



65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

Sentencing and Criminal Justice Committee

August 16th, 2018

Agenda

- I. **Call to Order & Approval of Meeting Notes of July 19, 2018 meeting**
 - II. **New Business**
 - A. **Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment**
Update on the status of the ballot initiative now known as State Issue 1.
 - III. **Old Business**
 - A. **Chapter 2925 recodification**
Further discussions of efforts at a redraft of the drug chapter, particularly in light of state issue 1.
 - B. **Appellate Review**
Scott will update the committee on the draft of changes to ORC 2953.08. The working draft is included in meeting materials.
 - C. **Recodification Project**
Update on the joint effort with the Ohio Judicial Conference to move recodification forward with two legislative proposals.
 - IV. **Legislative Update**
Scott will update the Committee on pending and recently enacted legislation.
 - IV. **Adjourn**
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Upcoming Meetings

Sentencing and Criminal Justice Committee	October 18, 2018 Ohio Judicial Center, Room 101
Ohio Criminal Sentencing Commission	September 27, 2018 Verne Riffe Center, Conference Room South B&C

Sentencing and Criminal Justice Meeting July 19, 2018

Call to order and approval of May 17, 2018 minutes:

Judge Spanagel called the meeting to order and members in attendance introduced themselves. Paula Brown corrected a typo in the May 17, 2018 minutes. The minutes were then approved.

Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment:

Discussion of the ballot initiative began with the agencies behind the amendment. Director Andrews informed the Committee of several of the individuals involved in support of the amendment. Scott Shumaker of the Sentencing Commission staff then briefed the Committee on the earned credit portion of the amendment. Paul Dobson noted all the existing types of credit inmates can earn and questioned what the language involving excluded offenses. The amendment language only excludes "murder, rape, and child molestation." Kyle Petty noted that given the provision that the tenets of the amendment be liberally construed the enabling legislation would be very important. Given that the credit stems from successful participation in programming at the institution, Director Andrews asked about program capacity being an issue.

Chair Spanagel noted that the trustees of the municipal judges association had voted to oppose the amendment based on the constitutional concerns as well as opposition from OPAA. Mr. Shumaker will look into if similar earned credit laws had been enacted and how they had affected average length of sentences. Mr. Petty indicated DRC was looking into the projected savings numbers claimed by the proponents of the amendment.

Many members of the committee agreed that a constitutional amendment was not the proper venue for changes to low level drug offenses and were also concerned about a lack of non-jail placements for drug addicted individuals in need of detox or at high risk for overdose. Lusanne Greene indicated this was an issue OCCA hoped to be able to address.

Judge Spanagel then proposed that the Committee make a determination as to what to recommend to the Commission at the next full meeting. He believed the Commission was in a unique position to comment on the pros and cons of the ballot initiative. He suggested the Committee consider whether a position paper was an appropriate. Lusanne Greene indicated that OCCA planned to meet with DRC regarding the amendment and Director Andrews asked that the Commission staff be included in any interested party meetings that were conducted by member agencies. Judge Spanagel then asked members of the Committee to come to the next meeting prepared to discuss concerns and potential responses from their respective agencies.

Old Business:

Mr. Shumaker briefly discussed Recodification Bill efforts. The drug chapter from the Recodification proposal had previously been written up as a stand-alone bill and is being used as a starting point in moving forward. Assuming the committee was ok with the idea of presumptive

trafficking, the debate would then center on threshold amounts of drugs for each felony level. He has been unable to find evidence these amounts were based on scientific study or research. Diversion and supervision changes in the Recodification drug chapter would be removed given the expansion of ILC in SB66. Mr. Shumaker also noted the substantial impact the ballot initiative could have on the drug chapter.

With regard to appellate review of felony sentencing, Scott hopes to have a draft to present to the committee at the August meeting for potential September presentation to the full commission.

Other recodification efforts with OJC are proceeding as well. Marta Mudri and Scott have worked on developing a bill of just non-controversial sections of the recodification proposal that solely make readability and grammatical changes, as well as a second potential bill dealing with property crimes and sections that required mens rea additions. The hope is to have bills ready to move in in the fall/winter with the understanding that they might get pushed into the next GA.

Legislative update:

Mr. Shumaker highlighted legislation that awaits the Governor's signature including SB1 and SB66. He discussed the status of both the House and Senate versions of the Reagan Tokes bills.

The Committee then briefly discussed TCAP and community control violator caps. DRC's efforts at statewide TCAP are on hold pending the amendment previously discussed, but they continue to work on draft language defining technical violations. Scott noted that various appellate courts had begun to address the definition of technical violation and Director Andrews requested the Committee discuss §2929.15 further at the next meeting, including potential definitions of Technical violation.

With no further items for the good of the order, the chair then entertained a motion to adjourn that was seconded and unanimously approved.

TO: Sentencing and Criminal Justice Committee Members

FROM: Judge Ken Spanagel, Chair

DATE: August 7, 2018

RE: Issue 1 – The Neighborhood Safety, Drug Treatment, and Rehabilitation Am.

