



OHIO

CRIMINAL SENTENCING COMMISSION

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

Sentencing and Criminal Justice Committee

July 19, 2018

Agenda

- I. **Call to Order & Approval of Meeting Notes of May 17, 2018 meeting**
 - II. **New Business**
 - A. **Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment**
Update on the status of the ballot initiative
 - III. **Old Business**
 - A. **Chapter 2925 recodification**
A discussion of the recodification of the drug chapter.
 - B. **Appellate Review**
Scott will update the committee on Appellate review efforts.
 - C. **Recodification Project**
The committee will be updated on joint efforts with the Ohio Judicial Conference to move forward portions of the Recodification Committee proposal.
 - B. **Pending legislation update**
 - IV. **Adjourn**
-

Upcoming Meetings

Sentencing and Criminal Justice Committee	August 16th, 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 May 17, 2018

Call to order and approval of February 21, 2018 minutes:

Judge Spanagel called the meeting to order and the minutes of the February 21, 2018 were unanimously approved upon a motion by Paul Dobson seconded by Chrystal Alexander.

JRI 2.0 Questions:

The Committee began its discussion with a series of questions presented by representatives from the Council on State Governments regarding their efforts in JRI 2.0. CSG was interested in seeing if consensus existed for several of the changes made in the Recodification Committee proposal. Several of those changes were discussed.

With regard to split sentencing, Tim Young indicated a judge may sentence a defendant to community control in one case and prison in another, but they cannot split sentences on charges under one case. He noted 9000 individuals released from ODRC last year who were not on PRC, and stated that his bigger concern was why there are not more release options available to the institution rather than to the judge. The Committee also discussed sentencing simplification, but little consensus existed as to where that effort would start. Paul Dobson indicated a widespread desire for removal of formulaic recitation of words in sentencing hearings.

With regard to changing merger of offenses, it was noted through discussion consensus could be difficult. Mr. Dobson noted OPAA was opposed to the Recodification Committee proposal for merger of offenses. Mr. Young noted that the merger doctrine has been a moving target for decades and a clearer statutory provision was necessary.

The committee then discussed questions regarding changes to the judicial veto provision of transitional control. Jim Lawrence noted that an amendment to SB66 regarding this was in the works.

Regarding protection order changes proposed in Recod, the committee noted objections from victim's representatives. Mr. Young noted that Recod had hoped to simplify a complex procedure to make it easier for victims to procure an order.

The Recodification Committee moved all specifications to a dedicated chapter, a change the Committee felt had value. Concerns were noted with Recod's approaches to drug supervision and ILC and Director Andrews noted that supervision strategies should not be codified. Mr. Young also noted massive differences between the presumptive parole proposed by the Recodification Committee and those being proposed in the Reagan Tokes acts. Cynthia Mausser highlighted a desire for a release provision not tied simply to conduct, as that can often not tell the whole story.

The Committee then discussed a question posed by Mr. Young - Why is JRI 2.0 here? In his meeting with JRI representatives they were frustrated with the lack of available data and the difficulties obtaining what data does exist. Committee members recognized this as a reoccurring theme in Commission efforts, and discussed the best recommendations JRI could make. Mr. Dobson noted that a statewide case management system would be the cleanest and best way to establish readily available data on criminal cases.

Ongoing Projects:

Scott Shumaker discussed the Chapter 2925 review project. Commission staff is working with OPAA and OJC to form a larger workgroup for the project. A timeline was developed for a preliminary proposal to the Committee in September with a final vote on proposal for the full Commission in December.

Marta Mudri from the Ohio Judicial Conference discussed another recodification project. She will work with the Commission staff to evaluate what portions of the Recodification Committee proposal were merely grammatical or not contention and attempt to move those forward in a legislative package.

The appellate review projects continues with a phone conference being scheduled in the next week. The hope is to have a draft prepared for presentation in July for this group then Commission in September, if not for the full commission in June. Jill Beeler noted that concerns about proposed sentencing changes in the HB365/SB201 are being taken into account.

