Ohio Judicial Conference

The Voice of Ohio Judges

Senate Finance
Judge Alison McCarty
Summit County Common Pleas Court
House Bill 49 – Felony Five Sentencing
June 14, 2017

Good morning, Chairman Oelslager, Vice-Chair Manning, Ranking Member Skindell and members of the Senate Finance Committee. I am Judge Alison McCarty from the Summit County Common Pleas Court and a member of the Ohio Judicial Conference's Community Corrections Committee. I appreciate the opportunity to provide testimony today on the provisions in House Bill 49 that would limit judges' sentencing authority over certain felony five offenders. I would like to start by thanking the members of this committee along with Senators Huffman and Peterson for their work on this proposal, particularly for their effort to retain some judicial discretion to send this category of offenders to prison. We understand the difficult situation that the legislature faces in this budget. We would be remiss, however, if we did not reiterate our concerns about enacting such a significant criminal justice policy change through a budget bill and about the possible unintended consequences of that change.

First, most judges in the state recognize the need for low level drug offenders to receive treatment rather than a prison sentence. Typically, low level offenders are sent to prison only after several probation violations or after several offenses. They are sent only as a last resort when the judge feels like they have exhausted their options locally. The proposal in House Bill 49 requires, in the 10 largest counties, that offenders be given continued opportunities at probation and treatment even though most have already been given several such opportunities without success. Additionally, judges use the threat of significant prison time, even if not imposed, to encourage compliance with treatment. I foresee offenders who, upon being sentenced to our local CBCF or Half Way House, will decide that 4 – 6 months of treatment followed by a year or two of additional supervision is too much work. Many will do something to get terminated after deciding that it is easier to do 90 days in prison. These offenders would not, however, want to do a 12 month sentence. In other words, the proposal will make it very difficult for judges to handle problematic probationers. This will be substantially more difficult in the 10 largest counties where even the 90 day option does not appear to exist. The legislature is taking a significant tool out of the tool belt of our urban judges in the midst of an opiate epidemic that demands every available tool.

Second, the proposal will force judges to send unmotivated offenders to residential facilities where they will negatively affect the other offenders who are actually trying to change. These are offenders who, among other things, fail to report to probation, fail to complete drug screen tests, fail to attend treatment, and fail to obtain employment. They may be repeat Felony 5 drug dealers with no addiction issues. Placing these offenders into a facility with drug addicted offenders who are attempting to recover is extremely counterproductive. Judges believe in treatment for those who need treatment. The proposal, however, paints with too broad a brush, prohibiting prison for drug dealers along with prohibiting prison for those who warrant treatment.

Finally, we do not believe that the HB 49 proposal will have the impact on Ohio's prison population that the Department of Rehabilitation and Correction projects that it will have. The Department's statistics about Felony 5 commitments to prison do not account for the number of Felony 5 offenders judges are already treating in the community. They do not provide you with a picture as to why judges decided certain Felony 5 offenders warranted a prison sentence, typically because of multiple low level felonies, multiple probation violations, or both. This proposal is an extension of the limitations on felony four and felony five sentencing that were enacted in House Bill 86 in 2012. These changes have encouraged judges to use community programming, rather than prison, as the primary option. Nevertheless, they have also resulted in prosecutors bringing more serious charges and being less willing to accept plea agreements at felony four/felony five levels. This has resulted in more serious convictions. It is one reason the prison population reduction goal of House Bill 86 has not been realized. The proposed change to RC 2929.34 is likely to have the same effect on both charging and sentencing.

The Judicial Conference believes that there are clearer, more effective, ways to accomplish the goals of increased community treatment and prison population management that maintain judicial authority to send the worst offenders to prison. We stand ready to work with you toward longer term and more realistic solutions to prison overcrowding. For the time being, we recommend making participation in this program completely voluntary. The Department of Rehabilitation and Correction has testified that around 50 counties have already made the decision that participation in TCAP is what is most appropriate for their communities. The current pilot projects that ODRC cites as models for statewide implementation are less than one year old and outside of anecdotal evidence, there is little confirmation that the programs are a success. Continued study and implementation on a voluntary basis would allow time to ensure that the program works from both a treatment and public safety perspective.

The Judicial Conference is committed to working with you and with the Administration toward solutions that will be effective for all. I thank you for your time. I am happy to answer any questions.