Office of the Ohio Public Defender

Timothy Young, State Public Defender

HB699 Proponent Testimony
Criminal Justice Omnibus Bill
Sponsors Representatives Seitz and Galonski

Chair LaRe, Vice Chair White, Ranking Member Leland, and members of the House Criminal Justice Committee. My name is Niki Clum, and I'm the Legislative Policy Manager for the Office of the Ohio Public Defender. Thank you for the opportunity to provide testimony in support of Substitute House Bill 699 (HB699).

Record Sealing and Expungement

The terms sealing and expunging are often used interchangeably, however, they are different processes that result in very different amounts of access to an individual's criminal record. Currently, Ohio Revised Code 2953.31-2953.62 speaks to sealing records. Sealing a record occurs when a court orders the record to be filed in an alternate, secure location. During the sealing hearing, the court must weigh the government's interests in maintaining the record of conviction against the defendant's interests in having the record sealed.[1] However, expunging a record means the court orders the record to be physically destroyed. Expunged records may not be used for any purpose, must be removed from the Law Enforcement Automated Data System (LEADS), and courts must indicate that no record exists when asked. Currently, expungement is only available for juvenile records and a certain few adult convictions.

For record sealing to provide true relief from the collateral consequences of a conviction, Ohio's record sealing statute must be written so that average Ohioans can navigate the process without having to pay an attorney. Under current record sealing law, an individual must first determine if they are barred from sealing by having a conviction for one of forty-one specified offenses. These are mostly violent or sexual offenses. If the person is not barred, the individual must determine if all their convictions are fourth- or fifth-degree felonies or misdemeanors. If so, to remain eligible, the individual must determine if they are prohibited from sealing their record because they have a conviction for one of fifteen additional specified felony offenses.

Let's backup to someone who has been convicted of a felony that is not a felony of the fourth or fifth degree or one of the forty-one barred offenses. That individual must determine if they have been convicted of not more than two felonies, four misdemeanors, or not more than two felonies and two misdemeanors. If they are still eligible, they should note that minor misdemeanors, or a violation of any section of Revise Code Chapters 4507, 4510, 4511, 4513 or 4549 do not count as a conviction, except violations of R.C. 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, 4549.62, 4549.41 to 4549.46, 4510.11 or 4510.14 that are based upon the offender's operation of a motor vehicle during a suspension imposed by R.C. 4511.191 or 4511.196, and any felony traffic offense do count as a conviction. They must also consider that two or three convictions from the same indictment, complaint or information and that result from related criminal acts that were committed within a three-month period but do not result from the same act or offenses committed at the same time, may be treated as one conviction if the court finds that it is in the public interest. If the individual is still eligible, they must then determine if they are barred by one of the ten delineated exceptions in statute.

[1] *State v. Rojas,* 180 Ohio App. 3d 52, 2008-Ohio-6339.

If the person is still eligible, and they are trying to seal a third-degree felony they must make sure that at least three years has lapsed since they completed either the term of incarceration or supervision, whichever is later. If the individual is trying seal a fourth- or fifth-degree felony or misdemeanor convictions, they must ensure that at least one year has lapsed since they completed either the term of incarceration or supervision. The individual must determine if the misdemeanor is one of the traffic offenses that cannot be sealed. Finally, they must make sure all of the fines and costs associated with the convictions are paid.

According to the Ohio Department of Rehabilitation & Correction, approximately 2 million citizens, 17% of Ohioans, have a felony or misdemeanor conviction. That's 2 million Ohioans who may benefited from an expanded sealing and expungement law. However, most Ohioans would not be able to understand this statute without the assistance of an attorney. Therefore, Ohio really needs a large overhaul of the sealing statute to simplify it. Until Ohio's sealing statute is easy to understand and use without an attorney, getting one's record sealed will not be a meaningful option for many Ohioans to obtain relief from the collateral sanctions of a conviction.