Members of the Sentencing and Criminal Justice Committee –

As discussed at our July meeting, the *proposed* Neighborhood Safety, Drug Treatment, and Rehabilitation *constitutional amendment* has collected a sufficient amount of signatures and has been formally certified by the Secretary of State for the November ballot as Issue 1.

Given the relatively short time frame before the election, the Sentencing and Criminal Justice Committee must take up consideration of any potential response at the next meeting on August 16, 2018 in order to present that response *and any potential recommendations* to the full Commission at the September meeting. To that end, we ask that the members of this Committee come prepared to discuss the amendment and potential response next week.

You will find the full text of the amendment attached, as well as a summary sheet prepared by commission staff. These were included as part of the meeting materials for the July meeting as well.

Issue 1 is well funded, organized, and poised to have a dramatic effect on Ohio's criminal justice system. It is important that this Committee be prepared to inform the full Commission of the potential impact and to make recommendations as to any position the Commission may choose to take on the ballot initiative.

The Neighborhood Safety, Drug Treatment, and Rehabilitation Act

a.k.a.

State Issue 1

<p>Summary of Proposal</p>	<p>The Neighborhood Safety, Drug Treatment, and Rehabilitation Act is a ballot initiative led by a coalition of Ohio agencies aimed at “reduc[ing] the prison population while increasing community health and safety.”</p> <p>Provisions:</p> <ol style="list-style-type: none"> 1) Reclassify all F4 and F5 drug possession charges as misdemeanors punishable only by probation on the first 2 offenses in 2 years. Retroactive application for those who have not completed their sentence on an applicable offense, and allows for those who have completed their sentence to petition for reclassification. 2) Prohibit a prison sentence for probation violations that are not new felonies or misdemeanors. 3) Earned credit against a prison sentence of up to 25% for successful participation in programming at the institution 4) Establishes criteria for measuring savings from these pro and mandates that 70% of savings from the amendment go to substance abuse treatment programs; 15% to trauma recovery services for victims; 15% goes to existing criminal justice system to implement provisions of the amendment.
<p>Supporters</p>	<p>The Ohio Safe and Healthy Communities Campaign The Ohio Organizing Collaborative Ohio Justice & Policy Center The Ohio Transformation Fund Alliance for Safety and Justice Open Society Policy Center The Chan Zuckerberg Initiative</p>



OHIO

CRIMINAL SENTENCING COMMISSION

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	The Open Philanthropy Project Action Fund
Opponents	OPAA
Submission to Secretary of State	Signatures certified by Secretary of State on July 23 rd , 2018. The amendment had 351,095 valid signatures of the 730,031 collected.
Next Action	Signatures have been verified by Secretary of State. Will appear on November 2018 ballot as State Issue 1.
Passage Requirements	If approved by a majority of voters the amendment becomes effective 30 days after the election.
Commission Analysis	Further discussion of amendment at Sentencing and Criminal Justice committee meeting 8/16/18. Consider any potential recommendations for full Commission meeting 9/27/18.

Members of the Committee –

After close review of the possession offense provisions of Issue 1, I think it doesn't actually limit itself to F4 and F5 drug offenses, but affects possession charges at ALL levels as those charges were defined on January 1, 2018. I've attached the text of the proposed amendment for reference, but the relevant language is found below. The section reducing drug possession offenses to misdemeanors is section (D):

*(D) With respect to state laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense, in no case shall **any offense** be classified higher than a misdemeanor.[emphasis added]*

Section (F) deals with the retroactive application for people with prior ***convictions*** for drug possession. It allows people charged with possession offenses or who have been convicted of possession offenses to petition to have their convictions reclassified as misdemeanors, with resentencing where appropriate.

Now here's where we get into the legal weeds. Section (G) is the exclusionary section ostensibly intended to limit sections (D) and (F) to f4 and f5 possession offenses. This has been one of the central claims of Issue 1 – that it does not affect individuals charged with trafficking or with possession of large amounts of drugs. What's troubling is how section (G) is actually drafted:

*(G) Provisions Do Not Apply to **Convictions** for the Sale, Distribution, or Trafficking of Drugs. Divisions (D) and (F) of this Section do not apply to **convictions** for the sale, distribution, or trafficking of drugs or to **convictions** for any drug offense that, based on volume or weight, and as of **January 1, 2018**, was classified as a first, second, or third-degree felony offense.*

By using the term "conviction" in the exclusionary Section(G) rather than "offense" or "charge" they haven't actually excluded anything. Section (D) speaks specifically to drug "offense[s]" being reduced to misdemeanors. Terms like "offense" and "conviction" have very specific definitions and should not be interpreted as meaning the same thing. A person is not "convicted" until they have been found guilty by a judge or jury.

All of this is to say that there is at least an argument that Issue 1 reduces ALL possession offenses (kilos of fentanyl/heroin/cocaine etc.) to misdemeanors. The poor drafting of the exclusionary section leaves the amendment wide open to that interpretation. It is important to remember Ohio drug laws currently require either a sale or an offer to sell controlled substances to prove the offense of trafficking in drugs. Mere possession without any further evidence is charged as a possession offense rather than trafficking. Individuals who were found to be in possession of kilos of drugs and who were charged with possession offenses could file to have their cases either reclassified as misdemeanors or outright dismissed.

