and violence.<sup>i</sup> Instead of building another prison, taxpayer dollars would be better spent on early childhood education, including all-day preschool and kindergarten, weekend and summer meals, reading specialists, reliable childcare, after school programs, and paid maternity and paternity leave. Researchers have found that, “the average value of preventing a baby from growing up to become a youth who drops out of school, uses drugs and goes on to become a career criminal is at least \$2.5 million per individual.”<sup>ii</sup> Few things in life provide as reliable a return as investing in a child.

Another area where Ohio desperately needs further investment is mental health treatment. Ohio’s prisons are the state’s largest mental health provider with approximately 20% of the inmates requiring treatment.<sup>iii</sup> As of November 2019, there were over 49,000 people in DRC custody.<sup>iv</sup> To quote former DRC Director Gary Mohr, community based health programs are “[t]wice as effective at one-third the cost” of prison.<sup>v</sup> Representative Plummer can speak



from personal experience that officers will get called four, five, or six times about the same individual having a mental health episode. Officers are routinely placed in difficult positions with only two options, “pink slip” the individual or arrest them. Since the standard for involuntary hospitalization is that the individual is a danger to themselves or others, many mentally ill individuals do not qualify for involuntary hospitalization. Law enforcement is left with the sole option to arrest the individual and hold them in jail. Law enforcement officers are not psychologists or counselors, yet Ohio has forced them to the frontlines of mental health frontier. Ohio needs to invest in in-patient and out-patient mental health programs and facilities, as well as crisis units to respond, instead of law enforcement, when a mentally ill person is need assistance. As I previously mentioned, OPD believes the correct people should be in prison. Ohio’s mentally ill citizens are not the “right people.” These individuals need health care not the criminal justice system.

Another group of Ohioans inappropriately forced into the criminal justice system are individuals suffering from addiction. Addicted persons are ill and should be treated that way and provided treatment - not diverted to the criminal justice system. Ohioans are imprisoned for drug offenses more than any other offense.<sup>vi</sup> According to recent data from the Ohio Department of Rehabilitation and Corrections, roughly 2600 individuals are in prison for drug possession.<sup>vii</sup> That is enough people to fill approximately two prisons. Of those individuals, 1600 are incarcerated for low-level drug possession – amounts that are for personal use only. However, the research is conclusive that incarceration is more expensive and, more importantly, less effective than treatment.<sup>viii</sup> “[E]ach additional treatment facility in a county reduces the social costs of crime in that county by \$4.2 million per year.”<sup>ix</sup> Ohio must recognize



that addiction is a public health issue that can be addressed more efficiently and effectively outside of the criminal justice system.

In addition to identifying the right people, the second component of effective and responsible criminal justice reform is perhaps the least counter intuitive – ensuring that prison sentences are “the right amount of time.” The research is conclusive that longer prison sentences are ineffective. First, the data shows that harsher penalties do not deter crime.<sup>x</sup> Second, “lengthy prison sentences are ‘ineffective as a crime-control measure,’” because “[m]ost offenders reach a point when they age out of likely criminal behavior.”<sup>xi</sup> Most people have aged out of crime by their 30s and 40s<sup>xii</sup> and the average criminal career is only five – ten years long.<sup>xiii</sup> In fact, empirical evidence proves that longer prison sentences may actually increase criminal behavior because prison conditions “make inmates more likely to reoffend.”<sup>xiv</sup> Longer sentences force inmates to “miss big life opportunities for legitimate careers”, and force inmates to form ties with others in the criminal world.<sup>xv</sup> Many experts believe the U.S. should adopt a maximum 20 year sentence with option for more time only if necessary to protect the public.<sup>xvi</sup> Such a policy would “bring the United State more in line with other industrialized nations”<sup>xvii</sup> that have “fewer people in prison, along with roughly equal or lower violent crime rates.”<sup>xviii</sup>

