

# Criminal Justice and Drug Sentencing Reform in Ohio after Issue 1

Drug sentencing reform and criminal justice policymaking in Ohio feels like *Groundhog Day*,<sup>1</sup> and this piece explains why—by delving into the details of Issue 1<sup>2</sup> in 2018, examining its similarity with, ironically enough, Issue 1<sup>3</sup> as presented to Ohio voters back in 2002, and discussing the challenges ahead while proposing forward-thinking solutions. Long-lasting reform in criminal justice policy must be based upon more than limited circumstances, anecdotal experience, and insufficient data. We will not solve the “drug problem” or further the administration of justice without knowing more, a lot more, about the people we are trying to help.

The failed initiatives in 2002 and 2018 may be years apart, but they corroborate that incremental and piecemeal changes in our drug sentencing structure beleaguer criminal justice reform. We know that actors in the (criminal justice) system generally agree on desired outcomes—helping addicts who need treatment while punishing those who traffic in drugs. The Ohio Criminal Sentencing Commission<sup>4</sup> (the Commission) is well positioned and enthusiastic to spearhead these efforts. We must hotly debate and resolve the conundrum that drug use is a crime that can result in a felony conviction, but relapse—which is the same behavior—can be treated like a crime or like part of rehabilitation. We have to smartly distinguish drug traffickers from users, and craft laws and punishments that help people who want help while holding them accountable. There also must be constructive conversation about the reality of treatment resources, capacity, and outcomes.

The defeat of Issue 1 (2018) comes at a time when Ohio is grappling with the pressing and profound issue of drug-related sentencing in the wake of the opiate epidemic and other prevalent substance abuse disorders. In fact, it’s not just a sentencing issue, it is an all-of-us issue—something that surrounds us, speaks to us, and keeps us up at night. It impacts strangers, friends, and our families. It is also an example of the struggle of criminal justice reform: justice-involved individuals can be diverted to the treatment they need for rehabilitation, or they can be incarcerated without treatment and end up re-offending or dying of an overdose. Effective sentencing policy can ensure the former and prevent the latter.<sup>5</sup>

Many firmly believe that by the time a drug addict is in the courtroom, we are too late because prevention of drug abuse is the only mechanism through which we can end the

scourge of abuse and addiction. That requires a community-wide strategy that brings our schools, religious institutions, social and charitable organizations, and governmental assets together to educate, insulate, and prevent our young people from ever having to face drug addiction. While we cannot incarcerate our way out of the Drug War, we cannot treat our way out either. There must be a consistently applied balance between consequential punishment and meaningful treatment for drug offenders.<sup>6</sup>

How can Ohio break out of the infinite loop of under-achieving or failed reform? The answer is movement toward a data-informed environment, and only the Commission can harness that data and lead the way. It is essential for future success, fundamental for true reform and consequential for every Ohioan. Aggregating data in Ohio and across agencies can provide an unprecedented level of information for criminal justice system practitioners and policy makers. That kind of information can be used to develop and implement new law enforcement interventions and policing strategies, refine extant criminal justice policies, leverage resources and programming to improve outcomes for the criminal justice involved population, and help inform judicial decision making. In other words, robust data and information translates to a safer, fairer, and more cost-efficient criminal justice system and guides people who need treatment into effective programs.

## I. Issue 1—Déjà vu

Consider that in 2018, we are asking ourselves the same question posed in 2004: “with so much emphasis being placed on the need for treatment and prevention why did Ohioans reject The Ohio Drug Treatment Initiative?”<sup>7</sup> Some may not recall that in summer of 2002, The Ohio Drug Treatment Initiative<sup>8</sup> was certified to be placed on the November ballot as Issue 1. The proposed amendment to the Ohio Constitution required courts to approve requests for treatment for eligible nonviolent drug offenders and required that (1) a fixed amount of the state’s General Revenue Fund be allocated to pay to open and operate new treatment centers, (2) prison sentences for users and possessors be limited to ninety days, and (3) the records of those offenders who completed treatment be sealed and expunged.<sup>9</sup> It was defeated 66.92 percent No to 33.08 percent Yes.<sup>10</sup>



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Fast forward more than a decade. The Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment was filed with the Ohio Attorney General on December 1, 2017, determined fair and truthful on December 8, 2018, and deemed compliant with the single subject rule on December 12, 2017, by the Ohio Ballot Board. On July 23, 2018, the ballot initiative was certified by the Secretary of State for the November 6, 2018, election, appearing as State Issue 1.<sup>11</sup> It proposed sweeping changes to the criminal justice system, including:

- Reclassifying possession of controlled substances offenses from felonies to misdemeanors
- Establishing an earned credit program wherein offenders can earn up to a 25 percent reduction of their prison sentence for participation in programming at the institution
- Mandating guidelines for graduated responses to probation violations
- Providing a system to calculate the savings of the changes, including provisions for the disbursement of those savings.

