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Written Testimony before the Ohio Senate, Finance Committee

Dear Honorable Sirs and Madams,

House Bill 49 in its current form is the most destructive change to Ohio's system of criminal justice proposed in over a generation. With House Bill 49, the House of Representatives chose to treat dangerous crimes as if they were misdemeanors, but lacked the courage to reclassify the wrongs committed as minor crimes. Even more dangerously the current text gives a state bureaucracy unconcerned with and lacking a specialization in justice, ongoing and increasing power to defund local courts of justice when criminals are punished for victimizing the community.

The moral hazard of taking funding authority from the Courts and handing it to the prison system is not immediately apparent without outlining the institutional history motivating the "T-CAP"/PIG program.¹

Before 1996, Ohio had a system of criminal sentencing where a judge would hand out a sentence to a criminal for a period of years, and afterwards the prison system would release the defendant long, long before the completion of that sentence. In 1996, after years of battle by victims advocates, Ohio passed a law called "Truth in Sentencing," which meant that judges issued criminal sentences, and then the criminal had to actually serve that sentence, whether the prison system liked it or not.

Crime plummeted since then and for years the public enjoyed the fruits of that policy. One wonders who would benefit from its demise, other than criminals. The answer can be found in Ohio's prison system for adults, the Ohio Department of Rehabilitation and Correction (ODRC). ODRC and its leadership do not share law enforcement's goals of public safety. In contrast, ODRC and its director Gary Mohr - who is apparently as affable as he is dangerous - represent a bureaucracy and a heavy line item on a state balance sheet. ODRC and Mohr do not like having prisoners or prisons.

Fortunately for the public, it is very difficult for a judge to look at a rape, theft, burglary, assault, or narcotics victim and proclaim that no one should be punished for victimizing them. As such, ODRC and Mohr have been on a decade-long crusade to kill Truth in Sentencing, so that no matter what a judge sentences in court ODRC can just release prisoners when they want.

The first big step was House Bill 86, which went into effect in 2011. House Bill 86 allowed the prisons to release any criminal after they served 80% of their sentence, perversely giving the most time off to the worst criminals. Director Mohr's predictions of lower crime numbers were wrong, as the bill did not reduce prison numbers, but has fueled a serious increase in crime experienced by my local community. Where there used to be 230 or so felony cases in Muskingum County a year, now we approach 450.

¹ In the legislative text, the media term "T-Cap" program is administered as the "Probation Improvement Grant" (PIG).

Having failed in his first effort, Director Mohr has now taken a lesson from a separate State bureaucracy, the Ohio Department of Youth Services (DYS). DYS, responsible for youth prisons, successfully shuttered 7 of their 10 juvenile prisons at the expense of local communities and Ohio children, using a state funding kick-back model mirrored by the T-CAP/PIG program. Bear with me and I will explain.

DYS proposed and the Ohio Legislature crafted a program called RECLAIM. RECLAIM's purpose was purported to be finding "alternatives to incarceration" for children who commit crimes. In fact, its purpose was to act as leverage in the form of a large grant from the state to local counties, requiring the hiring of additional government employees. We are all aware that the only thing more permanent than a government job is a government program. HB49 requires the same, see Lines 83783-83790.

After the first year, with RECLAIM staffed with counselors and probation officers, DYS began attaching additional strings to the funding, ultimately taking major dollars a day out of local court funding for every juvenile criminal sent to a juvenile prison. HB49 grants open authority to do the same for adults, see Lines 83649-83654. Only one component of the economy responds at a 1:1 ratio to government monetary stimulus, and that is a government agency – even when it is a court of justice.

The result? Decisions on how to deal with youth criminals became a budgetary decision rather than a question of the child's best interests and the safety of the community. I witnessed this corrosion for ten years in Franklin County, with perverse consequences for both children and victims.

RECLAIM was, at the time, the ultimate outsourcing of government costs onto future crime victims. An injustice to be sure, but 100% effective at DYS's singular purpose of shuttering prisons. Unlike Ohio's criminals who have DYS, ODRC, and their expensively-contracted academic enablers to advocate for release, Ohio victims must fight individually for justice without State funding or contracts.

