



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Support of SB3 Drug Sentencing Law Reform Sponsor Senators Eklund and O'Brien

Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee. My name is Tim Young. I am the State Public Defender. Thank you for the opportunity to testify as a proponent of SB3 on behalf of the Office of the Ohio Public Defender.

Ohioans are imprisoned for drug offenses more than any other offense.¹ According to data from the Ohio Department of Rehabilitation and Corrections, roughly 3000 individuals are in prison for drug possession.² That is enough people to fill approximately two prisons. Of those individuals, over 1300 are incarcerated for low-level drug possession – amounts that are for personal use only.³ Unequivocally, the war on drugs is a failure. Opioids, meth, and cocaine continue to ravage Ohio. It is clear that Ohio will not incarcerate its way out of this crisis. We need a new approach, and SB3 is that approach.

Ohio should make low-level drug possession a misdemeanor offense. Imprisoning addicts has done nothing to combat Ohio's drug crisis. Addiction is an illness, and Ohioans with addiction issues are suffering and need treatment. Incarceration is more expensive and, more importantly, less effective than treatment.⁴ Treatment reduces the demand for drugs, incarceration does not. It is also important for recovery that individuals suffering from addiction stay in their communities with the positive influences in their life that make them want to get clean and stay clean.⁵ Addiction experts have repeatedly found that treatment is the most effective when individuals can maintain their pro-social support systems, meaning individuals

are able to keep their jobs, housing, and maintain personal family relationships. Imprisoning these individuals for a felony offense destroys their pro-social support systems by removing them from the community, the support of family, and makes it more likely they will relapse upon release. Further, incarcerating people who suffer from addiction makes Ohio more dangerous. The data shows that when these individuals are released from prison without a support system they are more likely to commit a violent offense and/or overdose. Ohio should stop wasting resources and make low-level possession offenses misdemeanors. Making possession a misdemeanor will facilitate those who struggle with addiction getting treatment in their own communities.

Some may have concerns about what will happen if Ohio passes SB3. These fears are not based in fact and are not supported by the data and research. To address those fears and assist the legislature, we want to provide you with data and research – not anecdotes. Perhaps the most prolific misconception is that making possession a felony deters use. This is unequivocally false. The threat of prison does not reduce the demand for drugs. The research is conclusive that drug use is not deterred by harsher penalties.⁶ It has also been said that reclassifying drug possession to a misdemeanor will cause Ohioans to perceive drug use as not dangerous. Domestic violence, assault, and OVI are misdemeanors yet Ohioans do not perceive the offenses as safe or acceptable. Reducing low-level possession to misdemeanors will not encourage dangerous behavior. In fact, when Portugal decriminalized drugs, not reduced the penalty – but completely decriminalized drugs, Portugal’s overdose rate dropped to one-tenth of its previous rate.⁷ They saw a huge reduction in dangerous behavior.

It has been suggested that West Virginia has the highest rate of overdoses because possession is a misdemeanor in that state. It is important to note that 19 states have classified



possession as a misdemeanor (all 19 include first-time possession, some states include additional instances of possession).⁸ Five states have made all possession offenses a misdemeanor.⁹ If making drug crimes misdemeanors increases overdoses, then all 19 of those states should have the highest overdose rates. However, Ohio, where possession is still a felony, has the second highest rate of overdose.¹⁰ The argument that misdemeanor classification increases overdose rates is without factual support and lacks merit.

It is worth repeating that 19 other states have made possession a misdemeanor. The sky has not fallen in any of those states. They have not become lawless wastelands that opponents of SB3 fear Ohio will become. The nation is moving in this direction because the research and data are clear and conclusive.

I also want to address the argument that Ohio should decline to reclassify possession because that is not the way we are currently handling possession cases. The way we have always handled drug possession is wildly ineffective. It is time for Ohio embrace substantive reform. Some have argued against reclassifying low-level possession because addiction services and supervision are not set up in common pleas court for misdemeanors. For no other offense does Ohio classify the crime based on where the services are currently located. The services should follow the crime. Ohio is a great state that is more than capable of embracing reform and aligning our services to meet the needs of Ohioans struggling with addiction. Possession should be a misdemeanor. I am confident in Ohio's ability to provide effective drug court programs and supervision in common pleas courts.