The language I've pasted in here is taken from the full text of the proposed amendment (attached). Unsurprisingly, it differs from the language in their amendment summary which uses the term "offense" as opposed to "conviction". Hopefully that's relatively clear. Let me know if any of you have questions or additional concerns.

Thank you
Scott

OHIO COMMON PLEAS JUDGES' ASSOCIATION

Judge Linda J. Jennings, President

Judge Jody M. Luebbbers, President Elect

August 14, 2018

FOR IMMEDIATE RELEASE

Statement of the Ohio Common Pleas Judges' Association regarding Ohio Issue One

The Ohio Common Pleas Judges Association strongly opposes Ohio Issue One, The Neighborhood Safety, Drug Treatment, and Rehabilitation amendment to the Ohio Constitution. Ohio's judges prefer to rehabilitate rather than incarcerate, but will be left powerless to do either in most cases by the passage of Issue One.

Issue One masquerades as a more thoughtful approach regarding the sentencing of drug offenders. In reality, The Neighborhood Safety Act will make neighborhoods less safe as the ultimate ability to punish those who steal, cheat, and lie in order to obtain and use dangerous drugs will be eviscerated.

Issue One fails to provide adequate funding for its stated goal of rehabilitation. It also mistakenly assumes that an adequate infrastructure already exists, ready to handle the complex needs of repeat, dependent offenders. This proposed constitutional amendment does not provide adequate funding for treatment infrastructure nor treatment itself.

The beneficiaries of Issue One's passage will be those who break the law. Issue One's passage will eliminate the court's ability to secure restitution for crime victims. Criminals will know that violating a court probation order to pay restitution will have no consequence. Why pay restitution when one can't go to prison? Why complete drug treatment, if one can't go to prison? Ohio's law abiding citizens will be further victimized. Loved ones of drug dependent individuals will lose their last chance to help their addict get clean in the criminal justice system.

Ohio's judges have been on the front line of the opioid epidemic in the nation's continual battle against drug dependency.

Few defendants upon arrest are dedicated to getting clean. Usually it is the threat of prison that helps to modify a dependent defendant's thinking. Issue One removes the threat of incarceration from our judges' sobriety toolkits.

Contact:

Judge Linda Jennings, OCPJA President: 419-213-4580

Judge David Matia, OCPJA Immediate Past President: 216-443-8695

State Issue 1: A Safe Harbor for Drug Traffickers and Violent Offenders

Proponents of State Issue 1 claim that the amendment promotes neighborhood safety and drug treatment. As professionals who deal with this issue every day, Ohio prosecutors believe that these assertions are based on a fundamentally flawed understanding of how the justice system treats drug addicted offenders and deals with the illegal drug trade.

1) Undermines Treatment

Claim: The amendment will cut off the “addiction-to-prison” and “probation-to-prison” pipelines allowing drug addicted offenders to receive treatment in their community.

Fact: Most drug addicted offenders already receive treatment in the community. Those who are sent to prison are typically individuals who have multiple convictions or multiple probation violations and for whom community treatment has not worked. For this population, a trip to prison can be beneficial. It can remove addicts from the stressors and triggers that lead to relapse behavior, shock them into complying with treatment, and potentially save lives. The amendment removes this essential tool from the tool belt of those in the justice system who are trying to help people recover. Research and experience clearly demonstrate that without court intervention, including possible incarceration, addicts are less likely to seek treatment. The amendment will cost some addicts their lives.

2) Hinders Prosecution of Drug Traffickers

Claim: The reclassification of drug-possession felonies down to misdemeanors does not apply to drug trafficking offenses.

Fact: The amendment will make it more difficult to prosecute drug traffickers. The proposal may limit the ability to prosecute individuals for possession with intent to distribute and prevent felony charges for traffickers who deliberately deal in small amounts so that they can assert simple possession as a defense. The amendment removes human judgment from decisions about who should receive treatment and who should go to prison. It replaces that judgment with a one-size-fits-all approach to an incredibly complex problem. It will result in misdemeanor convictions for many drug traffickers. Convicted drug traffickers will be eligible for a 25% sentence reduction.

3) Reduces Sentences for Violent Offenders

Claim: The amendment increases public safety by rewarding personal rehabilitation while in prison. It is the intent of the amendment to “ensure that state prison spending is focused on violent and serious offenses.”

Fact: The amendment will result in reduced sentences for violent and non-violent offenders alike. Individuals convicted of human trafficking, aggravated robbery, aggravated burglary, aggravated arson, kidnapping, felonious assault, and other violent offenses will be eligible to have their sentence reduced by as much as 25%. This puts the public’s safety at risk, undermines public confidence in the justice system, and is a disservice to the victims of violent crimes.

4) Overburdens Local Governments

Claim: The amendment will yield at least \$100 million in *annual* budget savings that will be reinvested in treatment.