HB699 seeks to simplify the sealing and expunging process and make more individuals eligible to ask the court for relief. First, the bill restructures the sealing and expungement statutes to be easier to navigate and understand. Any number of misdemeanors, felonies of the fourth degree (F4), and felonies of the fifth degree (F5) can be sealed or expunged and not more than two felonies of the third degree can be sealed or expunged. The bill makes explicit that there are only six categories of offenses for which sealing and expungement is inapplicable – (1) traffic offenses, (2) felony offenses of violence, (3) sex offenses [misdemeanor or felony] when the person is still on the SORN registry, (4) offenses where the victim was a child under the age of 13 [exempt non-support], (5) first- and second-degree felonies, and (6) Domestic Violence and Violation of a Protection Order. More serious convictions have longer waiting periods before they are eligible for sealing: Six months for minor misdemeanors; one year for misdemeanors, F4s, and F5s; three years for third-degree felonies; and five years after the client was removed from the SORN registry. For expungement of misdemeanors, the person must wait five years beyond the time in which they would be eligible for sealing. For felonies, the person must wait ten years beyond the time in which they would be eligible for sealing.[2]

Prosecutors may object to an application for sealing or expungement and are required to do so in writing at least 30 days before the hearing. Victims can object to an application as well. The court must hold a hearing on the application for sealing or expungement not less than 45 days and not more than 90 days after the application is filed. Currently, motions for sealing can linger on a court's docket for months. Finally, the bill allows convictions that have been pardoned by the governor to be sealed. Under current law, pardons are not sealable.

OPD does have concern with a recent amendment to this section. As previously stated, the current version of the bill limits the sealing for felonies of the third degree (F3) to two convictions. Under current law, also two F3s can be sealed. However, current law states:

> When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from

[2] OPD believes these timelines are far too long considering expungement is not automatic and the person may have already sealed their record. OPD suggests the bill return to the timelines in the previous version of HB699, two years after eligibility for sealing for misdemeanors and five years after eligibility for sealing for felonies.

> offenses committed at the same time, they shall be counted as one conviction, provided that a court may decide as provided in division (C)(1)(a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.[3]

Therefore, an individual may seal more than two F3s if they meet the criteria above. However, HB699 does not include this language, resulting in some people having less access to record sealing than under current law.[4] OPD believes HB699 should return to the as introduced version that allows any number of offenses to be sealed. It is important to remember sealing is not automatic. The prosecutor and victim can object, and the court must determine if the applicant's interest outweighs the government's interest in maintaining the record. Allowing people with multiple F3 convictions to ask for record sealing does not mean it will be granted, but they should at least have the opportunity to ask.

OPD appreciates HB699 intent to expand not just criminal record sealing but also expungement. The problem with just having one's record sealed is that certain agencies and people, as delineated by the legislature,[5] can still access the record. The record also still exists in the county clerk's office. According to the Ohio Civil Impacts of Criminal Convictions (CIVICC) Database, the Revised Code contains 37 statutes that require applicants to disclose sealed convictions when applying for employment or a professional license. Therefore, even after having one's record sealed, many individuals still have trouble obtaining housing, student loans, employment, or a professional license.

That is why Ohio needs to expand expungement as well as sealing eligibility. Individuals with criminal records, even sealed criminal records, are often prevented from obtaining professional licenses necessary to work in "fast-growing industries such as health care, human services and some mechanical trades."[6] The ability to seal and expunge criminal records will give these Ohioans access to a career, not just a job. HB699 will help many individuals make a better life for themselves and their family.

Transitional Control

Under current law, the Department of Rehabilitation and Correction (DRC) is permitted to move inmates to a transitional control program "for the purpose of closely monitoring a prisoner's adjustment to community supervision during the final one hundred eighty days of the prisoner's confinement."[7] Through O.A.C. 5120-12, DRC has established the parameters that must be satisfied by inmates to qualify for the transitional control program. While in the program, individuals are still considered inmates of DRC.[8] A prisoner transferred to transitional control who violates any DRC rule may be transferred back to prison and will receive credit towards completing the prisoner's sentence for the time spent in transitional control.[9] Under current law, the sentencing court can veto the move to transitional control for people serving less than two years after receiving notice of DRC's intention.

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[3] R.C. 2953.31(A)(1)(b)

[4] HB699 does allow individuals with no more than two F3 convictions to pursue expungement. Under current law, the vast majority of offenses are not expungable unless the applicant is a juvenile, a victim of human trafficking, or the conviction is for a repealed firearm offense.