Legislative update:

The Senate version of the Reagan Tokes bill , SB201 was voted out of senate. HB365 is still pending in the House. Tim Young noted that his office had developed their own fiscal impact statement of the two bills and would be testifying in opposition to both. The estimate the senate version as costing approximately \$45m/year and the House version as costing \$143.5m. These are annual costs and his office believe the bill could require that 3-4 prisons be built to house the additional prisoners. Kyle Petty noted that ODRC is still working on impact with regard to DRC population, classification, prison costs.

Several amendments to SB66 were discussed for the Committee, and Kyle Petty discussed a potential amendments in the works to limit record sealing. Concerns were discussed about allowing sealed convictions to be accessible to law enforcement.

The Committee then discussed the TCAP program and 2929.15. Efforts are underway to develop a definition for “technical violation,” including one definition of “anything other than a new felony offense.” Kyle Petty discussed ODRC’s efforts on the subject as well as an upcoming interested party meeting on the subject to be facilitated by Representative Seitz.



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

Judge Spanagel then discussed the Ohio Supreme Court's meeting about "bail improvement" and discussions amongst that group. Changes to Rule 46 are being discussed with proposals to include a presumption of non-monetary release.

Scott Shumaker then updated the Committee on new legislation introduced since the last meeting.

The Committee work chart will be updated prior to the next meeting. Director Andrews noted that the Commission has extended an offer to another researcher candidate.

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

The Neighborhood Safety, Drug Treatment, and Rehabilitation Act

Summary of Proposal

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.”

Provisions:

- 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 provisions 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.

Supporters

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

Opponents

OPAA

Submission to Secretary of State

It was submitted on July 4th, 2018 with 730,000+ signatures. 306,591 valid signatures are necessary (~42%).

	<p>Needs signatures from at least 44 counties, and each county's signatures must number at least 5% of the total gubernatorial vote in that county in the last election.</p>
Next Action	<p>A ratification decision is due by 7/24/18. If insufficient signatures exist, petitioners have 10 days to remedy the deficit of signatures.</p> <p>Then Secretary of State sends amendment to Ballot Board who prescribes ballot language.</p>
Passage Requirements	<p>If approved by a majority of voters the amendment becomes effective 30 days after the election.</p>
Commission Analysis	<p>Discussion of amendment at Sentencing and Criminal Justice committee meeting 7/19/18.</p> <p>Potential topics include if the Commission should take a position and if so, how.</p>

MORE HEALING, LESS PRISON, MORE SAFETY

The Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment



People-powered public policy: A vibrant coalition of Ohio citizens — led by the Ohio Organizing Collaborative, the Ohio Justice & Policy Center, and the Ohio Transformation Fund, with national support from the Alliance for Safety and Justice — is leading a criminal-justice-reform campaign, guided by one big question:

Can we reduce the prison population while increasing community health and safety?

The answer is a resounding YES — and we found at least **\$100 million** in our existing state budget that could be freed up to accomplish this goal. After months of research and working with legislators, it became clear that the only way to win what Ohio needs is through an **amendment to the state constitution**. We are in the process of collecting 500,000 signatures of Ohio voters by mid-2018, so that we can put it on the ballot for November 2018. The amendment has four parts that will **increase public safety by decreasing incarceration and increasing healing**.

1. Reward personal transformation

This amendment encourages incarcerated people to work toward transforming themselves by expanding Ohio's current earned-credit program. Someone would be able to earn one day off their prison term for every two days they participate in programs like job training, victim awareness, cognitive behavioral therapy, and getting a GED. This earned credit would be capped at 25% of a person's sentence. It would *not* be available to anyone convicted of murder, rape, or child molestation.

2. Cut off the addiction-to-prison pipeline

Any drug-possession offense that would currently count as a fourth- or fifth-degree felony would be reclassified as a misdemeanor, meaning they would be ineligible for prison. And the first two convictions for these new misdemeanors would also be ineligible for jail time. All drug *trafficking* felonies would remain felonies.

3. Cut off the probation-to-prison pipeline:

This amendment would prohibit prison for probation violations that are not new felonies or misdemeanors. Instead, each probation department will be empowered to create a system of rewards and punishments that create meaningful, local accountability for people on probation.

