

OHIO PROSECUTING ATTORNEYS ASSOCIATION

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HB-49; Budget Bill Interested Party Testimony May 18, 2017

Senate General Government and Agency Review Subcommittee

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, or the sentence is imposed concurrently with another offense to be served in prison, or the sentence is authorized by an exemption under the processes specified in the bill. .

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.

Third, if the case involves treatment for drug addiction, I am told by those who do this that it is very difficult to get some defendants to participate and cooperate in the treatment process without a threat of prison time. If the person knows that the court cannot impose prison time, the incentive to seriously commit to make a real effort is lost.

Fourth, we generally disagree with the idea of adopting the Reclaim Ohio kind of process to adult felony sentencing. We believe that the courts should impose sentence based on the seriousness of the offense, public safety, the nature of the offender, and other relevant factors - we should not adopt a process that requires the court to make tradeoffs with respect to the court's budget.

We agree that many offenses now categorized as fifth degree felonies should be misdemeanors. We have opposed increasing the penalty for many 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.

We oppose these sentencing provisions. They should be removed from the budget bill.