The extreme nature of Ohio’s current sentencing law was made tragically apparent in the recent Ohio Supreme Court case of *State v. Gwynne*.<sup>xix</sup> Ms. Gwynne was sentenced to 65 years in prison for theft related offenses committed while she was working at nursing home. Many of the items Ms. Gwynne stole were worthless trinkets taken because Ms. Gwynne was a hoarder with mental health issues. Regardless, 55-year-old Ms. Gwynne was sentenced to die in prison. The Ohio Supreme Court overturned the Fifth District Court of Appeal’s holding



that the sentence was unconstitutional and found that the Ohio Revised Code does not allow appellate courts to review the sentence imposed by a trial court. Ohio taxpayers are going to spend almost \$28,000 a year<sup>xx</sup> to keep Ms. Gwynne in prison for the rest of her life. To quote Justice Donnelly's dissent, Ms. Gwynne "hardly strikes me as a hardened criminal who needs to stay in prison until she is 120 years old in order to protect the public and that a 65-year prison term is the best use of our limited state and local resources."<sup>xxi</sup> This legislature needs to allow appellate courts the ability to overturn unconscionable sentences like this one. Additionally, this legislature needs to implement limits that prohibit nonviolent people like Ms. Gwynne from languishing in prison.

Another way to ensure that the right people are in prison for the right amount of time is to adopt matrix sentencing. Matrix sentencing ensures the right people are in prison for the right time by creating tiers of offenses that can be cross-referenced with an individual's criminal history, to determine the appropriate sentencing range. This literally takes the form of a matrix or spreadsheet where offense levels are listed on one side and criminal history categories spread across the top. The federal courts, as well as 15 states, have adopted some form of matrix sentencing, creating transparency and predictability in the system, for defendants, victims, attorneys, and judges.<sup>xxii</sup> It also ensures that sentences are based appropriate data and evidence.

An area in much need of criminal justice reform is sex offender registries. Admittedly, reform in this area is also counter intuitive. That is because, despite their purpose, sex offender registries make communities less safe. Public registries cause communities to fear and loath registrants regardless of that individual's circumstances. Individuals on registries are often unable to obtain employment or housing. Researchers have found that a lack of housing and a



“transient status seems to be associated with higher sexual recidivism rates.”<sup>xxiii</sup> Another study hypothesized that the link between sex offender registries and increased rates of recidivism is due to the personal, professional, financial, and social consequences of making registries public causing crime-free lifestyles to be unobtainable for registrants.<sup>xxiv</sup> As one of the researchers put it, “[w]e have an anti-reentry policy for sex offenders.”<sup>xxv</sup>

Not only does the registry make it hard for these individuals to find and maintain housing, they also have notification requirements any time they are forced to move. The individual must alert their county sheriff and the county sheriff where they are moving that they intend to move twenty days prior to moving. This is obviously hard to do for someone that has been forced into a transient lifestyle, yet failure to do so is a felony offense. Depending on the underlying conviction that lead to the registration, it can be as serious as a felony of the first degree. According to DRC, the third most common “sex crime” in prison is not a sex crime at all, but rather, a technical registration violation for failure to register and failure to notify. This is an irrational use of a prison bed and taxpayer dollars.

This legislature also needs to modernize its laws surrounding HIV. Ohio law makes failure to disclose that a person has HIV prior to sexual conduct a felonious assault. Ohio law “fails to account for proven prevention measures, such as antiretroviral therapy (ART), pre-exposure prophylaxis (PrEP), and condoms.”<sup>xxvi</sup> According to the Centers for Disease Control, an individual that adheres to their ART treatment poses “no threat of transmitting the virus.”<sup>xxvii</sup> However, Ohio law allows these individuals to be convicted of a violent felony. According to the CDC, HIV is not transmitted through saliva<sup>xxviii</sup>, but Ohio law still has penalties for spitting on someone when the individual has HIV.<sup>xxix</sup>



Ensuring the right people are incarcerated for the right amount of time also extends to pretrial incarceration. Ohio must address its monetary bail system, which disproportionately disadvantages low-income individuals. The inability to pay bail of \$100 may be hard to imagine for some, but it is the reality for many Ohioans. Financial hardships can force individuals to stay in jail and miss work while their case is pending. If they miss work – they get fired and getting fired is simply not an option for most people. These individuals are often compelled to plea guilty to crimes they may not have committed in order to get out jail. This same conundrum is not felt by wealthier Ohioans who have the means to simply post bail and return to work while their case is pending. Individuals “who can’t afford bail are 13 percent more likely to be convicted and will receive incarceration sentences that are on average five months longer.”<sup>xxx</sup> Despite the fact the wealthy Ohioan and the poor Ohioan might have the exact same charge, criminal record, and presumption of innocence, an individual’s ability to post bail can impact the outcome of their case and rest of their life.