[5] Those who can see sealed records include: Prosecutors, judges and police for future criminal investigations, judges considering convictions for enhanced subsequent sentences, employers in law enforcement, jobs working with children or other protected groups, real estate institutions, and professional licensing boards (i.e. Ohio State Medical Board).

[6] Tracy Jan, *After Prison, More Punishment*, The Washington Post, September 3, 2019, https://www.washingtonpost.com/graphics/2019/business/jobs-after-prison-rhode-island-recently-occupational-licensing/?noredirect=on.

[7] R.C. 2967.26(A)(1)

[8] R.C. 2967.26(F)

[9] R.C. 2967.26(F)

Simply, HB699 would remove the sentencing court's ability to veto transactional control for people serving more than a year, the court could still veto transitional control for people serving less than one year. HB699 puts the decision for transitional control in the hands of the experts, DRC. Former DRC Director Gary Mohr testified in the Senate Judiciary Committee in support of Senate Bill 288 that transitional control is particularly important for individuals serving short sentences. Because of the wait times and program lengths, people serving these short sentences receive little or no programing. If the goal of sending these individuals to DRC is to stop them from cycling in and out of the criminal justice system as proponents of the judicial veto claim, then these individuals need access to transitional control, which is DRC's more effective program for reducing recidivism. Removing the sentencing court's veto is good public policy.

In 2018, there were seven counties that vetoed 100% of the notices for transitional control, impacting 50 individuals.[10] That same year there were twelve counties that did not veto any notices, impacting 120 individuals.[11] Whether an inmate receives transitional control should be based on that person meeting the criteria established by DRC in the O.A.C., and not based on the luck of the draw and whether their county is inclined to veto.

This concept has been discussed in the legislature in some form since 2007. However, this much needed reform has failed to pass for over thirteen years because of concerns it will remove "judicial discretion." HB699 does not impact the separation of powers doctrine or "judicial discretion." When sentencing courts sentence an individual to DRC, they do not get to specify to which DRC facility the individual is sentenced. Those decisions are left to DRC, as should the decision to place an individual in a transitional control program. DRC is not releasing these inmates early contrary to the sentence ordered by the court. Just as the sentencing court cannot specify that the individual should spend five years at Lebanon Correctional Institution, then get transferred to Pickaway Correctional Institution; the sentencing court should not be able to veto DRC's decision to move an individual to transitional control when they have only 180 days or less left in their sentence.

When individuals leave DRC, we want them to be setup for success. Ohioans are safer when individuals returning home can successfully acclimate to life outside prison. During COVID, much of DRC's programing, including things like counseling, were discontinued. Even before COVID, DRC did not provide job placement and housing assistance. However, transitional control programs do offer services to individuals. Transitional control is the number one reducer of recidivism. Participating in transitional control is beneficial to the individual partaking in the program and their success is beneficial to all Ohioans.

Judicial Release

The COVID-19 pandemic caught Ohio's prisons flatfooted. Mass incarceration and COVID-19 turned out to be a deadly combination. The very nature of our current incarceration system prevents social distancing, effective quarantining, and the capacity to provide necessary medical care to large numbers of people incarcerated across Ohio. As a result, 139 individuals incarcerated at DRC and 17 staff members died because of COVID-19. This is inexcusable. Prison is not meant to be a death sentence for most people sent there. It certainly is not meant to be a death sentence for DRC employees. Whether it is a new strand of COVID-19 or another pandemic, Ohio cannot let this carnage happen again.

Early during the pandemic, defense attorneys and public defenders sprang into action filing 1,411 judicial release requests. While we don't know the exact number, we know that only a small

[10] Judicial Disapproval Rates among TC Recommended Notifications for Inmates Serving Aggregate Terms of Two Years or Less, CY 2018, by County**.**
[11] *Id*.

