



Sentencing and Criminal Justice Committee Meeting Agenda January 18, 2018

I. Call to Order & Approval of November 16, 2017 Meeting Notes

II. Discussion and determination of next steps:

- * **T-CAP Roundtable – Update from OJC, DRC, Members**
- * **2929.15 – Update from OJC, DRC**
- * **Reagan Tokes Act - SB201, SB202, HB365 and Recodification Committee 2929 recommendations**
- * **Appellate review**
- * **2925**
- * **Marsy’s Law implementation – OJC, DRC, Members**

III. “The Neighborhood Safety, Drug Treatment and Rehabilitation” amendment

We are working with Professor Berman via the new OSU Drug Enforcement & Policy Center and Hayden Capace, JD to consider the provisions as they compare to current law including Marsy’s Law, the work of the recodification committee and try to estimate how many past, current and future cases may be impacted by the initiative. Hayden will also review/summarize past efforts --- in Ohio and elsewhere --- to reform drug sentencing through initiative.

IV. Other Legislative Updates/Considerations (see pages 2 & 3)

V. Adjourn

Next meeting:

Full Commission – March 15, 2018 10:00a – 31st floor Riffe Center

Sentencing & Criminal Justice Committee – February 2018 Meeting TBD

April 19, 2018 Room 281 Ohio Judicial Center

HB 4 COCAINE AMOUNTS DETERMINATION (CUPP, ROGERS)

The bill provides that in determining the amount of cocaine for trafficking and possession offenses, it also includes a compound, mixture, preparation, or substance containing cocaine. The bill passed the House and was referred to the Senate Judiciary Committee on February 22, 2017. The bill had its third hearing in the Senate Judiciary Committee on March 28, 2017. There is also a similar bill, Senate Bill (SB 42 – Eklund) which had its third hearing in the Senate Judiciary Committee on March 28, 2017.

SB 42 Drug Offense Penalties (EKLUND) The bill expressly provides that drug offense penalties that refer to a particular type of drug also apply to a compound, mixture, preparation, or substance containing a detectable amount of that drug and to declare an emergency. The bill had its third hearing in the Senate Judiciary Committee on March 28, 2017. **See Hannah News Service story, January 5, 2018.**

HB374 CHILD ENTICEMENT PROHIBITIONS (DUFFEY, CUPP)

The bill creates additional criminal prohibitions within the offense of criminal child enticement and classifies criminal child enticement as a tier I sex offense when committed by a registered sex offender. The bill had a first hearing in the House Criminal Justice Committee on November 14, 2017.

HB439 RISK ASSESSMENT-BAIL SETTING (DEVER, GINTER)

The bill require courts to use the results of a validated risk assessment tool in bail determinations; allows nonmonetary bail to be set; require courts to collect certain data on bail, pretrial release, and sentencing; and requires the state Criminal Sentencing Commission to create a list of validated risk assessment tools and monitor the policies and procedures of courts in setting bail and utilizing pretrial supervision services. The bill incorporates several of the recommendations advanced by the Ohio Criminal Sentencing Commission. The bill was introduced on December 7, 2017.

HB457 OPIATE USE-PAROLE & COMMUNITY CONTROL (ANTANI)

The bill requires that an offender serving a community control sanction or a parolee who fails a drug test for heroin, fentanyl, or carfentanil be held in jail or admitted to a residential treatment program for up to 30 days. The bill was introduced on December 28, 2017.

HB 455 DRUG TRAFFICKING (WIGGAM)

The bill provides that, in determining the amount of cocaine for trafficking offenses, the weight of a compound, mixture, preparation, or substance containing cocaine is included. The bill also increases penalties for certain drug trafficking offenses, including making an F4 trafficking offense an F3 with a mandatory prison term, making an F3 trafficking offense an F2 with a mandatory prison term, and making an F3 aggravated trafficking offense an F1 (the statute already provides a mandatory prison term for this offense). The bill was introduced December 27, 2017.