I leave you with one final suggestion. In order to know if any criminal justice reform is effective, Ohio has got to collect data. Ohio must have a statewide court management system. This will allow Ohio to finally collect data and perform analysis of our criminal justice system. As Ohio pursues meaningful reform, we need data to ensure the billions of dollars we spend are actually achieving our desired goals. Ohio’s lack of data collection will need to be addressed in legislation sooner rather than later.

To ensure the right people are in prison for the right amount time this legislature needs to fight the temptation to make drastic changes to our criminal justice system after a tragic event. Bad facts make bad law. Good public policy should be based on empirical data and



research. Thank you for the opportunity to testify today before your committee. I am happy to answer questions at this time.

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<sup>i</sup> *Fight Crime: Invest in Kids, Proven Investments in Kids will Prevent Crime and Violence*, Council for a Strong America, 2014, <https://strongnation.s3.amazonaws.com/documents/37/3293c393-2978-4bc6-aa02-9d8fb62430cf.pdf?1545143238&inline;filename=%20Four%20Part%20Plan.pdf%22>.

<sup>ii</sup> Quoting *Id.*, citing M.A. Cohen & A.R. Piquero, *New evidence on the monetary value of saving a high risk youth*, *Journal of Quantitative Criminology*, 25, 25-49, 2009.

<sup>iii</sup> Karen Kasler, *Prisons Now Largest Mental Health Provider in Ohio*, Ohio Public Radio, April 29, 2015, <https://www.wyso.org/post/prisons-now-largest-mental-health-provider-ohio>.

<sup>iv</sup> Ohio Department of Rehabilitation and Correction Population Count Sheets – 2019-11-05  
<https://drc.ohio.gov/Portals/0/995.pdf>

<sup>v</sup> Karen Kasler, *Prisons Now Largest Mental Health Provider in Ohio*, Ohio Public Radio, April 29, 2015, <https://www.wyso.org/post/prisons-now-largest-mental-health-provider-ohio>.

<sup>vi</sup> Marty Schladen, *Ohio's Issues 1 Diagnosed A Prison Problem, But Solutions Complicated*, *The Columbus Dispatch*, December 3, 2018, citing Ohio Department of Rehabilitation and Corrections data.

<sup>vii</sup> Ohio Department of Rehabilitation and Corrections FY 2018 Commitment Report.

<sup>viii</sup> *Drug Rehab Instead of Prison Could Save Billions*, Foundations for Recovery Network, <https://www.dualdiagnosis.org/drug-rehabinstead-of-prison-could-save-billions-says-report-2/>; citing G. Zarkin, A. Cowell, & K. Hicks, et.al., *Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders from State Prison*, Sage Journals, August 1, 2015; see also *Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Cost*, RTI International, Newswise, January 9, 2013.

<sup>ix</sup> Jennifer L. Doleac, *New evidence that access to health care reduces crime*, *The Bookings Institute*, January 3, 2018, <https://www.brookings.edu/blog/up-front/2018/01/03/new-evidence-that-access-to-health-care-reduces-crime/>.

<sup>x</sup> *Five Things About Deterrence*, National Institute of Justice, Office of Justice Programs, <https://nij.gov/fivethings/pages/deterrence.aspx>; citing Daniel S. Nagan, *Deterrence in the Twenty First Century*, 2013; Economist at Columbia and the University of Michigan found that the threat of longer prison sentences does not reduce crime. The National Institute of Justice found that “severity of punishment does little to deter crime.”

<sup>xi</sup> Matt Ford, *What Caused the Great Crime Decline in the U.S.?*, *The Atlantic*, April 15, 2016, <https://www.theatlantic.com/politics/archive/2016/04/what-caused-the-crime-decline/477408/>; citing, *The Growth of Incarceration in United States, Exploring Causes and Consequences*, Committee on Law and Justice, National Research Council of the National Academies.

<sup>xii</sup> German Lopez, *The case for capping all prison sentences at 20 years*, *Vox*, February 12, 2019, <https://www.vox.com/future-perfect/2019/2/12/18184070/maximum-prison-sentence-cap-mass-incarceration>.

<sup>xiii</sup> Dana Goldstein, *Too Old to Commit Crime?* *The Marshall Project*, March 20, 2015, <https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime>.

<sup>xiv</sup> German Lopez, *The case for capping all prison sentences at 20 years*, *Vox*, February 12, 2019, <https://www.vox.com/future-perfect/2019/2/12/18184070/maximum-prison-sentence-cap-mass-incarceration>.

