

November 19, 2020

Chairman Lang, Vice Chairman Plummer, and members of the Committee,

My name is Lauren Krisai, and I'm a senior policy analyst at the Justice Action Network, a national bipartisan organization advocating for sensible criminal justice reforms at the state and federal levels. You may be familiar with my colleague Holly Harris, who testified before the Senate Judiciary Committee on this bill last year.

I am here to serve as a policy expert on Senate Bill 3, as well as an advocate for the passage of this bill. Senate Bill 3 is smart criminal justice reform that will provide more treatment opportunities for individuals at the beginning of their addiction or criminality, while reserving tougher penalties for more serious drug traffickers.

Research has consistently shown that custodial sentences [do not reduce recidivism](#) more than noncustodial sentences, imprisonment is likely to [generate more crime](#) for low-level offenders, individuals deemed low-risk offenders are most likely to experience the [increase in recidivism](#), and states that have reduced incarceration have also seen [reductions in crime](#). With Ohio experiencing the [fifth highest](#) overdose death rates in the nation and [over a quarter](#) of its prison population consisting of individuals incarcerated for a drug offense (14.5% of which are incarcerated for a drug possession offense), now is the time to try something new. Senate Bill 3 promises to do just that, and is backed by evidence and research that shows alternatives to incarceration for low level offenders often has better outcomes.

Senate Bill 3 gives individuals who have never been convicted of a drug possession offense the opportunity to have their prosecution held in abeyance if they complete drug treatment. This provides an opportunity for a clean slate and a second chance for those who may just need access to services to get clean.

As this committee knows, relapse is common in the pathway to recovery, so this bill also provides that individuals with one prior drug possession conviction within the past 3 years to be charged with an unclassified misdemeanor offense and sentenced to treatment instead of prison. This provides a crucial second chance when the current felony alternative can have a devastating impact on their opportunities for employment, housing, and more—all components to a successful recovery.

For those second time offenders who do not take treatment seriously and continuously fail, incarceration remains an option. And for those who have twice previously been convicted of a drug possession offense within three years, the third offense is considered a felony under Senate Bill 3.

The population these new punishments would apply to is limited. The Legislative Budget Office estimates that up to 2,700 fewer offenders may be sentenced to prison annually for a drug possession offense, but that estimate is based on an average of admissions to prison, and does

not extrapolate those who have no criminal history or only one prior conviction and would be eligible for treatment in lieu of incarceration. The number who would be eligible for a prosecution held in abeyance or an unclassified misdemeanor conviction is likely much lower.

Ohio wouldn't be the first state to make low level drug possession offenses a misdemeanor. As one example, South Carolina defeloned first time drug possession offenses in 2010. Since the state enacted these and other criminal justice reforms in 2010, it has seen a 14.5% reduction in its prison population, a 3% reduction in its recidivism rate, an 18.3% reduction in its violent crime rate, and a 22.6% reduction in its property crime rate. It also cancelled plans to build a new prison space and closed six prison facilities, saving a total of \$491 million between 2010 and 2016. The state also has a much lower drug overdose death rate than Ohio, ranking 22nd on the Center for Disease Control's list of highest overdose death rates in the country compared to Ohio's 5th place ranking.

Senate Bill 3 also readjusts some trafficking thresholds and adds a new classification of "major trafficking in drugs," below "aggravated trafficking in drugs." In Ohio, all possession with intent to distribute and drug sales fall under the all-encompassing term "trafficking"—there is no statutory distinction between the various offenses. This bill reduces penalties for the lowest level trafficking offenses—which include individuals who may be selling small amounts of drugs to support their own addictions—and reserves tough mandatory minimum sentences for high level traffickers.

The purpose of adjusting the trafficking thresholds and categories is to assign more appropriate punishment with the corresponding offense, instead of treating lower level offenders or middle-men as high-level traffickers. The changes in Senate Bill 3 are compromises from recommendations put forward by Ohio's Recodification Committee, which were based on research conducted by Case Western University researchers who interviewed hundreds of individuals convicted of drug offenses in Ohio.

Ohio's Senate Bill 3 is still tougher on high level traffickers as compared to its neighboring states. None of Ohio's neighboring states (Indiana, Michigan, Pennsylvania, and West Virginia) have mandatory minimum statutes on the books for drug trafficking offenses, leaving judges to determine the minimum term before release eligibility. In fact, courts in both Pennsylvania and Michigan repealed their mandatory minimum sentences within the last few years.

In Kentucky, individuals convicted of any cocaine trafficking offense are eligible for parole after 2 years, and those convicted of a heroin trafficking offense are eligible between 2 and 5 years. In Senate Bill 3, a person may receive a mandatory minimum prison term of 11 years for the highest-level trafficking offense. In Michigan, the average minimum term for trafficking between 50-449 grams of heroin is 5.1 years. In Senate Bill 3, trafficking between 50-100 grams of heroin carries a 3-11 year prison term, and trafficking more than 100 grams carries a mandatory minimum 11 years in prison. In Pennsylvania, the average minimum term for trafficking between 10-50 grams of heroin is 23.3 months; for over 1,000 grams, the average minimum is 42.5 months. In Senate Bill 3, trafficking between 5-30 grams carries up to 36

months in prison, and the punishments escalate from there until it reaches a mandatory minimum of 11 years for 100+ grams.

These examples further underscore that if passed, Ohio will still have tougher penalties for higher level trafficking offenses as compared to its neighboring states, but it will have more flexible punishments for the lower level offenders who may be selling to support their own habits and would benefit from lesser prison terms. This is not failing to get tough on crime, it is instead responding more appropriately to ensure better outcomes.

Ohio has been a leader for the nation when it comes to passing bipartisan criminal justice reforms. When I work in other states, I often tout Ohio's successes in putting politics aside to pass sound policy that makes Ohio a safer and more prosperous state. It has the opportunity to do so again with Senate Bill 3, and JAN encourages you all to pass this important bill. Too much is at stake not to.

Thank you all for your time and consideration. I'm happy to take any questions you may have.