Fact: The proposal is another shift of financial responsibility from the state to local government. It is not clear that the savings will be anything other than one-time savings. In year two, and thereafter, once the target population of non-violent drug possession offenders is out of prison, there are no savings to the State. Local governments, however, will remain responsible for the costs of treatment, probation, and jail. California, which adopted a similar proposal in 2014, has realized only a fraction of the savings that they projected there.

5) Shortsighted

Claim: The amendment increases healing.

Fact: The amendment sends the wrong message to young adults about the seriousness of drug abuse. While the amendment is intended to address the current opiate scourge, voters should not lose sight of the fact that it makes possession of drugs like heroin, meth, LSD, cocaine, fentanyl, carfentanil, and the next drug that the illegal drug trade begins trafficking misdemeanors. It places these drugs on par with marijuana. The message to our next generation is that use of these drugs does not carry serious personal consequences. The amendment is a green light to drug abuse that will inevitably destroy more lives.

2953.08 Appeal as a matter of right - grounds.

(A) In addition to any other right to appeal and except as provided in division (D) of this section, a defendant who is convicted of or pleads guilty to a felony may appeal as a matter of right the sentence imposed upon the defendant in the following circumstances:

(1) The sentencing court imposed only one sentence, or imposed multiple sentences and ordered the offender to serve the individual prison terms concurrently.

(2) The sentencing court imposed any prison term to be served consecutive to another prison term.

(3) An additional prison term was imposed upon the defendant pursuant to division (B)(2)(a) or (b) of section 2929.14 of the Revised Code.

(4) The sentence fails to comport with all mandatory sentencing provisions or is not authorized by any provision of the Revised Code.

(5) The sentence is not within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14 (A) of the Revised Code.

(6) The sentencing court abused its discretion in determining that the defendant's individual sentence comports with the principles and purposes of felony sentencing as set forth in section 2929.11 of the Revised Code and the seriousness and recidivism factors as set forth in section 2929.12 of the Revised Code.

(B) In addition to any other right to appeal and except as provided in division (D) of this section, a prosecuting attorney, a city director of law, village solicitor, or similar chief legal officer of a municipal corporation, or the attorney general, if one of those persons prosecuted the case, may appeal as a matter of right a sentence imposed upon a defendant who is convicted of or pleads guilty to a felony or, in the circumstances described in division (B)(3) of this section the modification of a sentence imposed upon such a defendant, on any of the following grounds:

(1) The sentence did not include a prison term despite a presumption favoring a prison term for the offense for which it was imposed, as set forth in section 2929.13 or Chapter 2925. of the Revised Code.

(2) The sentence fails to comport with all mandatory sentencing provisions or is not authorized by any provision of the Revised Code.

(3) The sentence is not within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14(A) of the Revised Code.

(4) The sentence is a modification under section 2929.20 of the Revised Code of a sentence that was imposed for a felony of the first or second degree.

(5) The sentencing court abused its discretion in determining that the defendant's individual sentence comports with the principles and purposes of felony sentencing as set forth in section 2929.11 of the Revised Code and the seriousness and recidivism factors as set forth in section 2929.12 of the Revised Code.

(D)(1) A sentence or an aggregate prison term imposed upon a defendant is not subject to review under this section if the sentence or the aggregate prison term is authorized by law; has been jointly recommended or agreed to by the defendant and the prosecution in the case, including a specific sentence as well as a jointly recommended sentencing range(s) or sentencing cap(s); and the sentencing court imposes a sentence or aggregate prison term consistent with that agreement. The sentencing court's imposition of consecutive service shall not be subject to review if the aggregate prison term imposed is within the jointly recommended sentencing range or sentencing cap.

(2) A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section.

(E) A defendant, prosecuting attorney, city director of law, village solicitor, or chief municipal legal officer shall file an appeal of a sentence under this section to a court of appeals within the time limits specified in Rule 4(B) of the Rules of Appellate Procedure, provided that if the appeal is pursuant to division (B)(4) of this section, the time limits specified in that rule shall not commence running until the court grants the motion that makes the sentence modification in question. A sentence appeal under this section shall be consolidated with any other appeal in the case. If no other appeal is filed, the court of appeals may review only the portions of the trial record that pertain to sentencing.

(F) On the appeal of a sentence under this section, the record to be reviewed shall include all of the following, as applicable:

(1) Any presentence, psychiatric, or other investigative report that was submitted to the court in writing before the sentence was imposed. An appellate court that reviews a presentence investigation report prepared pursuant to section 2947.06 or 2951.03 of the Revised Code or Criminal Rule 32.2 in connection with the appeal of a sentence under this section shall comply with division (D)(3) of section 2951.03 of the Revised Code when the appellate court is not using the presentence investigation report, and the appellate court's use of a presentence investigation report of that nature in connection with the appeal of a sentence under this section does not affect the otherwise confidential character of the contents of that report as described in division (D)(1) of section 2951.03 of the Revised Code and does not cause that report to become a public record, as defined in section 149.43 of the Revised Code, following the appellate court's use of the report.