<sup>xv</sup> Matt Ford, *What Caused the Great Crime Decline in the U.S.?*, *The Atlantic*, April 15, 2016, <https://www.theatlantic.com/politics/archive/2016/04/what-caused-the-crime-decline/477408/>.

<sup>xvi</sup> Marc Mauer, *A proposal to reduce time served in federal prison*, *The Sentencing Project*, March 11, 2015, <https://www.sentencingproject.org/publications/a-proposal-to-reduce-time-served-in-federal-prison/#:~:targetText=In%20testimony%20delivered%20to%20the,in%20prison%2C%20barring%20exceptional%20circumstances>.

<sup>xvii</sup> Dana Goldstein, *Too Old to Commit Crime?* *The Marshall Project*, March 20, 2015, <https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime>.



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- <sup>xviii</sup> German Lopez, *The case for capping all prison sentences at 20 years*, Vox, February 12, 2019, <https://www.vox.com/future-perfect/2019/2/12/18184070/maximum-prison-sentence-cap-mass-incarceration>.
- <sup>xix</sup> *State v. Gwynne*, 2019-Ohio-4761.
- <sup>xx</sup> Legislative Service Commission Fiscal Note & Local Impact Statement for SB221
- <sup>xxi</sup> *State v. Gwynne*, 2019-Ohio-4761, at ¶ 77.
- <sup>xxii</sup> Kelly Lyn Mitchell, *State Sentencing Guidelines: A Garden Full of Variety*, Robina Institute of Criminal Law and Criminal Justice, University of Minnesota Law School, [https://www.uscourts.gov/sites/default/files/81\\_2\\_5\\_0.pdf](https://www.uscourts.gov/sites/default/files/81_2_5_0.pdf)
- <sup>xxiii</sup> Steven Yoder & Commentary, *New evidence says US sex-offender policies are actually causing more crime*, Quartz, December 21, 2016, [https://qz.com/869499/new-evidence-says-us-sex-offender-policies-dont-work-and-are-actually-causing-more-crime/#:~:targetText=They%20found%20that%20the%20average,per%2010%2C000%20people%20to%209.3.](https://qz.com/869499/new-evidence-says-us-sex-offender-policies-dont-work-and-are-actually-causing-more-crime/#:~:targetText=They%20found%20that%20the%20average,per%2010%2C000%20people%20to%209.3.;); quoting *The Predictive Validity of Static-99R for Sexual Offenders in California: 2016 Update*, California Department of Justice & Public Safety Canada, July 13, 2016, [http://www.saratso.org/docs/ThePredictiveValidity\\_of\\_Static-99R\\_forSexualOffenders\\_inCalifornia-2016v1.pdf](http://www.saratso.org/docs/ThePredictiveValidity_of_Static-99R_forSexualOffenders_inCalifornia-2016v1.pdf).
- <sup>xxiv</sup> See J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* 1 J.L. ECON 54, 15 (2008), <http://www.nber.org/papers/w13803.pdf>.
- <sup>xxv</sup> Steven Yoder & Commentary, *New evidence says US sex-offender policies are actually causing more crime*, Quartz, December 21, 2016; quoting J.J. Prescott.
- <sup>xxvi</sup> Bill Hardy, *HIV is not a crime*, Equitas Health, <https://equitashealth.com/blog/hiv-is-not-a-crime/#:~:targetText=The%20disclosure%20requirement%20of%20Ohio's,is%20negligible%20and%20non%20existent..>
- <sup>xxvii</sup> *Id.*
- <sup>xxviii</sup> HIV Transmission, Centers for Disease Control and Prevention, <https://www.cdc.gov/hiv/basics/transmission.html#:~:targetText=Contact%20between%20broken%20skin%2C%20wounds,is%20not%20spread%20through%20saliva.>
- <sup>xxix</sup> R.C. 2921.38(C)
- <sup>xxx</sup> Juleyka Lantigua-Williams, *Why poor, low-level offenders often plead to worse crimes*, The Atlantic, July 24, 2016, <https://www.theatlantic.com/politics/archive/2016/07/why-pretrial-jail-can-mean-pleading-to-worse-crimes/491975/>; citing Megan Stevenson, *Distortion of Justice: How the inability to pay bail affects case outcomes*, University of Pennsylvania Carey Law School, May 4, 2016, [https://www.law.upenn.edu/cf/faculty/research/details.cfm?research\\_id=14047](https://www.law.upenn.edu/cf/faculty/research/details.cfm?research_id=14047).

