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TO: House Criminal Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: November 10, 2020
RE: Sub. Senate Bill 3 – Proponent Testimony

To Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for this opportunity to present proponent testimony on Substitute Senate Bill 3.

SB 3 is a dense but thankfully not complicated bill if we all keep in mind the crux of it is to make long overdue changes to Ohio's drug possession laws and route people to drug treatment instead of prisons.

This is accomplished via SB 3 by changing, with various exceptions, some current felony offenses of Drug Possession to a misdemeanor. Instead of prison, more Ohioans will hopefully get the help they need via a drug court and treatment in their local community.

BACKGROUND

For the committee's benefit, I have included with my testimony a document with various Drug Possession statistics and trends. The takeaways, according to the most recent data, are:

- In FY 2020, 2,272 people were sent to an Ohio prison for Drug Possession. This represents 16.3% of all FY 2020 commitments.
- Drug Possession is the number one reason people are sent to an Ohio prison. That is true not only for 2020 but for the past seven, consecutive years.
- As a percentage of people committed to prison, Drug Possession in FY 2020 was the highest it has been (16.3%) in at least the past ten years.
- Just over half the people sent to prison for Drug Possession are sent for the lowest level (5th degree) felony offense.

Together with Drug Trafficking, these two offenses fuel mass incarceration in Ohio although they are far from the only contributors.

SIGNIFICANT PROVISIONS

Because the following are sometimes overlooked, the committee should be aware of at least these two positive provisions that further strengthen SB 3:

Definition of “technical violations”

In Ohio, approximately 20% of our prison population at any given time consists of people locked up for a “technical violation” i.e. a violation of a supervision condition imposed upon them that is not its own criminal offense. This issue itself is long overdue for meaningful reform. A good first step is establishing a common definition and SB 3 provides one.

Data collection

Adequate data collection and reporting regarding Ohio’s criminal justice system has not yet been realized. In recognition of this, SB 3 tasks the Ohio Criminal Sentencing Commission with specifically studying and reporting on the effects of SB 3 after it is enacted.

SUGGESTIONS FOR FURTHER IMPROVEMENT

Suffice to say, the ACLU of Ohio has a host of suggestions to improve SB 3. We also do not wish to delay any further SB 3’s passage this session so my goal is not to do so. Still, if SB 3 will be further amended and as others make suggestions and requests, we briefly offer these three:

Retroactivity

So many of your constituents, for so many years, have been impacted by Ohio’s drug laws. They also need the relief SB 3 provides and this can be done by making SB 3 retroactive. That is, to apply in such a way that past felony convictions, now covered by SB 3, will not impact their employment, housing, education, and the other effects of being saddled with a felony record.

Expand eligibility

Currently, SB 3 does not apply to those with 2+ offenses in the past 3 years. In other words, it is designed to primarily help those with first offenses. Given the widespread and ongoing drug problems in Ohio, we want SB 3 to provide maximum help to those in need.

Fentanyl-related offenses

In Ohio, we treat any drug, or even non-drug, substance with any amount of fentanyl as all fentanyl. Last session, the General Assembly passed Senate Bill 1. SB 1 dramatically increased fentanyl penalties for even the smallest amounts. SB 3 currently does not apply to those with fentanyl offenses. Because it does not, a large number of people needing assistance will be unnecessarily and automatically disqualified from SB 3's sentencing benefits.

IMPORTANCE OF THIS SESSION

Having worked on this issue for many years inside and outside the Statehouse, I know opportunities in the General Assembly for bills like SB 3 are not common. Because of that, Ohio often remains a lonely island in a sea of bipartisan reform across the country.

The last time the OGA considered a bill with the potential impact of SB 3 was House Bill 86, which took effect all the way back in September 2011. Like SB 3, HB 86 addressed certain categories of Drug Possession convictions with the goal to get people help and keep them out of prison. As you saw from the data I provided about Drug Possession and Ohio prison numbers, much improvement is still needed.

SB 3 represents an immense amount of work for, and advocacy by, members of this body, their staff, numerous stakeholders, and local, state, and national advocates from across the political and ideological spectrum.

But, too many times, bills that do not cross the finish line during lame duck must await reintroduction the following session. However, priorities for busy legislators can and do change. Many other factors can lead to a bill not being reintroduced or it is significantly changed from its previous version.

The ACLU of Ohio's top priority is to provide whatever help and assistance we can to this committee to pass SB 3 this session. Please do not hesitate to contact me directly (gdaniels@acluohio.org) with any questions, requests, or further discussion.

