



THE BUCKEYE INSTITUTE

Strengthening Drug Sentencing Reform

Proponent Testimony
Ohio House Criminal Justice Committee
Senate Bill 3

Robert Alt, President & CEO
The Buckeye Institute

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Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the Committee, thank you for the opportunity to testify again today regarding drug sentencing reform and the new substitute Senate Bill 3.

My name is Robert Alt, and I am president and CEO of **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

Thank you for all of your hard work on Senate Bill 3. Although we continue to support the version of Senate Bill 3 as passed by the Senate, the new substitute Senate Bill 3 nevertheless constitutes a substantial reform of Ohio’s current drug sentencing law that we hope earns broad consensus. The substitute bill furthers the core purposes of Senate Bill 3 by utilizing evidence-based sentencing practices, shifting individuals suffering from addiction into treatment rather than incarceration, and removing the felony stigma from those battling addiction. Notably, the substitute bill strengthens the presumption of treatment, which serves the underlying goals of this legislation. By removing the presumption of prison for third-degree felony drug offenses, the substitute bill takes an evidence-based approach to the crimes, recognizing that some offenders in this category would benefit more from treatment than incarceration, and granting judges the discretion to make those determinations.

The Presumption of Treatment

The core purposes of Senate Bill 3 are to ensure that drug possession offenders in need of treatment receive it and to ensure that such offenders are not saddled with a felony conviction for the rest of their lives. Senate Bill 3 presumes an individual struggling with drug addiction will be sentenced to treatment and makes incarceration a careful exception to this general rule.

Under the substitute bill, the general presumption of treatment can only be rebutted if an offender signs a statement stipulating an unwillingness to participate in treatment or based upon the results of a validated risk assessment tool. The risk assessment provision could be improved by requiring a judge to find—based upon the risk assessment—a substantial likelihood of future violence against persons rather than more general risk. Tailoring this rebuttable presumption to an offender’s amenability to treatment and the offender’s threat to the community is a wise calibration to ensure that those in need of and desiring treatment receive it and that Ohio’s communities are kept safe from those offenders who pose a danger.

This latest version of Senate Bill 3 would also give judges the discretion to sentence an offender who is unwilling to go to treatment or has a serious criminal history based upon a validated risk assessment tool to either prison or jail, but would mandate prison if the offender’s local jail is 90 percent full. A better approach would provide judges with the discretion to sentence possession offenders to prison only if their local jail is 90 percent full, thereby keeping the sentence consistent with Ohio’s general and sensible requirement that individuals sentenced to less than one year of incarceration should not be sent to prison.

Rehabilitating possession offenders through a community-based sanction rather than in prison has been a longstanding aim of smart criminal justice reform in Ohio. Sixty of Ohio's 88 counties participate in the Targeted Community Alternatives to Prison (T-CAP) program and already agree not to send low-level drug possession offenders to prison. Senate Bill 3 would allow these participating counties to use T-CAP funds for the new unclassified misdemeanor offenses. There is no reason to provide judges with the discretion to send an offender to prison unless it is demonstrated that the local jail is overcrowded.

Drug Trafficking Offenses

The new substitute version of Senate Bill 3 would revert all of Ohio's first-, second-, and third-degree felony drug trafficking offenses back to the quantities specified in current law. But benchmarking drug trafficking quantities based on current law—which lacks a strong evidentiary basis—is a very serious mistake. Instead, this Committee should consider the Ohio Criminal Justice Recodification Committee's expert recommendations as the better benchmark—as previous versions of Senate Bill 3 have done.

The Recodification Committee's expert recommendations would substantially alter the quantities of drugs for third-degree felony offenses. Senate Bill 3's changes to third-degree felony thresholds, in particular, are based upon the reality that there are often middlemen who distribute or transport drugs in order to feed their own drug addiction, but are otherwise not engaged in high-level drug trafficking operations. Adjusting the threshold quantities for such offenses would ensure that Ohio's judges have maximum discretion to sentence middlemen differently than high-level traffickers who are in the business of dealing drugs.

The substitute bill does preserve an important element of Senate Bill 3 by removing the presumption of prison for third-degree felonies, and for quantities of narcotics consistent with third-degree felonies in the version of Senate Bill 3 passed by the Senate, but still keeping a nine- to 36-month prison sentence available for circumstances under which a judge considers a significant prison sentence to be the proper punishment. By removing the prison presumption for third-degree felonies and for trafficking offenses with quantities up to those contained in Senate Bill 3 as passed by the Senate, the proposed substitute bill ensures that judges can sentence middlemen in serious need of drug treatment to treatment, rather than incarcerate such offenders.

Conclusion

Senate Bill 3 is tailored to ensure offenders in need of drug treatment receive it and offenders posing a serious threat to Ohio's communities through predatory drug trafficking are held accountable for their actions. The new substitute bill would bring together a wide range of bipartisan supporters by taking the aforementioned steps of strengthening the presumption for treatment, and removing presumptions for prison.

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