SB 1 DRUG LAWS (LAROSE)

The bill increases penalties for drug trafficking, drug possession and aggravated funding of drug trafficking when the drug involved in the offense is a fentanyl-related compound; revises the manner of determining sentence for certain violations of the offense of permitting drug abuse, and adds lisdexamphetamine to the list of schedule II controlled substances. The bill had a second hearing in the House Criminal Justice Committee on October 10, 2017. **See Hannah News Service story, January 4, 2018.**

SB33 LEADS DISCLOSURE (EKLUND)

The bill allows disclosure of information from the law enforcement automated data system (LEADS) to a defendant in a traffic or criminal case and allows certain state highway patrol troopers to administer oaths and acknowledge criminal and juvenile court complaints, summonses, affidavits, and returns of court orders in matters related to their official duties. The bill also authorizes a court to continue a person on intervention in lieu of conviction if the person violates the terms and/or conditions, which mirrors a recommendation from the Ohio Criminal Sentencing Commission. **The bill was signed by the Governor on 12/22/2017, effective in 90 days.**

SB231 SIERAH'S LAW-VIOLENT OFFENDERS (GARDNER)

The bill requires the Ohio Attorney General Bureau of Criminal Investigation to establish a Violent Offender Database (VOD), requires persons convicted of certain violent offenses to enroll in the database and names the provisions of the act "Sierah's Law". The bill also increases the current membership of the Ex-Offender Reentry Coalition from 17 to 21, adding four members of the General Assembly, specifying two of the four will be the chairpersons of the standing committees that primarily address criminal justice matters, modifies the duties of the Coalition and eliminates its repeal. The bill requires halfway houses to use the single validated risk assessment tool selected by the Department of Rehabilitation and Correction for adult offenders and it provides that that the notice of release from prison of specified offenders given to sheriffs is to be the same as that provided to prosecuting attorneys and eliminates the notice to sheriffs regarding pardons, commutations, paroles, and transitional control transfers of offenders. The bill had a first hearing in the Senate Judiciary Committee on November 28, 2017.

SB235 SEX OFFENDER REGISTRY CHANGES (EKLUND)

The bill creates a procedure for certain tier II sex offenders convicted of unlawful sexual conduct with a minor to petition a court for reclassification or removal from the sex offender registry and to permits record sealing in those cases. The bill was introduced on November 27, 2017.



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FIND
A BILL

Bill Number:

132nd 2017-2018

GO

Bills Introduced: This Week | 1 Week Ago | 2 Weeks Ago | 3 Weeks Ago | This Session

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Supreme Court: Legislature Must Act to Allow Increased Penalties for Dangerous Fentanyl

Until and unless the General Assembly enacts revised penalty enhancements for super-opioid fentanyl in SB1 (LaRose), courts will have no power to impose harsher sentences on criminals who possess large amounts of the potentially fatal drug, the Ohio Supreme Court announced Thursday.

The Court pointed out that the Legislature has currently chosen to increase penalties for the possession of fentanyl and other Schedule II drugs up to a 1st degree felony based on varying multiples of the "bulk amount," as determined by the maximum daily dose in the usual dosage range specified in a standard pharmaceutical reference manual like the *American Hospital Formulary Service Drug Information (AHFS)*. Specifically, the bulk amount would be 20 grams or five times the maximum dose under the current language of R.C. 2925.01(D)(1)(d).

The problem, said the Court, is that while the *AHFS* contains some guidance on fentanyl use, it does not specify the maximum daily dose in the usual dosage range as it does for other drugs.

In framing its decision, the Court acknowledged the sobering numbers on fentanyl -- 50 times stronger than heroin and implicated in 60 percent of Ohio's opioid deaths in 2016, among other statistics.

Thursday's ruling centers on the arrest, conviction and sentencing of Mark Pountney, who was charged with two counts of drug possession, two counts of theft and one count of identity fraud after he was allegedly found with at least five but not more than 50 times the bulk amount of fentanyl, a second-degree felony violation under R.C. 2925.11(C)(1)(c). The Cuyahoga County Common Pleas Court merged Pountney's allied offenses and sentenced him to three years in prison for aggravated possession of fentanyl and 18 months for identity fraud, to be served concurrently, along with three years of mandatory post-release control and a \$7,500 fine.