(2) The trial record in the case in which the sentence was imposed;

(3) Any oral or written statements made to or by the court at the sentencing hearing at which the sentence was imposed;

(4) Any written findings that the court was required to make in connection with the modification of the sentence pursuant to a judicial release under division (I) of section 2929.20 of the Revised Code.

(G)(1) If the sentencing court was required to make the findings required by division (B) or (D) of section 2929.13 or division (I) of section 2929.20 of the Revised Code, or to state the findings of the trier of fact required by division (B)(2)(e) or (C)(4) of section 2929.14 of the Revised Code, relative to the imposition or modification of the sentence or the manner in which the sentences are to be served, and if the sentencing court failed to state the required findings on the record, the court hearing an appeal under division (A) or (B) of this section shall reverse and remand the case to the sentencing court and instruct the sentencing court to state, on the record, the required findings. The failure to include any findings made at the time of sentencing in the sentencing entry shall be harmless error unless the offender can demonstrate prejudice.

(2) The court hearing an appeal under division (A) or (B) of this section shall review the record, including the findings underlying the sentence or modification given by the sentencing court, under an abuse of discretion standard.

The appellate court may vacate an individual felony sentence, or the imposition of consecutive or concurrent service of multiple sentences, under the abuse of discretion standard of review and remand the matter to the sentencing court for a de novo resentencing hearing on that portion of the sentence or sentences only where the appellate court finds any of the following:

(a) That the trial court abused its discretion in making statutory findings because the record does not support the sentencing court's findings under division (B) or (D) of section 2929.13, division (B)(2)(e) of section 2929.14, division (C)(4) of section 2929.14 subject to the limitations in division (I) of this section, or division (I) of section 2929.20 of the Revised Code, whichever, if any, is relevant;

(b) That the sentence fails to comport with all mandatory sentencing provisions or is not authorized by any provision of the Revised Code;

(c) That the sentence is not within the statutory range of prison terms for the applicable degree of felony as provided by section 2929.14 (A) of the Revised Code;

(d) That the sentencing court abused its discretion in determining that the defendant's sentence imposed for any felony offense comports with the principles and purposes of felony sentencing as set forth in section 2929.11 of the Revised Code and the seriousness

and recidivism factors as set forth in section 2929.12 of the Revised Code subject to the presumption established in division (H) of this section.

(H) On an appeal under division (A) of this section challenging the sentence imposed upon any individual felony offense, there is a rebuttable presumption that the individual sentence is consistent and proportional under R.C. 2929.11 and 2929.12 if the sentence(s) are within the authorized range for the offense or offenses and the individual sentences are imposed to be served concurrently. This presumption is rebuttable by either the defendant or the government.

(I) An appellate court hearing an appeal challenging the imposition of multiple sentences to be served consecutively under section (A) or (B), shall examine the purposes and principles from section 2929.11 and the factors from section 2929.12 of the Revised Code to determine if the trial court abused its discretion (1) by imposing consecutive service based on the trial court's reliance on the sentencing factors considered under R.C. 2929.19(B)(2)(a) or, (2) if the proponent of the sentencing challenge can demonstrate with specific references to the record, based on all the factors considered under R.C. 2929.12(B)(2)(a) being unsupported by any evidence. An appellate court shall not reverse the imposition of consecutive service based on any of the R.C. 2929.12 factors that are not offered for consideration or independently considered under R.C. 2929.19(B)(2)(a). If the appellate court determines that the sentencing court abused its discretion as stated in this subdivision, the appellate court may reverse and remand for a de novo sentencing hearing. In such a hearing, the sentencing court may consider the factors under section 2929.12 and section 2929.14(C)(4) of the revised code anew to determine whether some or all of the individual prison terms are to be served consecutively or concurrently.

(J) An appellate court hearing an appeal challenging the imposition of a single sentence or a series of sentences imposed concurrently under section (A) or (B), shall examine the purposes and principles from section 2929.11 and the factors from section 2929.12 of the Revised Code to determine if the trial court abused its discretion. The appellate court, reviewing such sentences, shall give the trial court's sentence a presumption that both the purposes and principles from section 2929.11 and the factors from section 2929.12 of the Revised Code were properly considered and applied. The appellate court shall not overturn a single or concurrent sentence within the applicable range because the trial court did not identify any of the relevant factors under section 2929.12. It is presumed that the individual sentence, or sentences, are consistent and proportional under R.C. 2929.11 and 2929.12 if the sentence(s) are within the authorized range for the offense or offenses and the individual sentences are imposed to be served concurrently. An appellate court shall only reverse such a sentence under section (A) or (B) where the appealing party can specifically delineate how the sentencing court abused its discretion in imposing such a sentence.

(K) All alleged sentencing errors under this section are subject to the harmless error standard, as specified in Crim. R. 52(A). A judgment or final order of a court of appeals under this section may be appealed, by leave of court, to the supreme court.