Similarly, it has been argued that SB3 should be defeated because it will result in overcrowding at local detention facilities. This is another attempt at fear mongering that is without merit. First, SB3 reclassifies fourth- and fifth-degree felony possession offenses. These



low-level felonies are already incarcerated in local detention facilities pursuant to the Targeted Community Alternatives to Prison program (TCAP), so SB3 will not result in an increased burden in those local detention facilities. Additionally, SB3 will reduce the number of people incarcerated overall in local facilities for drug possession because the offense carries a presumption the penalty will be treatment, not incarceration. Finally, the Ohio Supreme Court recently changed the rules regarding pretrial incarceration. While the amendments did not go far enough, they will hopefully reduce the number of people taking up beds in local facilities pretrial because they cannot afford their bail. This is simply another attempt to sabotage the bill not based in fact.

As written, SB3 offers a compromise to keep misdemeanor possession in common pleas court. However, some claim that common pleas judges should not hear misdemeanors. Judges hear those offenses now, we just call them felonies instead of misdemeanors. Public policy should be directed by data and research – it should not be dictated by the level of ease with which a step might be accomplished. If Ohio declines to pass SB3 because reform might be hard, we are doing a disservice to the people of this great state who are looking to this legislature for leadership and assistance.

The Office of the Ohio Public Defender encourages you to pass SB3. In terms of criminal justice reform and fighting the opioid epidemic, Ohio is getting left behind, and its citizens are suffering. Addiction is not being treated and families are paying the price. The time has come for this legislature to take a bold step. A step that will save lives and improve the entire state. SB3 is that step. Thank you for the opportunity to testify today. I am happy to answer questions at this time.



¹ Schladen, Marty, *Ohio's Issues 1 Diagnosed A Prison Problem, But Solutions Complicated*, The Columbus Dispatch, December 3, 2018, citing Ohio Department of Rehabilitation and Corrections data

² Ohio Department of Rehabilitation and Corrections 2020 Census

³ Ohio Department of Rehabilitation and Corrections 2020 Census

⁴ *Drug Rehab Instead of Prison Could Save Billions*, Foundations for Recovery Network, <https://www.dualdiagnosis.org/drug-rehabinstead-of-prison-could-save-billions-says-report-2/>; citing Zarkin, G., Cowell, A., Hicks, K., et.al. *Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders from State Prison*, Sage Journals, August 1, 2015; see also *Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Cost*, RTI International, Newswise, January 9, 2013

⁵ McVay, Doug, Schiraldi, Vincent, Ziedenberg, *Treatment or Incarceration*, Justice Policy Institute, January 2004; *Drugs and Crime*, National Council on Alcoholism and Drug Dependence, April 29, 2014, <https://www.ncadd.org/about-addiction/addiction-update/alcohol-drugs-andcrime?highlight=WyJkcVncylslmRydWdzJylslmNyaW1lllO=>

⁶ *More Imprisonment Does Not Reduce State Drug Penalties: Data show no relationship between prison terms and drug misuse*, The Pew Charitable Trusts, March 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>; 2014 research by Peter Reuter at the University of Maryland and Harold Pollack at the University of Chicago found that heavy police enforcement and extended prison sentences do not effectively stop the flow of drugs and drug use. Economist at Columbia and the University of Michigan found that the threat of longer prison sentences does not reduce crime. The National Institute of Justice found that "severity of punishment does little to deter crime."

⁷ AG Conference Speaker: Ohio Should Emulate Portugal's Drug Policy Experimentation, Hannah News Service, January 16, 2018 <http://www.hannah.com/DesktopDefaultPublic.aspx?type=hns&id=20854>

⁸ 50 State Low-Level Drug Possession Review, Ohio Criminal Sentencing Commission, <https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/50StateDrugPossessionReview.pdf>

⁹ Id.