On appeal, Pountney objected to the enhanced, second-degree penalty for fentanyl possession, which would otherwise be only a fifth-degree felony, due to the absence of specific prescribing guidelines in the *AHFS*. The 8th District agreed and ordered a new sentence at the lesser penalty.

The state turned to the Supreme Court with *amicus* support from Ohio Attorney General Mike DeWine, who argued that the *AHFS* provides sufficient guidance on fentanyl's usual dose range to support enhanced penalties for the drug.

The Court disagreed, saying the current language of the Ohio Revised Code is very clear about the required specifications for maximum dose.

"The General Assembly made the policy decision to tie the degree of offense for aggravated possession of Schedule II controlled substances, like fentanyl, to the bulk amount rather than to weight or unit doses, as it did with other controlled substances. And because the *AHFS* ... does not state a maximum daily dose in the usual dose range for transdermal fentanyl, the state is unable to prove the 'bulk amount' under the current statutory scheme," Justice Judith French said, writing for the unanimous Court.

She rejected the testimony of the state's star witness, compliance specialist Paul Schad of the Ohio State Board of Pharmacy, who admitted there is no usual dose range for fentanyl patches in the *AHFS* but suggested dosing language for morphine had provided sufficient guidance.

"The issue in this case is not Schad's credibility or the persuasiveness of his testimony. Rather, the issue is whether Schad's testimony satisfies the statutory definition of 'bulk amount,' that is, whether he testified to a maximum daily dose in the usual dose range for fentanyl specified in a standard pharmaceutical reference manual," French said.

"This creates a problem of proof for the prosecution, but it is not a problem that we may remedy by ignoring the unambiguous statutory language the General Assembly has employed."

French concluded her opinion by reminding the Legislature that it has had SB1 pending in the House Criminal Justice Committee since May 9, 2017 after it passed the Senate earlier last year.

"To be sure, enhanced felony prosecution for possession of fentanyl is one weapon in the state's arsenal in the war on drug-related crime. But what the state asks here requires the General Assembly, not this Court, to act," she said.

Story originally published in *The Hannah Report* on January 4, 2018. Copyright 2018 Hannah News Service, Inc.

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Wednesday, January 10, 2018

Committee Likely to Combine Drug Mixture Bills

Sen. John Eklund (R-Chardon) and Rep. Bob Cupp (R-Lima) are working toward merging their bills clarifying that drug offense penalties also apply to compounds containing a detectable amount of that drug, Senate Judiciary Committee Chairman Kevin Bacon (R-Columbus) told *Hannah News* Friday.

"I believe they are in agreement to combine the bills," Bacon said, referring to HB4 (Cupp), which deals specifically with cocaine, and SB42 (Eklund), which deals with drugs more broadly. Both of the bills have received three hearings in the Senate Judiciary Committee.

"The Cupp bill kind of fixes the cocaine issue with a rifle shot, where the Eklund bill is kind of a broader fix," Bacon said. "So that's what we're working toward. Sen. Eklund is going to be bringing the bill up for consideration with our Senate Republican members and talking to committee members to see if he has the support. I suspect it will go well. I don't foresee any problems."

Bacon said Eklund's bill will probably be amended into Cupp's bill, as HB4 already passed the House. (See *The Hannah Report*, 2/15/17.)

HB4 passed the House with an emergency clause after the Ohio Supreme Court's initial decision in *State v. Gonzales* determined that only the weight of pure cocaine could be used to set an offender's sentence. However, the Court reversed its ruling in March 2017, making the issue less urgent for lawmakers to address. (See *The Hannah Report*, 3/6/17.)