4. Re-invest in healing, get safety

The first three reforms will safely shrink the state prison population, yielding at least \$100 million in annual budget savings. Our amendment requires that the savings be spent in healing people most harmed by addiction and crime: 70% for drug-treatment programs in the areas that need it most; 15% for trauma-recovery services for crime survivors; and the remaining 15% for making the existing justice system more responsive to these goals. Nearly all of these resources will be coming to local communities through competitive grant programs, meaning Ohioans closest to their county's safety problems will get the resources they need.

[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 sup-

plement, 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

Re-invest in healing, get safety

70% of the savings redirected from prisons will go toward **substance-abuse treatment programs.** The money will be available to any qualified applicant, from local law enforcement agencies to existing treatment providers to regional coalitions.

[See paragraph (I) below for exactly how the savings will be calculated]

The remaining 30% of the redirected savings will be divided in half:

15% for trauma-recovery services for victims of violent crime;

15% for the existing criminal-justice system, so that courts, law enforcement, jails, prisons, and other institutions will be able to implement the reforms throughout this amendment. Reentry services may be able to be included in this portion.

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

Reward personal transformation

The amendment expands Ohio's *existing* earned-credit program. People in prison will be able earn one half day off of their prison term for each day they participate in rehabilitative programming. This will be capped at 25% of their total sentence (up from the current 8% cap). The prison system will have the discretion to add up to 30 more days of credit for completing programs.

Cut off the addiction-to-prison pipeline

Any drug-possession offense that is currently a 4th or 5th degree felony would be reclassified as a misdemeanor. These offenses would never be eligible for state prison. The first two convictions would also be ineligible for local jail time.

Cut off the probation-to-prison pipeline

Prison will no longer be an option for probation violations that are not new felonies or misdemeanors. Instead, probation departments must create a new system of rewards and lesser, local punishments (see paragraph (J)(6) on page 4).

People with past 4th and 5th degree felony drug-possession convictions will be able to ask a court to have their convictions reclassified as misdemeanors.

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

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

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,

Re-invest in healing, get safety

This is the methodology for calculating the cost savings to the state budget for the thousands of people that will be diverted from prison because of this amendment.

Cut off the probation-to-prison pipeline

Each probation department will be empowered to create a right-sized accountability system for dealing with probation-rule violations.

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.

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:

Shakyr Diaz	5780 Great Northern Blvd., G2, North Olmsted, OH 44070
Gary Williams	13612 Ardoon Ave., Cleveland, OH 44120
Stephen JohnsonGrove	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

CHAPTER 2925 DRUG OFFENSES

Recodification Proposal

Presumptive Trafficking	<p>Recod Created 3 classifications - Generally raised threshold amounts at each felony level. They do not require the prosecution to prove the "sale" or "distribution" element traditionally associated with trafficking offenses; merely possessing a large amount of drugs creates an irrebutable presumption of trafficking because of the large amount of drugs involved and is sufficient to charge</p> <p>2925.01 Aggravated Trafficking: F1 and F2 offenses.</p> <ul style="list-style-type: none">• Mandatory prison terms.• Possession sufficient to prove trafficking.• Retains MDO for cocaine, opiates, and CSA as a mandatory 10 or 11 year term.• Amounts on attached chart. <p>2925.02 Trafficking In Drugs: F3 offenses.</p> <ul style="list-style-type: none">• No mandatory or presumptive prison sentences.• <i>Partial affirmative defense that lowers F3 Trafficking to F4 Possession if offender proves personal use.</i>• Unless rebutted, possession is sufficient to prove trafficking.• Amounts on attached chart. <p>2925.03 Petty Trafficking: F4 and F5 offenses.</p> <ul style="list-style-type: none">• Requires sale or offer to sell.• Amounts on attached chart
Threshold amounts	<p>Generally raised all amounts by one felony level. See attached charts for Recodification proposed amounts.</p> <p>How do we want to tackle amounts? Create a workgroup including subject matter experts (law enforcement, pharmacy board, etc)?</p>
Trace Amounts	<p>Offenses with drug amounts have a minimum required amount that must be detectable: either twenty-five one thousandths of a gram or one fourth of one unit dose, whichever is applicable.</p> <p>Include paraphernalia as</p>

Other steps

Defelonization of low level possession – see discussion of Ballot initiative.

