

June 11, 2019

Chairman Eklund, Vice-Chairman Manning, Ranking Minority Member O'Brien and members of the Ohio Senate Judiciary Committee.

My name is Douglas A. Berman. I am the Newton D. Baker-Baker & Hostetler Chair in Law and the Director of Drug Enforcement and Policy Center (DEPC) at The Ohio State University Moritz College of Law. Our Center was established with the support of the Charles Koch Foundation, and it conducts programming and research to enrich public understanding of the intersecting fields of drug policy and criminal enforcement.

I have provided my curriculum vitae to the Senate Judiciary Committee and you can see I have spent the vast majority of my academic and professional life examining, through research and real-world lawyering experience, the impact of criminal laws and drug sentencing practices.

Encouragingly, Ohio and a number of other states have started to recognize the human and social cost of the "war on drugs" and the punitive treatment of less serious criminal offenders. Realizing we cannot arrest our way out of drug problems, officials and voters in nearly every state are embracing a range of new laws and practices intended to reduce incarceration levels and to ameliorate the enduring harms of criminal convictions, particularly for less serious drug offenders.

This reform work is not easy, but it is critically important and I applaud your efforts to move forward with Senate Bill 3 to bring Ohio much needed criminal sentencing reforms. In particular, I want to thank Senate President Larry Obhof for his bold leadership and also state Sen. John Eklund for taking on this critical task and sponsoring the legislation. And state Sen. Sean O'Brien and other members of the committee are to be commended for your bipartisan dedication to reform as well.

Like many others, I have watched this General Assembly work for the past decade to make improvements to the operation of our criminal justice system. Your efforts, such as passing meaningful reforms like House Bill 86 and House Bill 49, have helped curb prison population growth. These reforms are great examples of how this body is committed to the always difficult task of identifying criminal justice reforms that can advance public safety in a fiscally responsible and humane way.

This task can be especially challenging at a time when so many Ohioans are struggling with substance abuse problems. But we know from experience that sending those suffering from addiction to prison often only exacerbates problems for these individuals, their families and their communities. And incarcerating addicted individuals places a tremendous burden on a strained state operating budget. Ohio spends \$1.8 billion each year on corrections, expenditures that can be usefully reduced if we stop sending low-level non-violent offenders charged with drug possession to state prisons.

Unfortunately, it seems some judges and prosecutors are often inclined to favor prison terms over other sentencing options even for lower-level offenders. And judges and prosecutors who are disinclined to fully implement reforms may lessen their positive impact, as we have seen in the implementation of House Bills 86 and 49. Given this history, I urge you in Senate Bill 3 to provide clear direction and a clear signal to prosecutors and judges about the importance of not sending low-level drug possession offenders to prison.

We know that a clear signal from a legislative reform can work to change judicial and prosecutorial behavior. For example, when the General Assembly changed the law for felony property offenses to misdemeanors, Ohio experienced a significant reduction in the number of people being sentenced to prison for these offenses.

In my view, Senate Bill 3 is the next sound legislative sentencing reform that can curb increased prison spending. In particular, because experiences show how felony convictions and state prison are not effective treatment for addiction, making low-level, simple drug possession a misdemeanor (instead of a felony) would be a wise reform for Ohio.

Research indicates that the cycle of addiction and crime is more effectively and humanely addressed as a public health issue. Expanding treatment programs, rather than expanding the number of people with felony records and admissions to prison, can best increase the chances for recovery and success.

Senate Bill 3 can and should address boldly the barriers facing Ohioans who have been previously convicted of felony charges for low-level drug possession. Everyone recognizes the importance of seeking to rehabilitate

past offenders and help them reintegrate into society, but a wide array of formal and informal collateral consequences means that any felony conviction makes it more difficult for an individual to secure a job, housing or even pursue educational opportunities.

Ohio can also reduce recidivism rates and save tax dollars and spending on prison by reforming our probation laws, and reduce the number of people in prison for minor probation violations, especially those related to low-level drug possession.

I wish to conclude by stressing what I see as the soundness and virtue of Senate Bill 3 making true possession offenses misdemeanors while allowing trafficking offenses to still be categorized as felonies. I have heard some prosecutors suggest that low-level drug possession in Senate Bill 3 is poorly defined and could include a large number of doses of heroin or other drugs. But if prosecutors have evidence that a person is possessing many doses with an intent to sell, then the prosecutor can charge and convict that person of a felony trafficking offense. If there is no evidence that a possessor has plans to traffic, however, then there is no basis to saddle the drug user with a felony conviction and all its consequences.

Because Senate Bill 3 actually expands the number of trafficking offenses, prosecutors ought to be better able to charge drug traffickers with felony offenses if and when they have evidence of intended sale of a large number of doses of heroin or other drugs. But, wisely, Senate Bill 3 makes clear that in the absence of evidence of trafficking, i.e., when the evidence only clearly shows a person is in possession of drugs, that person should not face a felony charge.

I want to once again thank Senate President Larry Obhof, state senators John Eklund and Sean O'Brien and members of the Ohio Senate Judiciary Committee for your work on Senate Bill 3.