



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Support of SB288 Unanimous Recodification Committee Recommendations Sponsor Senator Manning

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee. I am State Public Defender Tim Young. Thank you for the opportunity to provide proponent testimony regarding the portions of Senate Bill 288 that address the unanimous recommendations from the Ohio Criminal Justice Recodification Committee (Recod) on behalf of the Office of the Ohio Public Defender (OPD).

In 2014, 130th Ohio General Assembly established Recod to study the Ohio's existing criminal statutes "with the goal of enhancing public safety and the administration of criminal."¹ Recod was charged with recommending "a plan for a simplified criminal code" to the Ohio General Assembly.² From 2015 through June 2017, Recod met and developed "recommended comprehensive changes to the sentencing code designed with three goals in mind: prioritize prison for dangerous and violent offenders, incentivize offenders to target and change their behavior and prepare them for reintegration into society, and empower judges to exercise their discretion to fairly and proportionately sentence offenders."³ The 24-member Recod committee was composed of judges, prosecutors, defense attorneys, individuals from DRC and DYS, law enforcement, a representative from Ohio State Bar Association, a representative from community corrections programs, representatives from community addiction and mental health services providers; and legislators. I was privileged to serve as Recod's vice chair.

¹ HB483 (Amstutz) 130th General Assembly.

² Criminal Justice Reform: Ohio Council of Criminal Justice Education Research Conference April 12, 2019| Ohio Criminal Sentencing Commission, <https://www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/CJReformOhioCupp2019.pdf>.

³ Id.

As this committee knows, the Recod recommendations included in SB288 are those that were recommended unanimously by the committee. To be honest, there is substantively little to say about these recommendations. They are mostly small, but necessary, changes to the criminal code. They are lowest of the low hanging fruit. Some of the Recod recommendations contained in SB288 include the following:

- Throughout the revised code, changes the term “harm” to “damage” when referring to damage to property.
- In many places in the revised code, substitutes “offender” for “person.”
- In some statutes removes language that prohibits attempting to commit the offense. Currently, R.C. 2923.02 already specifies “an attempt to commit any other offense is an offense of the next lesser degree than the offense attempted.”
- Sec. 2907.011 New Aggravated Rape Statute – Specifies no person 18 or older shall engage in sexual conduct with children less than 13. No person 14 or older shall engage in sexual conduct with children less than 10. The offense is a felony of the first degree and requires 15 – 30 years in prison.
- Sec. 2909.03 Arson – Creates tiered penalties based on damage to property.
- Merges the Vandalism, Criminal Damaging, and Criminal Mischief into one statute and creates consistent tiered penalties based on damage to property.
- Sec. 2909.04 Disrupting Public Services – Changes the mens rea from “purposely” to “knowingly.”
- Adds a “knowingly” mens rea to the terrorism statutes, and a “recklessly” mens rea to the Criminal Use of a Chemical Weapon or Explosive Device statute.
- Sec. 2911.01 Aggravated robbery – Requires the person to “knowing control of the deadly weapon” instead of just having it on their person.
- Sec. 2911.02 Robbery – Adds a “knowingly” mens rea.
- Sec. 2911.11 Aggravated burglary becomes R.C. 2911.03 – Removes the distinction regarding whether a person was in the structure.
- Sec. 2913.02 Theft - Removes the graduated enhancements based on amount. Theft becomes a misdemeanor of the third degree.
- Sec. 2911.21 Criminal trespass becomes R.C. 2911.06 – Creates felony offenses for knowingly remaining on the land or premise of another with purpose to commit felony or remaining on critical infrastructure with purpose to destroy or tamper.
- Sec. 2913.03 Unauthorized Use of a Vehicle – Reduces the offense from a misdemeanor of the first degree to a misdemeanor of the third and a felony of the fifth degree to misdemeanor of the first degree.
- Recreates a new felony of the fifth degree for knowingly gaining access to the computer of the another.
- Sec. 2913.06 Unlawful Use of Telecommunications Device - Reduces a first offense from a felony of the fifth degree to a misdemeanor of the first degree.
- Makes passing bad check and misuse of credit cards a misdemeanor of the third degree.
- For riots and aggravated riots requires the person “actively” participate.
- Sec. 2917.01 Inciting to Violence – Specifies the offense is one degree lower than the offense of violence committed.



- Sec. 2917.04 Failure to Disperse – Increases penalty from a minor misdemeanor to a misdemeanor of the fourth degree, if failure to obey the order to disperse creates the likelihood of physical harm or damage the offense is a misdemeanor of the third degree.
- Sec. 2917.11 Disorderly Conduct – Changes mens rea from “recklessly” to “knowingly,” and adds a “recklessly” mens rea to being voluntarily intoxicated.
- Sec. 2917.31 Inducing Panic – Changes the statute to “recklessly” initiating and “recklessly” threatening and prohibits a person from knowingly causing alarm by making a false report of a fire; to law enforcement; or alleging a fire, explosion, a crime, or catastrophe. The offense is a misdemeanor of the first degree and felony of the fifth degree if physical or economic harm results.
- Sec. 2921.33 Resisting Arrest – Simplifies the statute to just knowingly resisting or interfering with a lawful arrest of the person or another.
- Sec. 2921.331 Failure to Comply with Order or Signal of Police Officer – Adds “recklessly” and substitutes “willfully” for “purposely.” Makes the license suspension voluntary.
- Sec. 2929.11 Purposes of felony sentencing – Adds to the purpose of felony sentencing reducing recidivism and safe and successful reentry into the community.
- Sec. 2941.25 – Allied offenses of similar import – multiple counts: Specifies offenses merge when all of the following are true: offenses were committed by conduct so connected in time and place as to constitute a single event; offenses were committed in with the same intent; offenses involved the same victim; offenses caused the same type of harm.

These are changes that simplify, clarify, provide proportionality and fairness, address criminal statutes that are inconsistent or duplicative. Ohio must start making these simpler noncontroversial changes to our criminal code. After all, these changes were unanimously supported by the diverse group I spoke of earlier. Yet, so far, the legislature has failed to act upon these Recod recommendations – the lowest hanging fruit. Until we address these issues, we will be unable to tackle the larger, more complex problems that lead to mass incarceration, rampant drug addiction, recidivism, and tragic deaths. Thank you for the opportunity to testify in support of the Recod provisions in SB288. I am happy to answer any questions at this time.

