



Ohio Judicial Conference

The Voice of Ohio Judges

November 19, 2020
Opponent Testimony SB 3

Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the Committee:

I am Paul Pfeifer, Executive Director of the Ohio Judicial Conference. Judge Jeffrey Reed of the Allen County Court of Common Pleas, and the current president of the Ohio Common Pleas Judges Association, could not be here to personally deliver his testimony on Senate Bill 3 today, so I am happy to present it on his behalf.

Before going into Judge Reed's comments, I would note that Ohio's judges not only witness firsthand the impact that substance abuse has on our communities, but are often on the front lines and have taken on a great responsibility in combatting this problem and making it easier for those who need help to get it. Judges around the state have done a tremendous job at establishing drug courts and other specialized dockets designed to keep people out of prison and to steer them instead to local resources better equipped to provide treatment, rather than punishment. These programs work, and have seen great success. It has always been our hope to see modifications in SB 3 that will not undermine the progress judges continue to make through their intensified work with substance dependent defendants using specialized dockets.

The Court of Common Pleas Allen County

GENERAL DIVISION
P.O. Box 1243 LIMA, OHIO 45802
PHONE: 419-223-8525; CLERK FAX: 419-222-8427

JEFFREY L. REED
ADMINISTRATIVE JUDGE

TERRI L. KOHLRIESER
PRESIDING JUDGE

TO: The Ohio House Criminal Justice Committee, Representative Lang, Chair;
Representative Plummer, Vice Chair; Representative Leland, Ranking Member
FROM: Judge Jeffrey L. Reed, Allen County Common Pleas Court, General Division
DATE: November 13, 2020
RE: Senate Bill 3-Opposition Testimony

My name is Jeffrey L. Reed, and I have had the honor and pleasure of serving Allen County as Common Pleas Judge since February 1999. A great part of my job responsibility is to hold people responsible and accountable for the bad choices they make.

The legislature has stated the purpose of sentencing felons and misdemeanants is to protect the public from future crime by the offender and others, to punish the offender, and to promote the effective rehabilitation of the offender using the minimum sanctions that *the court* determines accomplish those purposes without imposing an unnecessary burden on state or local government resources R.C. 2929.11(A).

To achieve the stated purposes of sentencing, the legislature has provided that a sentencing court shall consider the need for incapacitating the felony offender, deterring the felon and others from future crime, changing the misdemeanor's behavior, rehabilitating the offender R.C. 2929.11(A). In sentencing, you have legislated that judges should also consider the impact of the offense upon the victim and make restitution to the victim of the offense, the public, or both R.C. 2929.11(A).

With these statutory principles and purposes in mind, I applaud efforts of the legislature to address, head-on, the terrible drug crisis that Ohio has suffered through for the past several years and that has been made worse by the COVID-19 pandemic. I believe most judges welcome

efforts to expand treatment options for offenders with substance addictions as long as those efforts do not restrict judicial discretion. I do not think that any judge is against legislative reforms that would assist ex-offenders with getting their records sealed and securing employment. I appreciate the practical and economic difficulty of operating an efficient and effective criminal justice system, prison system, and treatment and recovery system. We are all looking for solutions and there are no easy answers.

I have reviewed the current text of Senate Bill 3 and respectfully submit opposition to many of the key parts of the proposed legislation because I believe parts of the bill reduce offender accountability, restrict judicial decision-making, and make it more difficult for judges to satisfy the purposes of sentencing. I also believe many of the bill's provisions appear to be an attempt to legislate ideas that the voters of Ohio clearly rejected in 2018 (State Issue 1) with respect to our drug laws. Do we really want to do this?

My strongest objection is to the proposal to reclassify most of the lower-degree felony drug possession offenses to unclassified misdemeanors. I am not a trained psychologist, so I defer to the opinion of Dr. Ted Parran, Jr., who has opined that Senate Bill 3 “presents a substantial risk of undoing and weakening some of the progress that has been made” in the approach that Ohio’s criminal justice system takes towards substance-abusing offenders. Over the years, I have seen and learned a few things about human behavior and believe I understand a lot about what makes the addicted population that comes before me in criminal cases tick. I have come to understand that addicts are master manipulators. They manipulate their families and friends and will stop at few things to try to manipulate even the criminal justice system. Even the worst addict understands what the law can and cannot do to him or her and while they might not be thinking clearly when using, they understand what can happen to them if they get caught committing a crime, and act accordingly.