- Concerns regarding municipal court resources
- Speedy trial issues

Supermisdemeanor status for low level offenses

- Need to address jurisdictional concerns

Concerns with remaining offenses in recod bill – what should be removed or changed

- Supervision model should come out
- Changes to ILC in SB66

Marijuana provisions of recodification bill

Aggravated Trafficking in Drugs

DRUG	AMOUNT	LEVEL
Schedule I or II	$\geq 50 \rightarrow < 100$ x bulk	F-2 (mandatory within the range)
	≥ 100 x bulk	F-1 (mandatory within the range)
Marijuana	≥ 40 kg	F-2 (mandatory within the range)
Cocaine: Powder or Crack	≥ 50 g \rightarrow < 100 g	F-2 (mandatory within the range)
	≥ 100 g \rightarrow < 250 g	F-1 (mandatory within the range)
	≥ 250 g	F-1 (MDO – 10 or 11 year mandatory)
LSD: Solid	≥ 500 UD \rightarrow < 5000 UD	F-2 (mandatory within the range)
	≥ 5000 UD	F-1 (mandatory within the range)
LSD: Liquid	≥ 50 g \rightarrow < 500 g	F-2 (mandatory within the range)
	≥ 500 g	F-1 (mandatory within the range)
Heroin/Fentanyl	≥ 30 g \rightarrow < 50 g; ≥ 300 UD \rightarrow < 500 UD	F-2 (mandatory within the range)
	≥ 50 g \rightarrow < 100 g; ≥ 500 UD \rightarrow < 1000 UD	F-1 (mandatory within the range)
	≥ 100 g; ≥ 1000 UD	F-1 (MDO – 10 or 11 year mandatory)
Hashish	≥ 2 kg	F-2 (mandatory within the range)
Controlled Substance Analog	≥ 30 g \rightarrow < 40 g	F-2 (mandatory within the range)
	≥ 40 g \rightarrow < 50 g	F-1 (mandatory within the range)
	≥ 50 g	F-1 (MDO – 10 or 11 year mandatory minimum)

Trafficking in Drugs

DRUG	AMOUNT	LEVEL
Schedule I or II	$\geq 5 \text{ x bulk} \rightarrow < 50 \text{ x bulk}$	F-3
Schedule III, IV, or V	$\geq 50 \text{ x bulk}$	F-3
Marijuana	$\geq 5 \text{ kg} \rightarrow < 40 \text{ kg}$	F-3
Cocaine: Powder or Crack	$\geq 27 \text{ g} \rightarrow < 50 \text{ g}$	F-3
LSD: Solid	$\geq 200 \text{ UD} \rightarrow < 500 \text{ UD}$	F-3
LSD: Liquid	$\geq 20 \text{ g} \rightarrow < 50 \text{ g}$	F-3
Heroin/Fentanyl	$\geq 10 \text{ g} \rightarrow < 30 \text{ g}; \geq 100 \text{ UD} \rightarrow < 300 \text{ UD}$	F-3
Hashish	$\geq 200 \text{ g} \rightarrow < 2 \text{ kg}$	F-3
Controlled Substance Analog	$\geq 20 \text{ g} \rightarrow < 30 \text{ g}$	F-3