Likewise, you will soon be hearing from other organizations and people across Ohio, including those who directly benefit from these changes, to encourage your support. The sooner we can all contribute to positive change the sooner people are helped.

The ACLU of Ohio asks for this committee's support in passing Substitute Senate Bill 3.

**Addendum (Page 1-3) to Sub. SB 3 Testimony – House Criminal Justice Committee – 11/10/20
from Gary Daniels, Chief Lobbyist, ACLU of Ohio**

DRUG POSSESSION - DRC COMMITMENT DATA

Data available here - <https://drc.ohio.gov/reports/commitment>

NOTE: Data broken down by felony level exists via DRC website for only CY 2019 & 2018.

DRUG POSSESSION COMMITMENTS - ALL

YEAR	TOTAL	% TOTAL	F1	F2	F3	F4	F5
CY 2019	2,608	15.47	98	266	661	141	1,442
CY 2018	2,469	14.03	97	245	449	171	1,507
CY 2017	2,738	14.70					
CY 2016	2,926	14.71					
CY 2015	2,728	13.75					
CY 2014	2,426	12.12					
CY 2013	2,268	11.05					
CY 2012	2,179	10.84					
CY 2011	2,213	10.70					
CY 2010	2,694	11.62					

DRUG POSSESSION COMMITMENTS - MEN

YEAR	TOTAL	F1	F2	F3	F4	F5
CY 2019	2,037	89	209	545	115	1,079
CY 2018	1,926	91	202	364	140	1,129
CY 2017	2,068					
CY 2016	2,238					
CY 2015	2,086					
CY 2014	1,929					
CY 2013	1,778					
CY 2012	1,739					
CY 2011	1,771					
CY 2010	2,147					

DRUG POSSESSION COMMITMENTS - WOMEN

YEAR	TOTAL	F1	F2	F3	F4	F5
CY 2019	571	9	57	116	26	363
CY 2018	543	6	43	85	31	378
CY 2017	670					
CY 2016	688					
CY 2015	642					
CY 2014	497					
CY 2013	490					
CY 2012	440					
CY 2011	442					
CY 2010	547					

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DRUG POSSESSION - DRC COMMITMENT DATA – COMPARING CY YEARS 2019-2010

Data available here - <https://drc.ohio.gov/reports/commitment>

Calendar Year // Rank re: all commitments // Total of all // Percentage of all

YEAR	RANK	TOTAL	% OF ALL
2019	1	2,608	15.47%
2018	1	2,469	14.03%
2017	1	2,738	14.70%
2016	1	2,926	14.71%
2015	1	2,728	13.75%
2014	1	2,426	12.12%
2013	2	2,268	11.05%
2012	2	2,179	10.84%
2011	2	2,213	10.70%
2010	1	2,694	11.62%

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DRUG POSSESSION - DRC CENSUS DATA

Jan 2011-Jan 2020 Comparison

Data available here - <https://drc.ohio.gov/reports/institution-census>

NOTE: Over the course of the 10 years analyzed below, there have been 3 different mechanisms/standards for sentencing people for Drug Possession (among other offenses). They are 1) Before SB 2 ("B42"), 2) Under SB 2 ("SB2"), 3) Under HB 86 ("HB86"). This data is also divided by men/women.

YEAR	TOTAL	% TOTAL	MEN	B42M	SB2M	HB86M	WMN	B42W	SB2W	HB86W
JAN 20	3,005	6.18	2,546	0	119	2,427	459	0	6	453
JAN 19	2,681	5.49	2,246	0	152	2,094	435	0	10	425
JAN 18	2,688	5.43	2,260	0	200	2,060	428	0	20	408
JAN 17	2,858	5.67	2,389	0	281	2,108	468	0	33	435
JAN 16	2,693	5.33	2,238	1	401	1,837	454	0	45	409
JAN 15	2,495	4.94	2,146	1	620	1,526	348	0	72	276
JAN 14	2,435	4.82	2,101	1	1,035	1,066	333	0	130	203
JAN 13	2,429	4.88	2,097	0	1,577	520	332	0	226	106
JAN 12	2,547	5.08	2,223	0	2,223	X	324	0	324	X
JAN 11	2,869	5.65	2,493	1	2,492	X	376	0	376	X

Over the past 5 years, Drug Possession ranks here among offenses for which people are incarcerated in Ohio prisons:

YEAR	RANK
JAN 2020	#6
JAN 2019	#8
JAN 2018	#8
JAN 2017	#7
JAN 2016	#7