R.C. 2929.19(B) ((2) (a)

(2) Subject to division (B)(3) of this section, if the sentencing court determines at the sentencing hearing that a prison term is necessary or required, the court shall do all of the following:

(a) Impose a stated prison term and, if the court imposes a mandatory prison term, notify the offender that the prison term is a mandatory prison term;

(b) If a consecutive sentence or consecutive sentences are imposed, identify the relevant factors under R.C. 2929.12 that are either offered by the defendant or the prosecution or identified by the trial judge, that are determinate of the findings required under R.C. 2929.14(C)(4). The trial court is not required to identify the relevant factors under R.C. 2929.12 that weighed in favor of defaulting to concurrent service of the sentences imposed.

FULL TEXT OF PROPOSED AMENDMENT

Be it Resolved by the People of the State of Ohio that Article XV of the Ohio Constitution is hereby amended to add the following Section:

§12 Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment

(A) Findings and Declarations.

The People of the State of Ohio find and declare that drug addiction is a serious societal problem that presents issues of public health and safety and incarcerating users rather than by providing treatment poses a threat to public safety and is an inefficient use of criminal justice resources, and further find and declare that prison spending should be focused on violent and serious offenses and preparing individuals for release through rehabilitation while maximizing alternatives for non-serious non-violent crime.

(B) Purpose of this Section and Savings Achieved from Prison Population Reduction.

(1) In adopting this Section, it is the purpose and intent of the people of the State of Ohio to ensure that state prison spending is focused on violent and serious offenses and to invest future savings generated from this Section into substance abuse treatment programs, crime victim programs, and other purposes consistent with this Section.

(2)(a) To support substance abuse treatment programs, crime victim programs, and other purposes consistent with this Section, such as adult and juvenile probation department programs, graduated responses programs, and rehabilitation programs for people in the justice system, the general assembly shall include in the State biennial budget appropriations of funds from the savings to the State achieved as a result of the implementation of this Section. The funds disbursed pursuant to this Section are intended to supplement, not supplant, funding obligations of the state and local governments.

(b) Seventy percent of the funds to be disbursed under this Section shall be disbursed to the state department of mental health and addiction services, or its successor, for a grant program funding substance abuse treatment programs, services, and supports throughout Ohio. The state department of mental health and addiction services, or its successor, shall award the grants pursuant to an application program with an emphasis on the demonstrated need of the population to be served by the applicant, the applicant's proposed use for the funds, and the applicant's demonstrated ability to achieve successful results with effective programs. The state department of mental health and addiction services, or its successor, shall conduct a biennial evaluation of the efficiency and effectiveness of the substance abuse treatment programs and services funded under this Section.

(c) Thirty percent of the funds to be disbursed under this Section shall be disbursed for purposes that are consistent with the intent of this Section, such as crime victim programs, adult and juvenile probation department programs, graduated responses programs, and rehabilitation programs for people in the justice system. To reduce further victimization of underserved victims of violent crime, at least half of such funds shall be disbursed to the attorney general for a grant program funding victim trauma recovery services. The attorney general shall conduct a biennial evaluation of the efficiency and effectiveness of the trauma recovery services for crime victims funded under this Section.

(d) The general assembly may adjust the ratio of funds to be disbursed pursuant to this division for substance abuse treatment programs, services, and supports and for other purposes consistent with this Section after the first three biennial appropriations and every three biennial appropriations thereafter. Under any adjusted ratio of funds by the general assembly, no less than fifty percent of the total funds shall be disbursed for substance abuse treatment programs, services and supports, and no less than ten percent for crime victim trauma recovery services.

(e) The funds disbursed under this division may be used by the recipients without regard to the fiscal year for which the funds were appropriated or disbursed.

(C) Sentence Credits for Rehabilitation.

The Ohio Department of Rehabilitation and Correction, or its successor, shall grant to an incarcerated individual one half of one day of credit toward satisfaction of the individual's stated sentence for each day they participate in appropriate rehabilitative, work, or educational programming, up to a maximum of twenty-five percent of the individual's stated sentence. The Ohio Department of Rehabilitation and Correction may, at its discretion, grant up to thirty days of additional credit toward satisfaction of an individual's stated sentence for completion of appropriate rehabilitative, work, or educational programming. This division shall not apply to any individuals who are serving sentences of death or life without the possibility of parole, nor to individuals serving sentences for murder, rape, or child molestation.

(D) Reclassification of Certain Non-Serious, Non-Violent Drug Offenses.

With respect to state laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense, in no case shall any offense be classified higher than a misdemeanor. The misdemeanor classification may be a general classification or a special classification for the offense. The sanctions authorized may not exceed those of a first-degree misdemeanor, and, for an individual's first or second conviction within a twenty-four month period, the sanctions shall not exceed probation. If an individual has more than two convictions within a twenty-four month period, then sanctions may include jail time or probation in lieu of jail time.

(E) Graduated Responses for Non-Criminal Violations of Probation.