It was defeated 63.03 percent Against to 36.97 percent For.<sup>12</sup>

Many may have been surprised by the sound defeat of Issue 1 (2018), but opposition was substantial given the broad language and obdurate nature of constitutional amendments.<sup>13</sup> Notable similarities exist in the failure of Issue 1 in 2002 and in 2018, namely, powerful opposition and the Issue itself being its biggest adversary.<sup>14</sup> Similar to the initiative in 2002, many critics of Issue 1 in 2018 stressed that the appropriate place to address drug treatment and sentencing is in statute rather than by constitutional amendment.<sup>15</sup> Yet, advocates in 2018 echo those in 2002: “the most important reason for choosing the direct initiative may be that it does not require compromise [with the General Assembly] and allows a proponent to put exactly what they [*sic*] want before the voters.”<sup>16</sup>

Issue 1 (2018) created a high-insurmountable barrier to change in Ohio drug policy. One need only look at the rise of fentanyl as a deadly drug of abuse to see the need for drug laws that can be readily adapted to new threats as well as to best practices in dealing with issues of addiction.<sup>17</sup> No other state that has adopted such wide-ranging changes to its drug policy through constitutional amendment, and those that have reformed drug laws through a legislative package often need to go back and make changes to refine those reforms.<sup>18</sup>

As aptly opined by the Stark County Court of Common Pleas, “State constitutions are (and should be) hard to change. That’s in part because it’s a limit on legislative discretion. But that limit has a significant downside. As a species, we’re fairly notoriously bad at accurately predicting unintended consequences.”<sup>19</sup>

The constitutional amendment process in Ohio<sup>20</sup> does not require legislative approval of initiatives, and in the

aftermath of failure of the 2002 amendment, just as today, there is agreement that the amendments<sup>21</sup> could have benefited from the “machinery available for honing and structuring legislative action.”<sup>22</sup> Because the amendment and summary of it for the ballot must be the same as the language used in the signature gathering, it is impossible to refine it, alter it, or correct drafting errors—in other words, what may be perceived as a mere drafting error can create dire (albeit unintended) consequences should the amendment pass.

That became a central focus of the opposition in 2018—the clumsy, poorly drafted language propelled actors to up their engagement and mobilize an army of opposition. Opponents focused on the arguments central to public safety—namely that as written, Issue 1 would put human traffickers, armed robbers, and other violent criminals back on the streets early; tie judges’ hands with probationers, including those who violate no contact orders with victims; and it did not provide for victim input on release or restitution. Further, they emphasized that Issue 1 would give Ohio some of the most lenient drug laws in America and freeze them in time (January 2018). For example, it would let people caught with less than 20 grams of fentanyl off with no jail time at a time when nearly three-fourths of the drug overdose deaths in Ohio involve fentanyl.<sup>23</sup>

In rebuttal, proponents of Issue 1 cited several other states that initiated changes in drug possession laws, with bipartisan support. The Urban Institute released a timely study<sup>24</sup> detailing that since 2014, beginning with Proposition 47 in California, five states reclassified all drug possession from a felony to a misdemeanor. Following the California referendum, legislation in Utah (House Bill 348 in 2015), Connecticut (House Bill 7104 in 2015), and Alaska (Senate Bill 91 in 2016) passed with overwhelming bipartisan majorities, and Oklahoma voters in 2016 reclassified drug possession through a ballot initiative (State Question 780) with nearly 60 percent support. The reforms passed share three critical details: convictions for simple drug possession up to the third conviction are classified as misdemeanors; people convicted of drug possession are ineligible for state prison sentences; and changes apply to virtually all controlled substances. Notably though, none of the five states enacted the changes via an amendment to the state’s constitution, as proposed by Issue 1 for Ohio.