Eighteen years ago, I was introduced to the idea of drug courts. I embraced the idea of treatment and have presided over the Allen County Treatment Court since 2002. As you know, specialized dockets, like drug courts, mental health courts, OVI courts, and veterans’ courts, focus on intensely supervised treatment of offenders. It is “coerced treatment,” and it works because the participants know there are serious consequences for non-compliance with treatment. Making possession a misdemeanor will erase the serious consequences.

In my county, nearly all participants in drug court are there as a condition of Intervention in Lieu of Conviction. A lesser number are on community control. Successful completion of an intervention plan, whose major component is successful completion of an intense treatment regimen, results in no conviction and dismissal of the case. I support any effort to expand the availability and use of Intervention in Lieu of Conviction as an available mechanism to deal with substance addiction in the criminal justice arena.

One undeniable truth is that the threat of a prison sanction, for noncompliance with treatment, is crucial to the success of the participant in treatment court. My experience leads me to agree with what Dr. Parran has stated: that the lack of coercion leads to high levels of *early* drop outs and high relapse rates and that a high level of coercion leads to low levels of *early* drop outs. My Drug Court team, consisting of treatment providers, chemical dependency counselors, law enforcement, a prosecutor and defense attorney all agree—the threat of imprisonment is an effective motivator for change.

My objection to parts of Senate Bill 3 is that by making many felony drug possession charges misdemeanors, the coercive effect of possible imprisonment is removed, erasing the “hammer” over the head of the offender to coerce the treatment. Don’t think for a minute that offenders won’t know that. Facing a possible 364-day local jail sentence is not as great a motivator as facing prison. I support giving greater access to coerced treatment, like drug courts, but cannot support weakening the coercion but lessening the possible consequence of noncompliance.

I understand that much of the debate about Senate Bill 3 includes a focus on the collateral consequences of a felony conviction and the lack of such consequences for a misdemeanor conviction. This debate seems to ignore some important truths. First of all, if mechanisms like Intervention in Lieu are utilized, successful completion of treatment and required period of abstinence results in a *dismissal* of the criminal charge *without an adjudication of guilt* and gives the judge the discretion to *seal the participant’s record*. R.C. 2951.041(E). An opportunity to have one’s case dismissed without any conviction (even a misdemeanor) and sealed is the best way to eliminate the so-called collateral consequences of a felony.

Additionally, with respect to difficulties convicted felons have in getting jobs, I believe the problem is not *availability* of jobs for felons. Unfortunately, the problem is too often the offender’s motivation to get out of bed every morning and go to work and being able to pass a

urine test—two types of negative behavior that we try to change in drug court. True, some employers may always be afraid to take a chance of hiring a person involved in the criminal justice system, but I question whether that fear will be alleviated simply by re-naming the drug offense a misdemeanor. To paraphrase Shakespeare; “A drug possession offense by any other name will smell just as bad” ... to some employers.

I do not see this as an issue of *classification* or *degree* of a crime, it is more an issue of *offender motivation* and *employer understanding*. In my county, we have tried to enlighten employers about the problem of addiction and what we have tried to accomplish through our drug court. I have not experienced the situation where employers will never hire low-level drug offenders.

If we truly want to do something to alleviate the drug problem in our state, the answer is not decriminalization. If I am a drug addict and possess illegal drugs, if you call my offense an unclassified misdemeanor, I am still a drug addict and don't care too much about it because you can't do too much to penalize me. But, if you tell me that I must get treatment and could go to prison if I don't get treatment, and that if I complete the treatment, I won't get convicted of anything and won't go to prison, I am still an addict, but am motivated to change and work towards sobriety.