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December 1, 2017

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Ohio Attorney General
Constitutional Offices Section

Via Hand Delivery

Hon. Mike DeWine
Ohio Attorney General
30 E. Broad Street
Columbus, Ohio 43215

**Re: "The Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment"
Summary Petition**

Dear Attorney General DeWine:

On behalf of my clients, Ohio Safe and Healthy Communities Campaign and petition committee members Shakyra Diaz, Gary Williams, Stephen JohnsonGrove, Albert Rodenberg, Jr., and Margaret Nichelle Nicole Rosario, and pursuant to R.C. § 3519.01(A), I am hereby filing with your office a petition to approve a summary of a constitutional amendment to be proposed by initiative petition. The petition contains over 4,000 signatures of electors on 248 part-petitions and the summary and full text of the amendment to be proposed.

Please contact me if you have any questions. Thank you.

Very truly yours,



Donald J. McTigue

Encls.

County: Auglaize

Number: 1104

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:

Shakyrá Diaz	5780 Great Northern Blvd., G2, North Olmsted, OH 44070
Gary Williams	13612 Ardoon Ave., Cleveland, OH 44120
Stephen Johnson Grove	3968 Lowry Ave., Cincinnati, OH 45229
Albert Rodenberg, Jr.	3622 Highland Green, Cincinnati, OH 45245
Margaret Nichelle Nicole Rosario	3584 Tivoli Ct., Gahanna, OH 43230

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.

STATEMENT OF CIRCULATOR

I, Catalleya Storm, declare under penalty of election falsification that I am the circulator of the foregoing petition paper containing the signatures of 1 electors, that the signatures appended hereto were made and appended in my presence on the date set opposite each respective name, and are the signatures of the persons whose names they purport to be or of attorneys in fact acting pursuant to section 3501.382 of the Revised Code, and that the electors signing this petition did so with knowledge of the contents of same. I am employed to circulate this petition by

(Name and address of employer). (The preceding sentence shall be completed as required by section 3501.38 of the Revised Code if the circulator is being employed to circulate the petition.)

I further declare under penalty of election falsification that I witnessed the affixing of every signature to the foregoing petition paper, that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Catalleya Storm

(Signed)

3427 Province Street

(Address of circulator's permanent residence in this state) Number and Street, Road or Rural Route

Fairborn, OH

City, Village or Township

OH

State

45324

Zip Code

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

OHIO CRIMINAL SENTENCING COMMISSION

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Chief Justice Thomas J. Moyer, Chairman

David J. Diroll, Executive Director

To: Chief Justice Tom Moyer
From: David Diroll
Re: Drug Initiative Stuff
Date: September 11, 2002

Since the Commission helped shape many provisions in drug sentencing law, I tend to emphasize the legal and policy implications of the Initiative, rather than the numbers. That's why I included the Commission's position as the second part of this memo. But some discussion of the numerical impact is inevitable. The first part ("Stats") contains Fritz's estimates.

Stats

Fritz's numbers vary some from Steve VanDine's and lead to different conclusions than Ed Orlett draws from them. Part of the problem is that we know a lot about people sent to prison, but relatively little (given the local nature of community control sanctions) about those not sent to prison. Another problem is that the pool envisioned by the Campaign for New Drug Policies must include some offenders at levels higher than F-5 (and thus above what we typically see as the "personal use" range). How many is hard to figure. For all its specificity, the Initiative leaves vague which offenders would be eligible. *Per Fritz:*

- About 6,144 felons are convicted of F-5 drug possession annually. Of these:
 - About 1,450 are sent to prison directly (23.6%), including many who plead to F-5 possession;
 - But, 68% of them have a prior felony conviction, 55% have a prior prison term, & 45% have a prior jail sentence.
 - About 1,201 come to prison as community sanction violators (19.5%);
 - Prison-bound possessors serve, on average, about 6 months (so the Campaign's statement of savings "per bed" is overstated).

The Commission's Take

Here's the memo that we prepared after the Commission's May 16 vote to oppose the drug initiative:

To: Interested Persons
From: Sentencing Commission
Re: The Proposed Drug Initiative
Date: May 20, 2002

The Commission's Position on the Drug Initiative

Persons charged with drug possession could elect to enter a treatment program instead of facing a prison term under an initiative proposed by the Campaign for New Drug Policies. The initiative limits jail terms to 90 days for those who continue to violate drug possession laws during or after treatment. It appropriates \$38 million for treatment annually.