Within ninety days of the effective date of this Section, each trial court with jurisdiction to revoke an adult's or juvenile's probation for a non-criminal violation shall prepare and submit for approval to the Ohio Department of Rehabilitation and Correction, or its successor, guidelines for graduated responses that may be imposed for such violations. An individual who, on or after the effective date of this Section, is on probation for a felony offense shall not be sent to prison on a probation revocation for non-criminal violations of the terms of their probation. Non-criminal violations shall be dealt with in accordance with guidelines for graduated responses.

(F) Retroactive Application of this Section.

(1) Any individual who, prior to the effective date of this Section, was convicted under Ohio law of an offense of possessing, obtaining, or using a drug or drug paraphernalia, or was adjudicated a delinquent based on such an offense and who has not completed their sentence for such offense, may petition the court in which the conviction or adjudication occurred to have such charge changed to the respective class of offense as determined by the general assembly in accordance with this Section, and shall be re-sentenced and/or released, unless the

court makes a finding and sets forth a particularized factual basis that the individual presents a risk to the public and should not be re-sentenced and/or released.

(2) Any individual who, prior to the effective date of this Section, was convicted under Ohio law of an offense of possessing, obtaining, or using a drug or drug paraphernalia, or who was adjudicated a delinquent based on such offense, and who has completed their sentence for such offense, may petition the court in which the conviction or adjudication occurred to have such charge changed to the respective class of offense as determined by the general assembly in accordance with this Section.

(G) Provisions Do Not Apply to Convictions for the Sale, Distribution, or Trafficking of Drugs.

Divisions (D) and (F) of this Section do not apply to convictions for the sale, distribution, or trafficking of drugs or to convictions for any drug offense that, based on volume or weight, and as of January 1, 2018, was classified as a first, second, or third-degree felony offense.

(H) Provisions Do Not Apply to Convictions for Murder, Rape, or Child Molestation.

Nothing in this Section shall be construed as applying to, changing, or affecting laws or sentencing for the incarceration of individuals convicted of murder, rape, or child molestation.

(I) Calculation of Savings to the State.

(1) The general assembly shall include the appropriations set forth in Division (B) of this Section in each State biennial budget beginning with the budget commencing July 1, 2019, in a total amount equal to the projected savings in state costs that will result from the implementation of this Section during the biennium period.

(2) The projected savings in state costs shall be the sum of the following calculations:

(a) The State shall project the fewer number of days of incarceration that will be served in state prisons during the biennium as a result of Divisions (C), (D), and (F) of this Section and multiply the number by a per-diem amount of forty dollars.

(b) The State shall project the fewer number of days of incarceration that will be served in state prisons during the biennium as a result of Division (E) of this Section and multiply the number by a per-diem amount of thirty dollars.

(3) The general assembly shall enact a system to adjust appropriations under this Section at the close of the biennial budget period based upon true-ups of the projected savings.

(4) The per-diem figures used in this subdivision shall be adjusted each State biennial budget by the rate of inflation for the previous biennial budget period according to the consumer price index or its successor.

(5) In making the calculations required by this Section, the State shall use actual data or best available estimates where actual data is not available.

(J) Definitions.

As used in this Section:

(1) “Drug” means any controlled substance, compound, mixture, preparation, or analog intended to be injected, ingested, inhaled, or otherwise introduced into the human body as identified and regulated by the general assembly.

(2) “Possessing, obtaining, or using a drug” does not include possession of a drug for purposes of the sale, distribution, or trafficking of drugs

(3) “Drug paraphernalia” means any equipment, product, or material used or intended to be used in connection with the possession or use of a drug.

(4) “Possessing, obtaining, or using drug paraphernalia” does not include possession of drug paraphernalia for purposes of the sale, distribution, or trafficking of drugs.

(5) “Laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense” do not include laws that make it a criminal offense to possess a drug or drugs for purposes of the sale, distribution, or trafficking of drugs.

(6) “Graduated responses” means an accountability-based graduated series of sanctions and incentives designed to protect communities, hold people accountable, and prevent repeat offenses by providing appropriate responses for unlawful actions and by inducing and reinforcing law-abiding behavior. This schedule of responses may include, but is not limited to, drug treatment, community service, fines, electronic monitoring, detention other than in a county or municipal jail, detention in a county or municipal jail, but only upon the court making a finding and setting forth a particularized factual basis that the individual presents a risk to themselves or the public, and earned rewards, such as reduced sentences for compliant conduct as the trial court deems appropriate.

(7) “County or municipal jail” means a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse.

(8) A “non-criminal violation” of the terms of probation includes, but is not limited to, actions such as a drug use relapse, missing a curfew, missing or being late for a probation meeting, changing an address without permission, failing to timely pay a fine, or failing to perform required community service. An action that results in a criminal conviction is not a non-criminal violation under this Section.

(9) “Probation” includes community control sanctions.

(K) Liberal Construction.

This Section shall be liberally construed to effectuate its purpose.

(L) Conflicting laws.

This Section shall supersede any conflicting state and local laws, charters, and regulations or other provisions of this constitution.

INITIATIVE PETITION

To the Attorney General of Ohio: Pursuant to Ohio Revised Code § 3519.01(A), the undersigned electors of the State of Ohio, numbering in excess of one thousand, hereby submit to you the full text of a proposed Amendment to the Ohio Constitution and a summary of the same.