¹⁰ 50 State Low-Level Drug Possession Review, Ohio Criminal Sentencing Commission, <https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/50StateDrugPossessionReview.pdf>





DRUG REFORM

Myths & Misconceptions v. Facts

M&M	OPAA asserts that reducing drug possession offenses to misdemeanors reduces the perceived dangerousness of a drug.
FACT	<ul style="list-style-type: none">• Domestic violence and OVI are misdemeanors, and there is no perception that these behaviors are safe or acceptable.• When Portugal decriminalized drugs, the overdose rate dropped to one-tenth of its previous rate.¹
M&M	It is claimed that West Virginia has the highest rate of overdose because possession is a misdemeanor.
FACT	Ohio, where drug crimes are still felonies, has the second highest overdose rate. ² If making drug crimes misdemeanors increases overdoses, then the other 19 states in which first-time possession is a misdemeanor should rank above Ohio. ³
M&M	It is purported that making possession is a felony deters use.
FACT	The research is conclusive that drug use is not deterred by harsher penalties. ⁴
M&M	It has been opined that incarcerating addicts saves their lives.
FACT	<ul style="list-style-type: none">• Drugs and alcohol are the most seized contraband in Ohio prisons.⁵• Community-based treatment works; incarceration does not.⁶• Individuals released from prison are at a higher risk of overdose.⁷
M&M	OPAA claims that a report found that reclassifying drug possession to a misdemeanor in California caused an increase in violent crime.
FACT	That report actually found “no evidence that violent crime increased as a result of Proposition 47. While California saw an uptick in the violent crime rate from 2014 to 2016, the trend appears to have preceded the reform and is due in large part to unrelated changes in crime reporting after 2014.” ⁸



M&M	OPAA contends that a report found that reclassifying drug possession to a misdemeanor in California caused an increase in auto theft and larceny.
FACT	<ul style="list-style-type: none"> • Proposition 47 also reclassified check forgery, receiving stolen property, shoplifting, theft, and writing bad checks under \$950 to a misdemeanor.⁹ • Increases in the rate of auto theft resulted from California's Realignment reform that passed in 2011, and not Proposition 47.¹⁰ • While California has seen an increase in auto thefts and larcenies, those increases are more likely related to the reclassification of property crime laws and not drug possession laws. • Despite this increase, crime rates in California "remain near historic lows."¹¹
M&M	Many have asserted that Ohio cannot afford to reclassify misdemeanors.
FACT	<ul style="list-style-type: none"> • Treatment is cheaper than incarceration.¹² • It is estimated that Proposition 47 saves California \$69 million annually.¹³ • The 19 other states in which first-time possession is a misdemeanor have not suffered economically when reclassifying drug offenses.
M&M	It is alleged that reclassifying F4 and F5 possession to a misdemeanor will end drug courts.
FACT	<ul style="list-style-type: none"> • California saw only a 12% reduction in drug court participation.¹⁴ • The reduction in participation allowed California to successfully open drug courts to more individuals with previously barred offenses.¹⁵ • Fewer people in drug court does not mean fewer people in treatment. In 2016, because of savings from Proposition 47, California transferred \$67 million to community-based treatment programs.¹⁶

¹⁴"Ohio Should Emulate Portugal's Drug Policy Experimentation," Hannah News Service, Jan. 16, 2018, www.hannah.com/DesktopDefaultPublic.aspx?type=hns&id=20854.

²Mackenzie Bean, "Fifty States Ranked by Opioid Overdose Death Rates," *Becker's Hospital Review*, Jan. 17, 2019, www.beckershospitalreview.com/opioids/50-states-ranked-by-opioid-overdose-death-rates.html, and Jessica Wehrman, "Ohio State to Lead \$65.9 Million State Study to Help Reduce Opioid Deaths," *The Columbus Dispatch*, April 18, 2019, www.dispatch.com/news/20190418/ohio-state-to-lead-659-million-state-study-to-help-reduce-opioid-deaths.