Opponents latched on to the comparison to other states and emphatically resisted the notion that as California goes, so goes Ohio. That energy captured what may be referred to as “earned media” instead of paid media, or as some suggested, “dark,” out-of-state money.<sup>25</sup> And opponents took notice surmising that together with dark money from Open Philanthropy, Tides Advocacy, and the Ford Foundation, the east and west coasts poured nearly \$20,000,000 into Ohio Issue 1, while Ohioans contributed less than 6 percent of the funding to support Issue 1.<sup>26</sup>

The Stark County Court of Common Pleas professed that “this is not the first time out-of-state interests have put drug decriminalization initiatives on Ohio ballots. Voters

repeatedly rejected prior decriminalization efforts. The difference this time is the packaging. Proponents have seized upon and exploited the opioid crisis and have cloaked their campaign in compassionate claims of treatment for addicts. But the result would be the same: a massive and dangerous social engineering experiment cemented into our state Constitution.”<sup>27</sup>

The momentum began to shift, and among the faults noted with Issue 1 (2018) was the resounding belief that although the proponents marketed it as a drug treatment initiative, it was really much more and didn’t seem to focus much on treatment at all. In fact, the word “treatment” is mentioned just nine times in the full text of the amendment, versus “sentencing,” “resentencing,” and “release,” which are all mentioned dozens of times. Additionally, whereas there is quite a bit of detail about sentencing, resentencing, and release, the detail regarding treatment was limited to the “formula” to allocate funds for it.<sup>28</sup> The practical reality was that the provisions were deemed over-inclusive and once more can be compared to the fatal flaws identified in the 2002 initiative.<sup>29</sup> For instance, both initiatives failed to consider how drug use relates to other crimes, and both presumed that all drug users and possessors need or would be inspired to seek treatment—and further, both failed to consider whether or not adequate treatment capacity exists.

Beyond the constitutional, poor drafting, and public safety concerns, opponents said Issue 1 (in 2002 and 2018) failed to consider that current statutes direct most drug abusers into treatment programs rather than prison, and encourage accountability, while retaining prison terms when warranted.<sup>30</sup> There was also sharp criticism of the potential impact on Ohio’s specialized dockets and drug courts—alleging that Issue 1 (2018) would cripple drug courts by taking away the tools they need to help people recover—with emphasis that drug courts in Ohio are one of the few proven success stories in the battle against addiction.<sup>31</sup>

Proponents of Issue 1 (2018) clapped back, citing its potential to save the state money as lower-level offenders would be diverted from prison into treatment programs,<sup>32</sup> but an analysis performed by the Office of Budget and Management (OBM) questioned that key assumption.<sup>33</sup> The fiscal analysis of Issue 1 (2018), developed under a requirement that OBM assess the state budgetary impact of statewide ballot issues, found that the presumed savings for the Ohio Department of Rehabilitation and Correction (ODRC) would likely not materialize as expected, and that the changes could, in fact, result in additional costs into the “tens of millions.”<sup>34</sup>

Notably, the analysis from OBM stated that “the determination of the constitutionally calculated savings is complicated by ambiguities in the language of the amendment that could lead to varied interpretations of how direct and indirect factors impact population changes.”<sup>35</sup>

OBM found the language confusing. Practitioners shared similar comments, and there does not seem to be

any direct evidence from the proponents that legislators, judges, prosecutors, defense attorneys, drug courts, treatment professionals, victims or their representatives, probation officers, or academics were consulted. As mentioned before, the time is right in Ohio to reconsider drug laws and sentencing. While proponents suggest there was legislative inaction to change drug laws, if they had rallied practitioners to join the conversation and develop a comprehensive, reflective, consensus-driven proposal, the result may have been legislative language that had much-needed support and that could have passed.

One of the most chasmal holes in the Issue 1 (2018) narrative was the insufficient verifiable, aggregate data to support its passage. Ohio criminal justice data is disparate, mismatched, complex, and lacks the capacity for comprehensive analysis. Thus, Issue 1 was based upon the only available aggregate data source, prison population, and ostensibly without the ability to generate information on those criminal justice involved persons who don’t go to prison. That translates to a data deficit that makes distinguishing between a first time commitment to prison versus a first time conviction difficult, if not impossible. In addition, it is probable that the majority of sentences to prison involve a plea agreement, reduced charge(s), or agreed sentence, but there isn’t a way to articulate those details or assemble relevant data for those circumstances and cases. Knowing more about those who don’t go to prison is essential to developing informed, well-reasoned public policy. Relying solely on prison population statistics, and developing any amendment, policy, or law as a result, is simply short-sided and ill-advised—it does not fully reflect the criminal justice landscape and is incomplete information.