number of judicial release request were approved. HB699 allows for a new form of judicial release when Ohio is in a state of emergency as declared by the governor due to a public health emergency or pandemic. Inmates are permitted to request judicial release at any point during their nonmandatory prison term. Judges may hold or waive the judicial release hearing. The bill provides an accelerated timeline for ruling on the motion for judicial release. The trial court is required to determine if the risks posed by incarceration to the health and safety of the individual, because of the nature of the state of emergency, outweigh the risk to public safety if the offender were to be released. For individuals who are incarcerated for a felony of the first or second degree, the bill keeps current law that requires the court to consider whether (1) a sanction other than prison would adequately punish the person and protect the public because of factors indicating a lesser likelihood of recidivism outweigh factors indicating a greater likelihood; and whether (2) a sanction other than prison would not demean the seriousness of the offense because factors indicate the offender's conduct was less serious than conduct normally constituting the offense outweigh factors indicating the offender's conduct was more serious than normal.

Ohio's current judicial release laws fall into two general categories. First, subject to a variety of exceptions based on offense and length of sentence, those in prison may file a motion with their sentencing court to reduce their sentence. Courts have discretion whether to grant judicial release. As we saw during the COVID-19 pandemic, these requests are frequently denied without a hearing. Subject to a variety of exceptions based on offense, a court may file its own motion to release people from prison who fall into three narrow medical categories requiring the person to be a) in imminent danger of death; or b) medically incapacitated; or c) suffering from a terminal illness. DRC is responsible for certifying at least one of these designations apply to the person in question. Despite the obvious risk of serious illness or death from COVID-19 on the DRC population, DRC could not certify for most individuals that death was imminent. This section of current judicial release law was not an option for most individuals during the pandemic, and thus we saw just low numbers of success with judicial release motions filed during the pandemic. However, HB699 will require trial courts to also consider the threat of the state of emergency when making the judicial release determination.

HB699 also creates DRC initiated 80% judicial release. If an individual has served at least 80% of their eligible sentence, DRC may ask the trial court to consider judicial release for that individual. The DRC motion carries a presumption that offender shall be released. The court shall grant the motion unless the prosecutor proves by a preponderance of the evidence that the government's legitimate interest in maintaining the offender's confinement outweighs the offender's interest in being released from that confinement.

OPD is also supportive of this change to judicial release in HB699. At the juncture when an individual is eligible for judicial release, the sentencing court has not been monitoring, supervising, and working with the individual the way DRC has throughout their incarceration. DRC is in the best position to know whether this person is a good candidate for release, more so than the sentencing court. That is why it is appropriate that HB699 gives DRC 80% judicial release motions a presumption for release that can be overcome by the prosecutor. While HB699 still gives the judge the ability to deny the request if the presumption has not been overcome, the process gives deference to the expertise of DRC who has been supervising the individual. Without the presumption for release, courts have proven unwilling to grant 80% release requests under current law as it is granted in less than .1% of cases, less than 1 out of 1,000.[12]

The provisions for judicial release in HB699 are necessary for DRC to control its population. HB699 will help ensure the right people are in prison for the right amount of time.

[12] See DRC Monthly Fact Sheets – Monthly Supervision Counts.

Speedy Trial

OPD is opposed to the provisions in the bill that deal with speedy trial. People who are arrested and charged with crimes have a constitutional right to a speedy trial. Ohioans charged with felonies have a statutory right to be brought to trial within 270 days – or 90 days if they are incarcerated pending trial – as each day of incarceration counts for three days pursuant to Revised Code 2945.71. If a defendant is not brought to trial within the 270-day (or 90 day) deadline, they may assert their right to speedy trial has been violated. If a court finds that a defendant has not been brought to trial prior to the speedy trial deadline, the charge is dismissed with prejudice. However, dismissals for a speedy trial violation are extremely rare. When a defendant claims that his or her speedy trial right has been violated, they must show that 270 days (or 90 days) have passed, and no tolling occurred. Upon meeting this burden, the State then can respond and explain when there should have been tolling. Many things can toll the speedy trial clock. For example, a defendant's motion for discovery tolls the speedy trial clock. The defendant's motion for speedy trial tolls the speedy trial clock. Furthermore, a motion from the defendant, state or court can toll speedy trial for good cause. Additionally, speedy trial can be tolled for a period because of the necessary and temporary absence of a key state witness.[13] Furthermore, there is always the option for the State to dismiss the case without prejudice so that the charges may be brought later. HB699, however, gives prosecutors two additional weeks to have a trial unless the defendant reminds them in advance that the speedy trial deadline is two weeks away.