Petty Trafficking in Drugs

DRUG	AMOUNT	LEVEL
Schedule I or II0	$\geq 0.025\text{g} \rightarrow < \text{bulk}$	F-5
	$\geq x \text{ bulk} \rightarrow < 5 x \text{ bulk}$	F-4
Schedule III, IV, or V	$\geq 0.025\text{g} \rightarrow < \text{bulk}$	F-5
	$\geq \text{bulk} \rightarrow < 50 x \text{ bulk}$	F-4
Marijuana	Gift $\leq 20\text{g}$	Minor Misdemeanor
	$\geq 0.025\text{g} \rightarrow < 1 \text{ kg}$	F-5
	$\geq 1 \text{ kg} \rightarrow < 5 \text{ kg}$	F-4
Cocaine: Powder or Crack	$\geq 0.025\text{g} \rightarrow < 10 \text{ g}$	F-5
	$\geq 10 \text{ g} \rightarrow < 27 \text{ g}$	F-4
LSD: Solid	$\geq 0.25 \text{ UD} \rightarrow < 50 \text{ UD}$	F-5
	$\geq 50 \text{ UD} \rightarrow < 200 \text{ UD}$	F-4
LSD: Liquid	$\geq 0.025\text{g} \rightarrow < 5 \text{ g}$	F-5
	$\geq 5 \text{ g} \rightarrow < 20 \text{ g}$	F-4
Heroin/Fentanyl	$\geq 0.025\text{g} \rightarrow < 1 \text{ g}; \geq 0.25 \text{ UD} \rightarrow < 10 \text{ UD}$	F-5
	$\geq 1 \text{ g} \rightarrow < 10 \text{ g}; \geq 10 \text{ UD} \rightarrow < 100 \text{ UD}$	F-4
Hashish	$\geq 0.025\text{g} \rightarrow < 50 \text{ g}$	F-5
	$\geq 50 \text{ g} \rightarrow < 200 \text{ g}$	F-4
Controlled Substance Analog	$\geq 0.025\text{g} \rightarrow < 10\text{g}$	F-5
	$\geq 10 \text{ g} \rightarrow < 20 \text{ g}$	F-4

Unlawful Possession of Drugs

DRUG	AMOUNT	LEVEL
Schedule I or II	$\geq 0.025\text{g} \rightarrow < \text{bulk}$	F-5
	$\geq x \text{ bulk} \rightarrow < 5 x \text{ bulk}$	F-4
Schedule III, IV, or V	$\geq 0.025\text{g} \rightarrow < 5 x \text{ bulk}$	F-5
	$\geq 5 x \text{ bulk} \rightarrow < 50 x \text{ bulk}$	F-4
Cocaine: Powder or Crack	$\geq 0.025\text{g} \rightarrow < 10 \text{ g}$	F-5
	$\geq 10 \text{ g} \rightarrow < 27 \text{ g}$	F-4
LSD: Solid	$\geq 0.25 \text{ UD} \rightarrow < 50 \text{ UD}$	F-5
	$\geq 50 \text{ UD} \rightarrow < 200 \text{ UD}$	F-4
LSD: Liquid	$\geq 0.025\text{g} \rightarrow < 5 \text{ g}$	F-5
	$\geq 5 \text{ g} \rightarrow < 20 \text{ g}$	F-4
Heroin/Fentanyl	$\geq 0.025\text{g} \rightarrow < 1 \text{ g}; \geq 0.25 \text{ UD} \rightarrow < 10 \text{ UD}$	F-5
	$\geq 1 \text{ g} \rightarrow < 10 \text{ g}; \geq 10 \text{ UD} \rightarrow < 100 \text{ UD}$	F-4
Controlled Substance Analog	$\geq 0.025\text{g} \rightarrow < 10\text{g}$	F-5
	$\geq 10 \text{ g} \rightarrow < 20 \text{ g}$	F-4

Possession of Marijuana

DRUG	AMOUNT	LEVEL
Marijuana	$\geq 0.025\text{g} \rightarrow < 200 \text{ g}$	Minor Misdemeanor
	$200 \text{ g} < 400 \text{ g}$	M-4
	$400 \text{ g} < 1 \text{ kg}$	F-5
	$1 \text{ kg} < 5 \text{ kg}$	F-4
Hashish	$\geq 0.025\text{g} \rightarrow < 10 \text{ g}$	Minor Misdemeanor
	$10 \text{ g} < 20 \text{ g}$	M-4
	$20 \text{ g} < 50 \text{ g}$	F-5
	$50 \text{ g} < 250 \text{ g}$	F-4