



Ohio Prosecuting Attorneys Association

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House Bill 211
Written Opponent Testimony
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Chairman Thomas, Vice-Chair Swearingen, Ranking Member Synenberg and members of the House Judiciary Committee, thank you for the opportunity to provide written opponent testimony to House Bill 211 that would elevate a single characteristic of felony offenders - their status as the primary caretaker of a child - above all other characteristics for purposes of felony sentencing and intervention in lieu of conviction. We have the following concerns with this legislation.

First, felony offenders are already authorized by R.C. 2929.19(A) to present to the court, at sentencing, any information that they feel is relevant to the imposition of sentence in the case. As such, defendants are free to tell the court that they are the primary caretaker of a child. Division (B) of the same statute requires the court to consider the information so presented before imposing sentence. The statute affords the same opportunity to present relevant information to the prosecutor, the victim, and, with the approval of the court, *any other person*, which could allow even an offender's child to present information to the court. Additionally, presentence investigation reports already inquire into an offender's social history including their family background. This gives the offender, the state, the victim and the court all the flexibility they need to present and consider information regarding the offender's status as the caretaker of a child. It is simply not necessary to single out one characteristic for special consideration, especially when it may be wholly unrelated to the underlying criminal activity. Proponents have presented no evidence that courts do not already consider this factor when appropriate.

Second, while we recognize that the legislation is ostensibly neutral in terms of whether the defendant's status as the caretaker of a child is a mitigating factor or aggravating factor, the proponent testimony clearly indicates an intent for this to be a mitigating factor weighing in favor of more lenient sentencing (i.e. community control or intervention in lieu of conviction over imprisonment) for felony offenders who happen to be the parent of a child. One proponent even recommended that the committee "clarify" that caregiver responsibilities "be considered as a mitigating factor during sentencing." Another proponent states that they "support strategies that reduce costly reliance on incarceration" and that the "dramatic disruption of incarcerating someone at the center of a child's world can negatively impact that child's life."

The legislation is clearly intended to reduce accountability for crime for offenders who are the primary caretaker of a child so that person can maintain the relationship with the child. Involvement with the criminal justice system and incarceration can certainly be disruptive to family and other

relationships. The proponents, however, seem to argue that we should not incarcerate the primary caregivers of children because it leads to bad outcomes for the child. But bad outcomes for these children could just as well be due to the fact that the child is being raised by someone who is engaged in felony criminal activity in the first place and who is modeling that behavior. Reducing accountability and encouraging leniency could in fact endanger children by leaving them in the care of an adult who has been convicted of drug possession or drug trafficking, domestic violence, endangering children, sexual assault, or any number of other crimes. Holding a parent who is committing felony offenses accountable through incarceration could very well be beneficial to a child whose living situation could become less dangerous and who will no longer be a witness to criminal activity.

Our Association shares the sponsors' concerns about the well-being of Ohio children. We disagree that House Bill 211 is an appropriate policy to improve that well-being. Prioritizing an offender's parental status over other factors that may be more closely tied to an offender's dangerousness or risk of recidivism could ultimately put children in harm's way. For these reasons we are opposed to House Bill 211 and encourage the defeat of the measure.