So you don't think I am totally negative towards legislative efforts in this context, I am also supportive of any proposal to expand or make more user-friendly the existing provisions for civil commitment of drug addicts in R.C. 5119.93. I admit that I never used this provision or know whether it has ever been used in Allen County by our probate judge. I support efforts to expand the involuntary civil commitment for treatment, although I believe we can already achieve the purpose of R.C. 5119.93 with Intervention in Lieu and specialized dockets. R.C. 5119.93 includes “involuntary” treatment and is currently punishable only with contempt...again lacking the motivation that I believe is present with a possible prison sanction.

I often quip that I wished I had a magic wand to make drug addicts no longer be drug addicts. I don't have a magic wand, but I currently have a hammer. Senate Bill 3, as proposed takes a lot of the weight of my hammer away. Don't take the hammer away.

Thank you,

Judge Jeffrey L. Reed

**JANUARY 2020 CENSUS OF ODRC INSTITUTIONAL POPULATION,
DEMOGRAPHIC AND OFFENSE SUMMARY**

MALE = 44,686 (91.9%) FEMALE = 3,953 (8.1%) TOTAL = 48,639

OHIO COUNTIES WITH THE HIGHEST NUMBER OF COMMITTED INMATES	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
Cuyahoga	6,958	15.57	324	8.20	7,282	14.97
Franklin	4,810	10.76	275	6.96	5,085	10.45
Hamilton	3,590	8.03	201	5.08	3,791	7.79
Summit	2,149	4.81	139	3.52	2,288	4.70
Montgomery	2,028	4.54	147	3.72	2,175	4.47
Lucas	1,885	4.22	102	2.58	1,987	4.09
All Others	23,266	52.07	2,765	69.95	26,031	53.52
TOTAL	44,686	100.00	3,953	100.00	48,639	100.00

RACE/ETHNICITY OF INCARCERATED OFFENDERS	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
Black	20,772	46.48	953	24.11	21,725	44.67
White	22,123	49.51	2,918	73.82	25,041	51.48
Hispanic	1,342	3.00	36	0.91	1,378	2.83
White Hispanic	249	0.56	11	0.28	260	0.53
Black Hispanic	38	0.09	2	0.05	40	0.08
Other Hispanic (Race Not Specified)	1,055	2.36	23	0.58	1,078	2.22
Native American	79	0.18	3	0.08	82	0.17
Asian	60	0.13	7	0.18	67	0.14
Other	310	0.69	36	0.91	346	0.71
TOTAL	44,686	100.00	3,953	100.00	48,639	100.00

AGE OF INCARCERATED OFFENDERS	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
15-19	481	1.08	28	0.71	509	1.05
20-24	4287	9.59	336	8.50	4,623	9.50
25-29	7225	16.17	724	18.32	7,949	16.34
30-34	7446	16.66	805	20.36	8,251	16.96
35-39	6592	14.75	783	19.81	7,375	15.16
40-44	5379	12.04	506	12.80	5,885	12.10
45-49	4097	9.17	306	7.74	4,403	9.05
50-54	3162	7.08	205	5.19	3,367	6.92
55-59	2524	5.65	136	3.44	2,660	5.47
60 And Over	3493	7.82	124	3.14	3,617	7.44
TOTAL	44,686	100.00	3,953	100.00	48,639	100.00
MEAN AGE	38.89		36.49		38.69	
MEDIAN AGE	37.00		35.00		36.00	

MOST SERIOUS COMMITMENT OFFENSE TYPE	MALE		FEMALE		TOTAL	
	N	%	N	%	N	%
Crimes Against Persons (Sex Offenses Not Included)	19,975	44.70	1,502	38.00	21,477	44.16
Sex Offenses	7,784	17.42	132	3.34	7,916	16.28
Drug Offenses	6,246	13.98	1,062	26.87	7,308	15.02
Burglary Offenses	4,597	10.29	356	9.01	4,953	10.18
Against Justice/Public Administration	2,321	5.19	473	11.97	2,794	5.74
Firearm Offenses	1,611	3.61	51	1.29	1,662	3.42
Property Offenses	1,122	2.51	212	5.36	1,334	2.74
Fraud Offenses	608	1.36	123	3.11	731	1.50
Motor Vehicle Offenses	405	0.91	40	1.01	445	0.91
Miscellaneous	17	0.04	2	0.05	19	0.04
TOTAL	44,686	100.00	3,953	100.00	48,639	100.00