



OHIO JUSTICE & POLICY CENTER

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To: Senate Finance Subcommittee, General Government & Agency Review

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From: Stephen JohnsonGrove, Deputy Director for Policy

Date: 23 May 2017

Re: HB 49 — DRC request — Targeted Community Alternatives to Prison

Greetings Chairman Jordan, Vice-Chair O'Brien, and members of this Senate Finance Subcommittee. I am here today to urge your support for DRC's budget request, including a robust version of the Targeted Community Alternatives to Prison (TCAP) program.

The Ohio Justice & Policy Center is a Cincinnati-based non-profit law office that works statewide to create fair, intelligent, and redemptive criminal justice systems. We are both litigators and criminal-justice policy experts. We are zealous advocates because we believe fair, intelligent, and redemptive criminal-justice reform is not only possible, it is urgently necessary in our state at this time.

Most of my comments will be drawn from the attached two-page policy brief summarizing the value of both the TCAP program and the related Senate Bill 66. I add this written testimony to highlight important sections of a report referenced in that brief, "Accounting for Violence," by Danielle Sered at the Vera Institute for Justice. Ms. Sered speaks from a deep relationship with and knowledge of crime survivors. She is the founder and director of Common Justice, the first alternative to incarceration and victim-services program in the United States to focus on violent felonies in adult courts. If—and only if—the harmed parties consent, Common Justice diverts cases such as assault and robbery into a dialogue process designed to recognize the harm done, identify the needs and interests of those harmed, and develop appropriate sanctions to hold the responsible party accountable. Remarkably, when given this options, 90% of the crime victims choose Common Justice's program instead of regular prosecution and incarceration for the perpetrator.

I highly recommend you read and digest Ms. Sered's entire report. For today's purposes, I will only offer a key quote that captures one of the central themes of her paper:



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We cannot incarcerate our way out of violence. ... On the individual level, violence is driven by shame, isolation,¹ exposure to violence,² and an inability to meet one's economic needs³ — factors that are also the core features of imprisonment. This means that the core national violence prevention strategy relies on a tool that has as its basis the central drivers of violence.

As Representative Patton suggested when questioning Director Mohr about TCAP in the House Finance Committee, sending low-level offenders prison to gives them “a master's degree in criminology, but of the wrong kind.” As you will hear from Chris Coteat of Akron today, not everyone who comes home from prison is so harmed that they cannot be an asset to their community. But why would we make it increasingly likely that the human potential of someone like Mr. Coteat would be ruined and then call that process “accountability?” How could we call that *justice*?

Conclusion: support a robust TCAP program

Thank you for the opportunity to speak to you today. I urge you to support the TCAP proposal from Director Mohr in a form that will ensure it benefits the most Ohioans.

Respectfully Submitted,

Stephen JohnsonGrove,
*Deputy Director for Policy
and Attorney at Law*

¹ James Gilligan, *Violence: Our Deadly Epidemic and Its Causes* (New York: Putnam Publishing Group, 1996).

² Li-yu Song, Mark Singer, and Trina Anglin, “Violence Exposure and Emotional Trauma as Contributors to Adolescents’ Violent Behaviors,” *Archives of Pediatric and Adolescent Medicine* 152 (1998), 531-36.

³ Albert Reiss and Jeffrey Roth, ed., “Patterns of Violence in American Society,” in *Understanding and Preventing Violence: Panel on the Understanding and Control of Violent Behavior*, Vol. 1 (Washington, DC: National Academy Press, 1993), 70 & 145, <https://perma.cc/8AMY-G4A7>.

More safety, fewer people in prison, less cost

TCAP and SB 66 are Ohio's next big step toward safety-driven criminal justice



A piece of the 2017–19 budget bill, along with Senate Bill 66, are a combined step toward a criminal justice system that prioritizes *safety over punishment for punishment's sake*. Together, these bills solidify the **Targeted Community Alternatives to Prison (TCAP)** program, created by prison director Gary Mohr. **TCAP** would reduce the number of people with the lowest level felonies coming to prison — and would provide more resources to local communities for programs and interventions that are far more effective than prisons.

WHAT'S AT STAKE

Excessive punishment costs all of us

At its root, the criminal justice system must deliver *accountability*—someone honestly answering for harm that she or he caused to other people's bodies, property, or community. The justice system must also be driven by *safety*—governmental responses to harm that protect the crime victim and the community. Crime survivors and people across the political spectrum are coming to the realization that prison is often poor at delivering either real accountability or real safety.¹

Director Gary Mohr is 43-year veteran of the Ohio prison system, from an entry-level correctional officer, to warden, to being tasked by Governor Kasich to lead the Department of Rehabilitation and Corrections since 2011. Few can match Director Mohr's passion and insight for using Ohio's criminal-justice resources wisely — and for **knowing when prison is not the right answer**. When it comes to people convicted of the lowest level, nonviolent crimes, he asks a simple question:

*"Does it make sense to spend \$68 a day sending people to prison, where they may learn more criminal skills, and be further detached from their **family, jobs, and community**, at **three times the rate** of keeping people in the community?"*

— DRC Director Gary Mohr

Ohioans know the answer. And they deserve better, which is why Director Mohr has already started piloting the **Targeted Community Alternatives to Prison (TCAP)** program in eight counties.