During proponent testimony for previous iterations of this provision, proponents stated that in the rare insistences where a case is dismissed for speedy trial violations, "there is usually enough blame to go around between the state and the court." That is because bringing cases to trial within the speedy trial timeline is the burden of the court and state. But this bill flips the system on its head and makes it the defendant's responsibility. OPD is happy to provide this committee with language that sets a statutory tolling length when the defendant requests discovery and requires all tolling events to be journalized by the court. Adding language regarding tolling will ensure the State, the defendant, and the court are all aware of, and agree on, the speedy trial deadline before it expires. Tolling language will provide clarity so the State will not need an additional 14 days.

Individuals being detained in jail pending trial are presumed innocent. Fourteen days is a long period of time for someone being held away from their family and employment – often due to a lack of financial ability to pay for bail. To extend the case by another 14 days is to defeat the longstanding principals of speedy trial which serve to protect everyone, including defendants and victims who are waiting for the case to be resolved. The State has considerable power within the criminal justice system, which includes discretion of what charges to file against a person and when. The State should be held accountable to bring to trial the accused within the timeframes already prescribed by law.

Juvenile Offender Parole Flops

Recently, a provision was added to SB288 and HB699 that allows parole hearings to be continued, or "flopped," for up to ten years for individuals who were sentenced to DRC as children. Current law, as passed by the 133rd General Assembly in Senate Bill 256, which passed the Senate 29 – 4 and the House 75 – 9; specifies that a person incarcerated for an offense committed when they were a child can be flopped for up to five years. Kids are different. The data shows that they are especially apt at rehabilitation. Research from Michigan and Philadelphia has shown that juveniles sentenced to life in prison, and released because of bills like SB256, have a 1% recidivism rate. Furthermore, the U.S. Supreme Court has held that kids are entitled to a "meaningful opportunity for release." Flops of 10 years, going from age 45 to 55 to 65, do not allow these individuals a meaningful

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[13] *State v. Smith,* 3 Ohio App. 3d 115 from 1981.

opportunity for release. If the law goes to 10-year flops, Ohio may once again be out of compliance with Supreme Court precedent.

DRC wants individuals to be at Security Level 1 before they are released. However, many kids enter prison with an inflated security level. DRC utilizes ORAS to help determine an inmate's security level. However, ORAS is not meant for children. It has never been tested and peer reviewed as a risk assessment tool for children. For this reason, children can have a higher score simply because of factors consistent with youth, which are considered aggregating factors by ORAS. Many of these things are out of the child's control and not the fault of the child. A 10-year flop for individuals with a security level 4 or 5 does not reflect their inflated risk assessment score.

The majority of people seen by the parole board because of SB256 received less than a five-year flop. This means that there is something in their records—remorse, insight, programming, treatment, security level—where the board felt that they should be seen sooner. In fact, one OPD client was told that they are an example of why Ohio has SB256 by a parole board member. Some of the individuals impacted by SB256 have been living in DRC with no hope of release in their lifetime. Five-year flops give these individuals a chance to improve their behavior or do more programming because now they have hope.

Good Samaritan Law

In 2019, Ohio had the third highest rate of opioid overdoses in the country.[14] In 2020, approximately 5,215 or more people died of an overdose, a 22% increase since 2019.[15] Those people were husbands, wives, daughters, sons, mothers, and fathers. They are members of our communities – our peers, our friends, our family. This legislature has a moral imperative to take action to reduce the number of overdose deaths. The Good Samaritan provision in HB699 is a good start.

When the first Good Samaritan law, that only addressed immunity for low-level drug possession, became effective I was working as a prosecutor. Upon learning about the law, I immediately noticed that drug paraphernalia and needles were not given immunity. That fact did not make sense to me then and it does not make sense to me now. The individuals seeking medical attention used the drugs. That is why they need medical attention - because someone is overdosing. It is only a rare instance where additional drugs are present. However, the drug paraphernalia will almost always be present. HB699 extends immunity to the paraphernalia officers are likely to encounter at an overdose, everything from needles to cotton balls to burnt spoons, etc.