The HB49 decriminalization process is to start slowly, and dishonestly. As has been openly remarked on Ohio State Bar Association discussion threads related to the topic, legislators are supposedly too cowardly to change felonies into minor crimes because they are aware that the public is revolted by decriminalizing felonious acts. So, rather than making a crime a misdemeanor and thereby making the criminal ineligible for prison, HB49 creates fake felonies. No longer will felons who break into businesses ever be eligible for prison, not even if they totally refuse to comply with probation. Same with stealing from the elderly, stealing \$7,500, operating a crack house, selling up to four-times the bulk amount of heroin, identity theft, disseminating private information off of government or hospital computers, forging documents, fencing stolen goods and many, many other dangerous and criminal acts. Lines 29198 et. seq.

The poisoned apple is a promise of cash to local courts in exchange for not giving a criminal the prison sentence he has earned. ODRC calls it "T-CAP", but it is administered as the "Probation Improvement Grant" (PIG). In the real world, we call it a bribe; a disgusting, dishonorable, and immoral act of paying someone money to refuse to do their job and uphold their oath. The PIG is ODRC's RECLAIM.

And lest any legislator believe this to be a "small" or "one time" change, I direct you to the authorizing text. Line 83649. Carte blanche to ODRC to set its PIG kick-back funding at any level, attaching any

string, so long as it claims a “purpose” of offsetting the local costs of the decriminalization. This “purpose” functions no differently than RECLAIM’s “purpose.” Those words are the dead hand of ODRC on the levers of justice in each Ohio county; a poisoned apple of addicting but ever diminishing funding in exchange for justice. They are the gag by which my county’s voters are silenced regarding the standards of behavior they expect within my community.

Fifteen lines later in the bill, one can view the future. When selling an original version of the PIG to the legislature in HB 86, local funding was set against a static standard (2010 revocations) so that counties could count on a static funding model. Line 83668 makes the standard fluid, one RECLAIM-following step at a time, and implements an ever tightening ratchet of reduced funding. Those counties that reduced probation revocations the most (by not punishing probation violators) must double-down again on their refusal to punish recidivist criminals in an ever more starved chase of ODRC kick-back scraps. They got a PIG in a poke, so to speak.

Ohioans expect more than a California-style justice system where a person is sent to jail for 90 days and released after 3 days, and where rapists get sentenced to six months and are out in three, hiding the lack of punishment from the victim and the public. In the parts of Ohio with which I am familiar, stealing \$7,000 from a person isn’t just a serious crime; it is a serious setback to one’s life. Those victims deserve justice even if the prison system doesn’t believe them to be crimes worthy of the State’s attention, and even if academics demean their victimization as illegitimate merely because it lacked violence.

Addicts will not meaningfully commit to court-ordered rehabilitation without the availability of consequences for their failure to do so. Consequences are the means by which a criminal is brought to a place where they voluntarily choose to pursue rehabilitation, and it is the choice that is the critical component to success, not the availability of treatment as an alternative to consequences. Everyone in law enforcement wishes there was an easier, wave-of-the-wand solution, but there is not.

Finally, the unsavory truth is that the criminal justice system is the means by which we, as a society, take a citizen’s liberty and lock them in a cage. There are sound reasons for which we make this choice and impose this burden. Should a judge make a determination that a citizen’s acts require incarceration for a period of one year, it would be a moral outrage of the most grotesque type if the judge also made a finding that it would save the state money to imprison him for two years and sentenced him accordingly. It is no less grotesque to have a monetary motive for reducing the sentence justice requires and victims deserve.

HB49’s criminal justice provisions have no place in the State budget. They are wide-ranging and impactful across the entire spectrum of Ohio’s criminal justice system. I ask you to excise the offending language and instead demand that sweeping changes to Ohio’s criminal justice system be addressed openly, in their own bill, and on their own merits; or at the very least honestly, by decriminalizing acts into misdemeanors, rather than creating felonies-in-name, but misdemeanors-in-fact. The electorate deserves more.

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