The initiative could appear as an amendment to the Ohio Constitution on the November 2002 ballot. The Sentencing Commission reviewed the initiative at its April and May meetings.

Although the Commission has long favored treatment over incarceration for those who abuse drugs, most members believe that the initiative is unnecessary and rigid. On May 16, the Commission voted to oppose it.

Here is why. In recent years, based on Sentencing Commission recommendations, the General Assembly adopted a series of reforms designed to foster treatment and appropriate controls for drug users. Summarized under "current law" below, these changes address many of the initiative's sentiments. Under these provisions, courts sentence relatively few low-level drug abusers directly to prison today.

Our understanding of drug abuse and effective treatment continues to grow. That is why Commission members prefer setting Ohio's drug policy by statute rather than by constitutional amendment. We can routinely refine statutes. A constitutional amendment is not as flexible.

Current Law

Here are some of the Ohio Revised Code's relevant provisions. In present form, each grew out of a recommendation of the Sentencing Commission:

- **Intervention in Lieu of Conviction.** Before sentencing, courts can place willing low-level drug possessors in treatment. If successful, the court dismisses the case without a conviction (§2951.041). Drug courts use this approach or variations on it.

- **General Sentencing Options.** If the case reaches sentencing, a court may place drug users under various community controls, including intervention programs (such as Narcotics Anonymous), residential treatment, nonresidential treatment, and drug testing (§§2929.13(A) & 2929.17).
- **Guidance Against a Prison Term.** In fact, the Code guides courts to use these community programs, rather than prison, in sentencing F-5 drug possessors, unless certain factors are present (prior prison term, weapon, violence, *etc.*) (§2929.13(B)). Moreover, on appeal, the appellate court *must* review any prison sentence imposed on an F-5 possessor when no aggravating factor is present.
- **Personal Use Affirmative Defense.** The initiative focuses on "personal use" amounts. It's unclear whether it covers F-4 possessors. Current law does not favor either community options or prison for F-4 drug users (§2929.13(C)). However, the law affords the F-4 possessor a personal use affirmative defense. If successful, the penalty drops to the F-5 level (§2925.11(F)).
- **Treatment before Prison for Violators.** Courts sentence relatively few drug possessors directly to prison. Those sent to prison typically violate the conditions of treatment or other community controls, often several times. To minimize the number of these violators sent to prison, §2929.13(E)(2) now encourages judges to order treatment if an offender violates community control solely by testing positive for drugs, provided the offender has not already failed in treatment.
- **Prison Terms.** After following the rules noted above, if a prison term is warranted for drug use, the maximum term is 12 months for F-5 possession and 18 months for F-4 possession. These are the shortest prison terms in Ohio's felony sentencing law.

In short, current statutes direct most drug abusers into treatment programs, rather than prison. But they also encourage the offender to assume accountability and retain prison terms when warranted.



**Sentencing and Criminal Justice Committee
Meeting Notes
November 16, 2017**

Call to Order, Welcome & Introductions

In Chair Spanagel's absence, Sara called the meeting to order, welcomed members and introductions were made.

Old Business

- * **Update on Bail and Pre-Trial Services – status of recommendations with the Supreme Court of Ohio and General Assembly.**

Sara noted that the Commission's recommendations specific to the Supreme Court were forwarded to the Chief Justice via Judge Selvaggio. The response from Administrative Director Buenger was that the Court has already compiled its proposed rule amendments to be implemented in July 2018, therefore the earliest the Commission recommendations could be considered is in 2019.

Judge Capelli in Fairborn Municipal Court and Judge Spanagel are both pilot courts to implement bail and pretrial services change/reform (not in a joint effort).

Sara reported legislation regarding the recommendations may be introduced in the near future.