TITLE

The Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment

SUMMARY

This Amendment would add a new section 12 to Article XV of the Ohio Constitution to reduce the number of people in state prison for low-level, nonviolent drug possession or drug use offenses or for non-criminal probation violations and by providing sentence credits for participation in rehabilitative programs and to direct the savings achieved by such reductions in incarceration to drug treatment programs and other purposes. More specifically, in addition to other provisions, the amendment would:

- Appropriate state funds saved due to a reduction in the number of people in state prisons as a result of the Amendment's provisions to support drug treatment programs and other purposes consistent with the intent of the Amendment, which are intended to supplement, not supplant, funding obligations of the state and local governments. The general assembly shall include such appropriations in each State biennial budget beginning with the budget commencing July 1, 2019, in a total amount equal to the projected savings in state costs that would result from the implementation of this Amendment during the biennium period. The general assembly would determine the projected savings by multiplying the projected fewer number of days of incarceration that would be served in state prisons as a result of the provisions in the Amendment by certain per-diem rates, which would be biennially adjusted by the rate of inflation. The general assembly would also enact a system to adjust the appropriations at the close of the biennial budget period based upon true-ups of the projected savings. For the first three State biennial budgets after the adoption of this Amendment, the cost savings shall be reallocated as follows: 70% to the state department of mental health and addiction services, or its successor, for a grant program funding substance abuse treatment programs, services, and supports; and 30% for purposes consistent with the intent of this Amendment, such as crime victim programs, adult and juvenile probation programs, graduated responses programs, and rehabilitation programs for people in the justice system, at least half of which shall be distributed to the attorney general for a grant program funding trauma recovery services for crime victims. After three State biennial budgets, the general assembly could change the allocation percentages subject to certain minimum parameters. The funds disbursed may be used by the recipients without regard to the fiscal year for which the funds were appropriated or disbursed.
- Provide that the Ohio Department of Rehabilitation and Correction, or its successor, grant incarcerated individuals sentence credits of one half of one day for each day they participate in appropriate rehabilitative, work, or educational programming, up to a maximum of twenty-five percent of the individual's stated sentence, and, in the Department's discretion, grant up to thirty days of additional sentence credits for completion of such programming. These provisions would not apply to individuals serving sentences of death or life without parole or for murder, rape, or child molestation.
- Provide that offenses for obtaining, possessing, or using a drug or drug paraphernalia shall be classified no higher than a misdemeanor. The sanctions for such offenses may not exceed those of a first degree misdemeanor, and, for an individual's first or second conviction within a twenty-four month period, the sanctions shall not exceed probation. If an individual has more than two convictions within a twenty-four month period, sanctions may include jail time and probation in lieu of jail time.
- Require that graduated responses be imposed for non-criminal probation violations, and that individuals who are on probation for a felony offense and commit a non-criminal probation violation shall not be sent to prison on a probation revocation for such violation.
- Require each trial court with jurisdiction to revoke an adult's or juvenile's probation for a non-criminal violation to prepare guidelines, subject to approval by the Ohio Department of Rehabilitation and Correction, or its successor, for graduated responses that may be imposed for non-criminal probation violations.
- Provide that individuals who, prior to the effective date of this Amendment, were convicted of obtaining, possessing, or using a drug or drug paraphernalia, or were adjudicated delinquent based on such offense, may petition the court in which the conviction or adjudication occurred to have such charge changed to the respective

class of offense as determined by the general assembly in accordance with this Amendment. Individuals who have not completed their sentences for such offense as of the Amendment's effective date, and who petition the sentencing court, shall be re-sentenced and/or released, unless the court determines that the individual presents a risk to the public and should not be re-sentenced and/or released.

- Provide that the grants for substance abuse treatment programs, services, and supports be awarded pursuant to an application program with an emphasis on the demonstrated need of the population to be served by the applicant, the applicant's proposed use for the funds, and the applicant's demonstrated ability to achieve successful results with effective programs.
- Require biennial evaluations of the efficiency and effectiveness of the substance abuse treatment programs and services and the crime victim trauma recovery services funded under this Amendment.
- Not apply to offenses for the sale, distribution, or trafficking of drugs, nor to any drug offense that was classified as a first, second, or third degree felony as of January 1, 2018.
- Not apply to, change, or affect laws or sentencing for the incarceration of individuals convicted of murder, rape, or child molestation.
- Supersede any conflicting state and local laws, charters, and regulations or other provisions of the Constitution.

The Amendment contains certain declarations and findings that are relevant to the Amendment, and defines "drug," "possessing, obtaining, or using a drug," "drug paraphernalia," "possessing, obtaining, or using drug paraphernalia," "laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense," "graduated responses," "county or municipal jail," "non-criminal violations [of probation terms]," and "probation."

COMMITTEE TO REPRESENT THE PETITIONERS

The following persons are designated as a committee to represent the petitioners in all matters relating to the petition or its circulation:

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