I remember discussing Ohio's current law in the halls among other prosecutors and police officers. When officers voiced concern about the law, I remember commenting, "When you respond to an overdose, look around. You are going to see needles or paraphernalia in plain view. Arrest them for that." While I did not want people to overdose, it never occurred to me that arresting these individuals for paraphernalia was defeating the purpose of the law. If these individuals are in fear that they will be arrested, they won't call for medical assistance. It does not matter that they will be facing misdemeanor charges for paraphernalia instead of a felony possession charge. The fear of getting arrested will prevent them from calling, and people will die. In fact, arresting them puts them in more danger as

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[14] Center for Disease Control and Prevention, https://www.cdc.gov/nchs/pressroom/sosmap/drug_poisoning_mortality/drug_poisoning.htm, last accessed Feb. 25, 2022

[15] Jake Zuckerman, New data: fatal overdoses leapt 22% in Ohio last year, Ohio Capital Journal, July 15, 2021, https://ohiocapitaljournal.com/2021/07/15/new-data-fatal-overdoses-leapt-22-in-ohio-last-year/, last accessed Feb. 25, 2022.

people are more likely to overdose after a period of incarceration. My advice to those officers was shameful.

Since that time, I have a better understanding of the challenges of addiction. The road to recovery is not a straight path. Sometimes people relapse. Regardless of whether it is a first-time user or someone relapsing, if a person is overdosing, we want them to receive immediate medical assistance. The law should incentivize the people to seek help, not make them afraid to do so.

OPD also suggests the bill remove the current law requirement that individuals get an assessment and referral for treatment within 30 days to qualify for immunity. I spoke to a trial attorney at OPD who stated that this requirement makes the Good Samaritan law less effective. The only time this attorney saw people qualify was when they happened to already be in treatment. Many people cannot afford to have an assessment done. Some people may not be in a place yet where they want to pursue treatment. Obviously, we want to encourage everyone suffering from addiction to get treatment, but we also want people overdosing to get medical assistance. The Good Samaritan law should not contain any hurdles that make it harder to get immunity. People must feel free to call for medical assistance. That is the only way we can save the lives of our fellow Ohioans.

Supreme Court Case Provisions

The bill contains several provisions resulting from decisions by the Supreme Court of Ohio. For example, the bill removes the unconstitutional language in the Gross Sexual Imposition statute that requires mandatory prison when the case involves evidence beyond the victim's testimony.[16] HB699 specifies that the juvenile court must find probable cause before a charge can be boundover to the adult court system, and the juvenile court keeps jurisdiction over any charge not boundover.[17] Additionally, the bill specifies that that an underage[18] OVI or "OVUAC" does not enhance penalties for a future offenses.[19] The bill also makes clear that there is no statute of limitations for attempt or complicity to commit aggravated murder or murder.[20]

Finally, the bill allows community control officers, parole officers, and probation officers to search with or without a warrant any real, tangible, or intangible property of an individual on supervision. The search is statutorily permissible under HB699 if any of the following are present, (1) the officer has reasonable grounds to believe the person is not abiding by the law or not complying with conditions of community control or release; (2) for felony offenses, the court can require the person consent to searches as part of the terms and conditions of community control or release; or (3) for felony offenses, the person otherwise consents to the search. OPD has concerns about this provision. First, we are opposed to including the language that makes consenting to searches a term of community control. OPD foresees courts making mandatory consent to search a requirement of every term of community control and probation. Signing away protections from arbitrary search doesn't seem rationally related to the supervision needs and will lead to litigation pursuant to *State v. Jones*[21] and *State v. Talty.*[22] Community control officers' hands are not tied because they already can search when there are "reasonable grounds to believe that the offender is * * * not complying with the conditions" of community control. This language provides much broader authority to search people under supervision than those