There has also been some conversation regarding the recommendations and the applicability of ORC 5120.114 and ORAS as the single validated risk tool. Members discussed if Department of Rehabilitation and Correction (DRC) grants are specific to pretrial services and that jurisdictions are currently using different tools such as the Arnold tool, the Summit County tool and ORAS – Pretrial Tool (PAT). Will DRC reconsider single tool selected for bail/pre-trial? Conversation then turned to ORAS and the presumption for prison. It was noted that if/when a Judge wants to rebut a presumption for prison for a person with a low ORAS score, the person is often rejected from placement in a community based correctional facility because of the low ORAS score. The deviation cap and exceptions are inconsistent.

- * **PRC issue (attachment)**

Sara also updated members on the status of a fix to ORC 2967.28, clarifying imposition of post release control by the court. The recommended statutory revision is included in HB365 – the Reagan Tokes Act.

New Business

- * **Update on JRI 2.0 – kick off meeting November 9, 2017**

Members discussed the recent meeting of the Ad Hoc Committee. Comments included that while it is worthwhile endeavor, Ohio refuses to collect data – so there won't be change. The Ohio Court Network exists but it is not statewide aggregate data and there is no effort to move toward a statewide court management system – when it is clear that a unified system for data collection is needed. The best recommendation of the effort may be that data collection piece.

Other notables of the effort include that the analysis of current statutory scheme was constructive and illustrative of the impossible nature of the code and the emphasis on the value of learning/using alternative data sources. The sentiment was expressed that until we as a criminal justice system decide how we deal with relapse, nothing we propose will work.

* **T-CAP**

DRC reported that 50 counties opted into the program and 7 of the 10 mandatory counties are participating. The Ohio Judicial Conference (OJC) is planning a T-CAP roundtable to air grievances and discuss solutions at the Ohio Common Pleas Judges Association winter meeting the first week in December. Members noted that T-CAP is squarely a sentencing commission issue and it is problematic that the proposed legislation wasn't vetted with the Commission given the direct impact on sentencing. It was noted that counties that declined to participate did so because there is currently no opportunity for deviation – which leaves one obvious solution.

* **2929.15**

Members discussed the cap on community control violators and asked if community control continues after the person is returned as a violator – to which DRC has opined no. Members pointed out that it is problematic for a 12 month sentence to be reduced to a 90-day violator maximum and then released from prison sans community control. Members also discussed the letter that DRC is sending the courts is inconsistent with the application because it says DRC is honoring the journal entry. Furthermore, the technical violation language is problematic because the definition proposed by DRC is anything short of a new offense.

Members generally agreed that the process for solution is the problem – the conclusion is probably fine – but, a budget bill is an inappropriate place to legislate it.

* **Recodification Committee**

Chapter 2929

Members agreed that a comprehensive review of sentencing in Ohio is necessary and if there is a return to indefinite sentencing, it must be for all offenses. Sentencing – one/two pages – simple, indefinite scheme is desirable.

The point was made that HB365 is not what the Recodification Committee recommended (chapter 2929) and there are vast differences. Additionally, members discussed that the advisements during plea hearing include complex language, will be incredibly difficult to administer and will be unsuccessful – it is doubtful persons will knowingly, intelligently understand and such administrative advisements after sentence announced creates public safety concern. The question was raised whether or not DRC can do it at intake?

Concern was also expressed that the mathematical nature of sentence determination, especially for the level of seriousness, invites error.



Chapter 2925

Members discussed the need to prioritize what is causing the greatest assault on sentencing statutes and that instead of continuing to work around it we should figure out how to define drug behavior, because it is the most important. Statutory construction of drug offenses – for instance, use is a misdemeanor; trafficking and sharing. It was suggested that we are changing the role of the judge to fix what should be addressed by changing the criminal act and we keep avoiding the issue of relapse behavior. Why not consider M1 v super misdemeanor – up to one year?

Drug use is a public health issue. The Ohio Community Corrections Association (OCCA) distributed a comparison document to members outlining certain legislative proposals/drug changes and recod proposals.

* **Simplify driving under suspension to three things:**

- Driving under Administrative Suspension
- Not having a license
- Driving under court imposed sentence

The OJC Traffic Law and Procedure Committee is working on draft language.

Adjourn

With no further business for the Committee, the meeting was adjourned.