Darke County Judge Jonathan Hein spoke to both safety and accountability in recent legislative testimony in support of TCAP: "[R]esearchers agree... prison doesn't usually deter future criminal conduct for low-level offenders. [By increasing funding for probation staff,] TCAP will increase offender accountability.... Supervising local offenders is a local public-safety obligation."²

States getting more safety with less incarceration

Pew Charitable Trusts recently released a 50-state summary of changes in crime rates and incarceration rates over the period 2010–2015. Forty-four states experienced a crime drop during that time, ranging from -36.4% (VT) to -1.1% (CA). Thirty-five states experienced a drop in imprisonment rates, from -25.2% (CA) to -0.5% (AZ), with no correlation between the change in the crime rate (up or down) and the change in the incarceration rate.³

This data analysis backs up the National Science Academies 2014 conclusion that "over the four decades when incarceration rates steadily rose, U.S. crime rates showed no clear trend: the rate of violent crime rose, then fell, rose again, then declined sharply. **The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment** as a response to crime."⁴

Three states are particularly notable for cutting about one quarter of their prison populations while their crime rates decreased significantly. Between 1999 and 2012, New York and New Jersey cut their prison populations by 26%, even as the total of all state prison populations was increasing. At the same time, NY and NJ had 30-31% drops in their violent crime rates—more than the national drop in violent crime. Between 2006 and 2012, California cut its prison population by 23%, even as that state's violent crime rate dropped by 21% and its property crime rate fell by 13%.⁵ **Ohio, too, could be getting more safety, with fewer people in prison, at less cost.**

THE BUDGET BILL (HB 49)

TCAP = safety dollars for local communities

The crux of TCAP is funding. Director Mohr is sending an increasing portion of DRC's budget to local justice systems to make it easier to keep people with low-level offenses in more effective alternatives to prison.

Counties can negotiate a rate of \$23 – \$33 per day for each person that is diverted from prison because of the sentencing reforms described below.

In FY2018, DRC has set aside **\$19 million for TCAP** in a first round of counties; in FY2019, that **increases to \$39 million** when TCAP becomes available for all 88 counties.

Keeping people who don't belong in prison, out of prison

DRC's 2017–19 budget proposal includes some modest yet high-impact sentencing reforms:

- **Anyone sentenced for less than 12 months on a fifth degree felony (“F5”) could not be sent to state prison;**
- **Exception:** even if someone's only offense is an F5 and their sentence is less than a year, they can still go to state prison if the current offense, *or any offense in their past*, is a violent or sex offense.
- People with these lowest level, non-violent F5's could be held in a community-based correctional facility, halfway house, other local program, or jail.
- DRC projects that this provision will **reduce prison intakes by 3,400 people** each year.
- Using DRC's average cost per prisoner, taxpayers would spend over \$63 million to imprison 3,400 people for an average sentence of nine months each. By allocating \$28 per day out of DRC's budget for these same 3,400 people, **taxpayers would spend \$37 million less through the TCAP program.**

Earned credit for education

Research has demonstrated that obtaining a GED while in prison is one of the best ways for a person to avoid coming back.⁶ Based on this, the budget bill gives incarcerated people **90 days off their prison terms if they complete a GED.**

¹ See Alliance for Safety and Justice, “Crime Survivors Speak,” 5 Aug. 2016 (first ever national survey of crime survivors on their opinions about incarceration and criminal-justice policy); available at <http://bit.ly/2omXWDb>. See also Danielle Sered, “Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration,” New York: Vera Institute of Justice, Feb. 2017; available at: <http://bit.ly/2o3AAq5>

² Hon. Jonathan Hein, “Summary of Testimony in Support of Targeted Community Alternatives to Prison,” 21 Mar. 2017 (emphasis added); available at <http://bit.ly/2oIz7n0>

SENATE BILL 66

SB 66 is an essential complement to DRC's budget proposals. One of the main targets of SB 66 is probation revocations. Since at least 2012, 23% of annual prison intakes — about 4,700 people each year — are the result of *probation revocations* that were not new felonies. These are people who broke some probation rule (such as missing an appointment with their probation officer) or who committed a misdemeanor. And the current *minimum* sentence for revoked probation is one year in state prison—at a cost of \$24,763 per year. According to DRC, a rapidly growing portion of these **probation violators are rural women addicted to opioids**. Prison does little to heal their addiction or to repair whatever harm they may have caused with their crime. SB 66 goes beyond the budget with several smart-on-crime proposals:

- When someone on probation (often called “community control”) for a F4 or F5 crime violates their probation rules, this bill would **give judges more discretion to sentence people to less than a year in prison**. (Current law requires a minimum one year sentence.)
- **Allows courts** to impose a term of up to six months in a community-based correctional facility or jail as a penalty for violating a probation rule.
- **Give judges more discretion** to grant **treatment in lieu of conviction**;
- **Give judges more discretion** to **seal criminal-records** for rehabilitated people;
- Modifies the criteria for considering a prison term as a response to a parole violation and reduces the maximum length of any such prison term;
- Expands the overriding purposes of felony sentencing to include rehabilitating the offender.

³ Pew Charitable Trusts, “National Imprisonment and Crime Rates Continue to Fall,” Dec. 2016 (updated 8 Mar. 2017); available at <http://bit.ly/2o08Dzy>

⁴ National Research Council, *The Growth of Incarceration in the United States*, J. Travis, B. Western & S. Redburn, eds., 2014, p. 3.

⁵ The Sentencing Project, “Fewer Prisoners, Less Crime: A Tale of Three States,” M. Mauer & N. Ghandnoosh, 23 July 2014; available at <http://bit.ly/2okK649>

⁶ John Nuttall, Linda Hollmen & E. Michele Staley, “The Effect of Earning a GED on Recidivism Rates,” *Journal of Correctional Education*, 54:3 (Sept. 2003), pp. 90-94; available at: <http://bit.ly/2oSBCEF>