³"Fifty State Low-Level Drug Possession Review," Ohio Criminal Sentencing Commission, www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/50StateDrugPossessionReview.pdf.

⁴"More Imprisonment Does Not Reduce State Drug Penalties: Data Show No Relationship Between Prison Terms and Drug Misuse," The Pew Charitable Trusts, March 2018, www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems. Research by Peter Reuter at the University of Maryland and Harold Pollack at the University of Chicago found that heavy police enforcement and extended prison sentences do not effectively stop the flow of drugs and drug use, 2014. Economists at Columbia University and the University of Michigan found that the threat of longer prison sentences does not reduce crime. The National Institute of Justice found that "severity of punishment does little to deter crime."

⁵John Caniglia, "Bad Connections: Cellphones in Ohio Prisons Enable Drug Deals, Gang Activity, Identity Theft," *The Plain Dealer*, Cleveland.com, Dec. 16, 2018, www.cleveland.com/metro/2018/12/bad-connections-cellphones-in-ohio-prisons-enable-drug-deals-gang-activity-identity-theft.html

⁶"More Imprisonment Does Not Reduce State Drug Problems," The Pew Charitable Trusts, March 8, 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>; see also Doug McVay and Vincent Schiraldi Ziedenberg, "Treatment or Incarceration," Justice Policy Institute, Jan. 2004; "Alcohol, Drugs and Crime," National Council on Alcoholism and Drug Dependence, April 29, 2014, www.ncadd.org/index.php/

about-addiction/addiction-update/alcohol-drugs-and-crime?highlight=WylkcnVncylslmRydWdzjylslmNyaW1liwiYWxjb2hvbCJd.

⁷Mia Bird, Magnus Lofstrom, Brandon Martin, Steven Raphael, and Viet Nguyen with research support from Justin Goss, "The Impact of Proposition 47 on Crime and Recidivism," Public Policy Institute of California, www.ppic.org/wp-content/uploads/r_0618mbr.pdf at pg. 16.

⁸*Id.* at Summary, page 3.

⁹*Id.*

¹⁰"California's Future: Corrections," January 2019, www.ppic.org/wp-content/uploads/californias-future-january-2019.pdf at page 8.

¹¹*Id.*

¹²"Drug Rehab Instead of Prison Could Save Billions," Foundations for Recovery Network, www.dualdiagnosis.org/drug-rehab-instead-of-prison-could-save-billions-says-report-2/; citing Zarkin, Cowell, Hicks, et. al. "Lifetime Benefits and Costs of Diverting Substance-Abusing Offenders from State Prison," *Sage Journals*, Aug. 1, 2015; see also "Replacing Prison Terms with Drug Abuse Treatment Could Save Billions in Criminal Costs," *Newswise*, RTI International, Jan. 9, 2013.

¹³Mia Bird, Magnus Lofstrom, Brandon Martin, Steven Raphael, and Viet Nguyen with research support from Justin Goss, "The Impact of Proposition 47 on Crime and Recidivism," Public Policy Institute of California, www.ppic.org/wp-content/uploads/r_0618mbr.pdf at pg. 19.

¹⁴Pauline Repard, "Drug Court Participation Drops Four Years After Proposition 47 Reduced Many Drug Crimes to Misdemeanors," *The San Diego Union-Tribune*, Sept. 15, 2018, www.sandiegouniontribune.com/news/courts/sd-me-prop47-courts-20180614-story.html.

¹⁵*Id.*

¹⁶*Id.*

¹⁶Mia Bird, Magnus Lofstrom, Brandon Martin, Steven Raphael, and Viet Nguyen with research support from Justin Goss, "The Impact of Proposition 47 on Crime and Recidivism," Public Policy Institute of California, www.ppic.org/wp-content/uploads/r_0618mbr.pdf at pg. 19.

