



# Ohio Prosecuting Attorneys Association

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Senate Bill 66  
Interested Party Testimony  
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Chair Bacon, Vice-Chair Dolan, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to offer interested party testimony on Senate Bill 66. While there are many changes in Senate Bill 66 that our association has no issue with, I do want to reiterate our concerns with three of the bill's proposals.

First, the bill proposes to add rehabilitation to the purposes of felony sentencing in Revised Code section 2929.11. Ohio's prosecutors do not oppose and in fact advocate for rehabilitation as an important objective when sentencing criminal offenders. We believe, however, that the current statute appropriately places the focus of felony sentencing on protecting the public from future crime and punishing the offender while simultaneously offering guidance to courts on the need to consider rehabilitating the offender as one means of protecting the public. Placing rehabilitation in the purposes of felony sentencing inappropriately elevates the term to the detriment of public safety. "Rehabilitation" is used by some to advocate for criminal justice policies that undermine prosecutorial discretion, judicial sentencing authority, the philosophy of truth in sentencing and therefore public confidence in the law. This change gives these advocates a greater license to do so and we recommend removing it from the bill.

Second, the bill proposes to expand intervention in lieu of conviction to authorize courts to grant ILC to eligible offenders regardless of the number of prior felony convictions and regardless of whether the offender has previously been through ILC. To be sure, prosecutors have no issue with intervention in lieu of conviction in appropriate cases. It is a valuable option for offenders with minimal criminal records. Prosecutors believe in second chances too. We do, however, believe that a line needs to be drawn. There should be a point at which an offender can no longer obtain the benefit of having charges dismissed. This does not mean that the offender will necessarily go to prison and/or not receive treatment. It simply means that at some point we have to recognize the fact that a felony has been committed. To do otherwise is a disservice to victims and to the public. Senate Bill 33, enacted late last year, already expands ILC to allow a judge to continue an offender on ILC indefinitely and without regard to the number of times the offender violates the terms of their agreement. If in addition ILC is expanded as proposed in Senate Bill 66 we are left with the possibility that an offender who has had multiple opportunities at ILC and multiple violations of ILC at each opportunity will be given a never ending opportunity to have charges dismissed. If an offender commits a new offense and shows continued unwillingness to comply with supervision the benefit of ILC should no longer be an option.

Additionally, the bill expands eligibility for ILC to include offenders charged with third degree felony drug possession. This would make offenders charged with possession of substantial amounts of drugs eligible for ILC and therefore eligible to have their charges dismissed entirely. Currently, third degree felony drug possession creates a presumption in favor of prison for many drug. This is a substantial change from a presumption of prison to an opportunity to have charges dismissed. It will also inevitably include offenders who are documented to be involved in drug trafficking. Given all of this we recommend removing these changes from Senate Bill 66. Intervention in Lieu has already been expanded through Senate Bill 33. At a minimum we should wait to see the impact of that change before going even further.

Finally, the bill proposes to expand eligibility for record sealing by defining “eligible offender” to include offenders who have multiple fourth and fifth degree felony convictions. Under current law, an offender is eligible for sealing if they have no more than one felony conviction, no more than two misdemeanor convictions, or no more than one felony conviction and one misdemeanor conviction. As with the expansion of ILC we are taking a statute that is a privilege for someone who has made a mistake and who deserves the opportunity for a second chance and expanding that statute to include offenders who have committed an undefined number of felonies. Any prosecutor can provide examples of lifetime criminals who may have committed double digit fourth and fifth degree felonies and similar numbers of misdemeanors. Under the bill, these offenders have the opportunity to have their records erased. We recommend removing the change from the bill.

While the current focus of the general assembly is on alleviating collateral consequences for the low level felony drug offender and to treat them as pseudo-misdemeanants, calling something a felony should mean that certain consequences attach. If the legislature wishes to treat these offenders as misdemeanants it ought to label the crimes as misdemeanors. It is also important to note that these are not always victimless crimes. We should not ignore victims’ rights or the consequences for victims. The proposed amendments to ILC and record sealing do just that. We urge the committee to carefully consider the impact of these proposals on victims and the public.

Thank you again for the opportunity to testify. I would be happy to answer any questions.