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[16] *State v. Bevly*, Slip Opinion No. 2015-Ohio-475.
[17] *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274.
[18] The bill also reduces the offense of underage consumption of alcohol from a misdemeanor of the first degree (M1) to a misdemeanor of the third degree. This change is not pursuant to an Ohio Supreme Court case, but it is a long overdue change. Other M1 offenses include assault, domestic violence, aggravated menacing, and OVI. Clearly, an 18- to 20-year-old simply possessing alcohol is a far cry from these more serious offenses.
[19] *State* v. Hand, 149 Ohio St.3d 94, 2016-Ohio-5504.
[20] *State v. Bortree*, Slip Opinion No. 2022-Ohio-3890.
[21] *State v. Jones* (1990), 49 Ohio St.3d 51, 52, 550 N.E.2d 469.
[22] *State v. Talty*, (2004) 103 Ohio St.3d 177.

who are not under supervision. Additionally, OPD suggest that Post Release Control be excluded from these provisions. Parole and Transitional Control involve early release, so there is leverage to request consent. PRC happens as a matter of course, so any consent to terms of supervision as articulated in statute would be meaningless and illusory.

DYS Transitional Control

HB699 authorizes DYS to develop a program to assist a youth leaving the supervision, control, and custody of the department from age 21 until age 22. The program must provide supportive services for specific education or rehabilitative purposes, under conditions agreed upon by both DYS and the youth and terminable by either. These services must be offered prior to discharge, but youth may request the services described up to 90 days after the youth's effective date of discharge, even if the youth has previously declined services. Participation in these offered services shall not be construed as extending control over the child.

This language is critical for these young adults as their brains are not yet fully developed, which can make them more susceptible to criminal behavior. Neuroscience proved the parts of the brain that govern risk and reward are not fully developed until around age 25.[23] Even the Supreme Court noted in a landmark decision that juveniles' brains are not fully developed, and youths are more susceptible than adults to peer pressure, more impulsive, more likely to take risks, less likely to consider long-term consequences, and more amenable to rehabilitation.[24] All of these factors support the conclusion that rather than throwing Ohio's youth out to sink-or-swim when they age out of DYS, we should send them out with a flotation device to prevent them from drowning as they reenter society as a young adult. Providing one year of transitional resources to help get them back on their feet could make an immense difference in this period of their lives.

Supporting young people during this vulnerable time is important as people tend to commit criminal offenses when they are younger and age out of criminal behavior as they mature. Once the brain fully develops around age 25, lawbreaking drops off.[25] Young adults, because of their impulsive, emotional responses, are more likely to commit crimes than older adults. Researchers found that crime increases throughout adolescence and then declines for the rest of their lives.[26] Poverty is also associated with criminal behavior and youth are more likely to live in poverty than adults, a circumstance that is out of their control, which can heighten their risk of criminal behavior.[27] By assisting these youth with services as they transition out of DYS, we would get them on their feet to start a successful adult life.

Finally, I want to emphasize how this bill will make our own communities safer throughout Ohio. By providing these necessary transitional services, the rate of recidivism will drop. Less youth will be put in the predicament of participating in criminal behavior because they lack their basic needs. These services can provide transitional housing for youth, secure employment, enroll in school or college, participate in community service, and set them up with mental and physical healthcare. In passing HB699, we will make our communities safer and our youth more successful.

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[23] Goldstein, The Marshall Project, https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime#:~:text=Criminal%20careers%20are%20short%20for,more%20likely%20to%20commit%20crimes.
[24] *Roper v. Simmons*, 543 U.S. 551 (2005).
[25] Goldstein, The Marshall Project, https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime.
[26] Cornelius, Lynch, Gore, *Aging Out of Crime: Exploring the Relationship Between Age and Crime with Agent Based Modeling*, https://scs.org/wp-content/uploads/2017/06/6_Final_Manuscript.pdf.
[27] Harris and Kearney, *The Unequal Burden of Crime and Incarceration on America's Poor*, Brookings, https://www.brookings.edu/blog/up-front/2014/04/28/the-unequal-burden-of-crime-and-incarceration-on-americas-poor/.

Conclusion

Clearly, there is a lot included in this bill. Most of these changes are minor and long overdue. As stated above, OPD does not support every single part of this bill. I doubt any organization does. That being said, OPD believes HB699 is a mostly fair and balanced bill in which the good outweighs the bad and problematic. This General Assembly should not hesitate to pass this legislation. Thank you for the opportunity to testify in support of HB699. OPD is happy to be a resource to this committee as you consider this bill.