

Summary of Testimony in Support of Targeted Community Alternatives to Prison

Chairman Oelslager, Vice-Chairwoman Manning, Ranking Member Skindell and Members of the Senate Finance Committee. My name is Judge Jonathan Hein and I am the Presiding Judge in Darke County. It is my pleasure to speak on behalf of the proposal known as Targeted Community Alternatives to Prison (TCAP), which would prohibit the imprisonment of non-violent, non-sex offense felony 5 level offenders. Here is a summary of my perspectives.

This proposal should not be a surprise. Since the passage of H.B. 86 in 2011, the emphasis on community corrections has been obvious. Most research supports the proposition that severity of punishment does not act as a deterrent to future criminal conduct nor does it solve the underlying social problems for most low-level social crimes; the best deterrent is the certainty of being held accountable for unlawful conduct. TCAP meets this objective.

Prison doesn't usually deter future criminal conduct for low-level offenders. The mistaken impression is that prison deters future criminal behavior. However, almost every judge will tell you they sentence repeat low level offenders (to whatever sanction seems appropriate) even after serving prison time. Learned researchers will agree, frequently citing short terms of imprisonment which are not conducive to rehabilitation. For example, see www.tasc.org and www.attcnetwork.org/greatlakes. TCAP encourages local supervision for periods of time long enough to address the root of criminal behavior:

TCAP provides more alternatives to judges. As a result of being the 2014 President of the Ohio Common Pleas Judges Association, it was my pleasure to know most of the General Division judges of Ohio. It is common for judges to explain that they continually lose sentencing alternatives and discretion; many expect TCAP to exacerbate this phenomena. However, to the contrary, TCAP will (eventually) lead to local creative solutions to address the underlying social problems that lead to low-level crimes. The current prison scheme is a one-size-fits-all solution to problems too complex to solve by that means. TCAP and its related funding will allow local communities to develop and implement those alternatives.

TCAP works in Darke County. Following enactment of H.B. 86, Darke County received one of the first rounds of Probation Improvement & Incentive Grants funding. The objectives were to reduce prison sentences for F4 and F5 level offenses. At its peak in 2006, Darke County sent 96 offenders to prison (88 for F3,4,5's). As Justice Reinvestment philosophies were being presented, the number decreased in 2010 to 49 total imprisonments (29 for F3,4,5's). For FY 2016, there were 37 total prison sentences (17 F3, 4 F4 and 3 F5's). By developing local treatment

alternatives and accompanying them with increased accountability, including short-term jail time, the spirit of H.B. 86 – and the mandates of TCAP – can be accomplished. And there is a trickle-down effect for higher degree offenders as shown by Darke County statistics; more community options often translate into fewer prison sentences for higher degree felonies. Importantly, criminal case loads have remained the same in spite of the opiate tsunami.

Sentencing is not just a judicial event. Yes, judges impose sentences within the ranges set by the legislature. (Thus, I believe that there is no separation of powers problem with TCAP if established by the Legislature.) However, the consequences of sentencing decisions affect all aspects of the local community. TCAP encourages all these stake-holders to implement solutions they believe to be necessary and viable. Since 2014, the Healthy Darke County Coalition (www.healthydarkecounty.org) has been working to bring these stake-holders together to reach collaborative solutions to housing, education, employment, sobriety, work ethic, employment skills and other values favored in this community. These stakeholders include representatives from the hospital, physicians, first responders, church leaders, law enforcement, ADAMHS, Chamber of Commerce, courts, probation, industry, JFS, etc. Progress is being made to reduce the criminogenic factors often causing low-level crime, whether felony or misdemeanor levels. Funding associated with TCAP will allow implementation of collaborative solutions – and not simply for the felony level offender.

Local sanctions are not “soft on crime.” For years, the “tough on crime” mantra was widely accepted by the public. As a former Prosecuting Attorney and Assistant Prosecutor for 14 years, I understand. However, the recent “smart on crime” philosophy is starting to gain even more acceptance, especially since it includes increased accountability. Since 2011 and H.B. 86, this Court’s probation department has increased drug testing and the frequency of offender contacts – both in the office and on the streets. Length of supervision has increased, often based on time necessary to complete education and job training programs. Some offenders would rather do the jail or prison time to be done with supervision and get back to old habits; this is not tolerated locally and should not be permitted. TCAP provides a state-wide incentive for being “smart on crime.”

TCAP does not necessarily lead to increased jail populations. It is easy to believe that local jails will bear the brunt of F5 sentencing decisions. Until the sentencing emphasis changes from warehousing to rehabilitation, local jails will likely feel the pressure. However, as judges continue learning to manage the jail population with TCAP options, this pressure will eventually decrease. Many colleagues have been implementing TCAP concepts with funding provided by Probation Improvement and Incentive Grants. In Darke County, jail sentences are often imposed but usually for shorter terms; this serves as a motivation to attend rehabilitation. (Local jail sentencing also drives home the economic cost of long term warehousing since it is seen in local budgets and read in local newspapers... a sight many judges don’t consider. I guess my economics and public administration degrees are showing.)

TCAP will increase offender accountability. My personal opinion based on anecdotal observations over 18 years is that most local probation departments in Ohio are understaffed. It was historically easy for local courts to accept state parole services as an alternative to probation

departments. However, since such funds in recent years have decreased or been shifted to parole supervision, counties have not increased their funding. Obviously, most Boards of County Commissioners would like someone else to pay the cost of supervising local offenders. However, it has been apparent over recent state budget cycles that this cannot continue. Supervising local offenders is a local public safety obligation - like all first offender services – and should be prioritized by county funding. Darke County has increased its probation staff from 4 employees in 2008 to 6 employees in 2010 to 10 employees in 2017 to meet the expectations of more local supervision, accountability and treatment. Counties who have not increased staffing will need to do so. TCAP funding demonstrates the state’s partnership in this process.

Don’t make public policy based on the exception to the rule but on the greater good.

Finally, I am sure that every opponent of TCAP can relate one case where the facts warrant prison for a low-level offender. I could do the same. However, these exceptional cases should not drive the public policy debate. It is easy for everyone to continue the same methods, but equally insane to think there will be different results. Instead, major change is necessary. TCAP will implement a better long-term solution to reducing prison population by increased emphasis on local community solutions that get to the root of criminogenic behavior. Admittedly, TCAP will cause strife in the short-term; implementing these philosophies in Darke County since 2011 has not been easy and we have not yet arrived at the destination. However, in the long term, our community will be better off for investing in solutions to the cause of criminal behavior than merely sending offenders away for a short prison hiatus until they return with their same criminogenic problems.

Thank you for your willingness to consider my perspectives and for your service to the public in the Legislature.

Sincerely,

Jonathan P. Hein, Judge