Ohio Prosecuting Attorneys Association

Louis Tobin
Executive Director
House Bill 96
Interested Party Testimony
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Chairman Stewart, Vice-Chair Dovilla, Ranking Member Sweeney and Members of the House Finance Committee, thank you for the opportunity to offer written testimony on several items in House Bill 96 that are of importance to Ohio prosecutors.

R.C. 109.39 (Attorney General – Special Prosecutor)
The House version of the budget creates section 109.39 of the Revised Code to authorize the attorney general to appoint a special prosecutor for the purpose of prosecuting offenses committed in facilities operated by ODRC.

Our Association opposes efforts to dilute county prosecutor authority in this way. The authority to prosecute felony offenses in Ohio has always resided at the local level with the county prosecutor. The attorney general has only ever become involved at the request of a county prosecutor who is requesting assistance. This is how it should be. The county prosecutor is more in tune with and more accountable to the community in which the crime has occurred. Removing prosecutorial authority from that community and vesting it in a statewide office reduces accountability for the outcome of the case and reduces the incentives to see that justice is done and the community's safety is promoted. For these reasons alone we oppose this provision of House Bill 96 and ask that it be removed from the bill.

In addition to the policy concerns with this approach, there are practical problems with the way this provision is drafted. It vests the attorney general with authority that the county prosecutor already has, seemingly creating concurrent authority to prosecute these cases. This creates the potential for serious conflicts between the special prosecutor and the county prosecutor. What happens, for example, when a special prosecutor and the county prosecutor both want to prosecute the case? What happens when they have different views of what charges to bring? What happens when the county prosecutor wants to prosecute a case and the special prosecutor does not, or vice versa? Whose decision is the final decision? Is one prosecutor given the authority to review and overturn the other's decision to charge someone or not charge someone? Is the special prosecutor appointed on a case-by-case basis or on an ongoing basis to review any crime that occurs in a DRC facility? None of this is clear from the unvetted language of this amendment.

This is another reason why one prosecuting authority, the county prosecutor, is vested with these decisions in Ohio. The Attorney General has never been a reviewing body for prosecutor charging decisions in this

state and we should not open the door to that now without more explanation for why this needed, more vetting of the language and more debate.

We request that this change be removed from House Bill 96.

R.C. 2929.12, 2929.15, 2929.25

These sections are amended to prohibit a court from imposing a condition of release under a community control sanction that requires an offender who has pleaded guilty by entering an Alford plea to otherwise admit guilt for the offense.

This will tie the hands of courts that wish to sentence offenders to community control sanctions that includes programming to address their behavior. Some of these programs require participants to admit that there was a victim or acknowledge the existence of a victim. For example, in *State v. Birchler*, 2000 Ohio App. LEXIS 4622, the offender had been charged with rape, kidnapping, and GSI and eventually entered an Alford plea to the lessor included offense of assault. The court imposed community control with a condition that the appellant obtain sex offender counseling. The appellant was then terminated from sex offender counseling when he refused to admit that he had a victim, a requirement of the program. Accordingly, the court revoked his probation. The Court of Appeals reversed because despite appellant being informed that he would have to obtain sex offender counseling, he had not been given notice that he would be required to admit specific criminal conduct or that there was a victim of such conduct when the Alford plea was accepted.

Or *State v. Hughes*, 2003-Ohio-3449, where the defendant entered an Alford plea to attempted GSI and sexual battery involving his stepdaughter. Upon judicial release, the offender was placed on community control and ordered to complete a sex offender program that required participants to admit the offense and acknowledge the existence of a victim. The offender would not do this and his community control/judicial release was revoked and he was ordered back to prison for the remainder of his sentence. In this instance, the Court of Appeals upheld the trial court decision finding it sufficient that the trial court informed the offender that he would be required to complete the sex offender program. They did not think it necessary for the trial court to "detail the minutiae of the program's requirements."

The changes to these sections appear to prohibit these types of sentences. This could enable offenders who have acknowledged that there is enough evidence for conviction to avoid some of the consequences and treatment requirements of a plea making it difficult to hold them accountable and more likely that they will recidivate. Alternatively, it may make judges more likely to forego a community control sentence altogether and simply sentence the person to prison.

These changes should also be removed from HB 96.

Thank you for your attention to these matters.