Issue 1 (2018) also failed to acknowledge recent legislative reform efforts and accomplishments. As pointed out by the Stark County Court of Common Pleas, “the state is not ignoring the problems in the corrections, criminal code, and treatment communities. Study, consultation, discussion and deliberation is occurring throughout the state’s criminal justice system to address the concerns identified by proponents of Issue 1.”<sup>36</sup>

In fact, in November 2017, the Chief Justice of the Supreme Court of Ohio, Ohio Attorney General, Senate President, Speaker of the House, and the Governor endorsed the Commission to take the lead in facilitating and coordinating the State’s effort for a second round of Justice Reinvestment.<sup>37</sup> The premise was that comprehensive analysis of the Ohio corrections, community supervision, and justice-involved populations will lead to the development of policy options to enhance public safety while wisely parsing limited resources. A comprehensive analysis of each stage of the criminal justice system is being conducted by reviewing hundreds of thousands of individual data records. Administrative policies, sentencing patterns, crime trends, treatment modalities, and rehabilitation programs are being analyzed.<sup>38</sup> Data-driven policy recommendations are being developed as of this

writing and intended for broad distribution in early 2019, coinciding with the change in administration for state-wide elected offices and the 133rd session of the General Assembly.

All of these issues—language not matching Ohio Revised Code, complicated by undefined terms; scant verifiable, aggregate data; and apparent oversight of a myriad of past and ongoing reform efforts—contributed to substantial opposition and played a significant role in the defeat of Issue 1. And ultimately, as previously noted, Issue 1 itself became its greatest adversary—just as had been the case in 2002.<sup>39</sup>

## II. Future Criminal Justice Reform in Ohio

Much of Issue 1 (in 2002 and 2018) reflect ideas long supported by the Commission, such as fostering treatment over incarceration for low-level drug-addicted offenders. However, in 2002 and 2018, the Commission voted to take a position in opposition, noting that while Commission members supported treatment over incarceration for drug abusers, the rigid nature of a constitutional amendment was not appropriate for enactment of drug policy.<sup>40</sup>

It is important to remember that the Commission began meeting in 1991 and is the only long-standing state agency designed, by statute, to bring judges, prosecutors, and defense attorneys together with members of the General Assembly, state and local officials, victims, and law enforcement officers. The work of the Commission is dedicated to enhancing justice and ensuring fair sentencing in the State of Ohio through impartial and consensus-driven analysis (of criminal justice policy, laws, and sentencing trends in Ohio), and development of policies and practices that maximize public safety, reduce recidivism, and equalize justice. The Commission believes in an evidence-based, data-driven approach to criminal justice issues, one in which policy and statutes can evolve as understanding of best practices grows. To that end it has put forth significant effort to improve and to effect positive change in Ohio's sentencing laws, which are myriad and complex.

The Commission will play a pivotal role in the effort to harmonize the many proposals and responses to the failure of Issue 1. Ideas abound<sup>41</sup> and, as sine die for the 132nd legislative session was approaching, Senate President Obhof and Senator John Eklund introduced Senate Bill 341,<sup>42</sup> commonly known as a “place-holder” legislation for the next General Assembly. The complete text of the bill is, “It is the intent of the General Assembly to develop and enact legislation to reform Ohio's drug sentencing laws.” Both legislators have publicly stated, on more than one occasion, that drug sentencing (and perhaps other criminal justice reform subjects) will be among the top ten bills introduced in 133rd legislative session.

As such, Senator Eklund, who is also a member of the Ohio Criminal Sentencing Commission, delivered sponsor testimony for Senate Bill 341 on December 5, 2018, that was particularly insightful and is worth being quoted in full.

Why would we develop and enact legislation to reform Ohio's drug sentencing laws? To me, the fundamental reason lies in a concept that should be a bedrock principle of legislating, but sadly is not so much so. It is the concept of critical self-evaluation, a process by which one examines what they have done, or not done, and how in order to assess whether it is serving the intended purpose.

We often hear opponents to legislation repeat the mantra that the bill they oppose will have “unintended consequences.” Rarely, in my view, can one predict a parade of horrors with the degree of certainty advocates sometimes profess. But, when we've already done something we very often do have at our disposal the tools necessary to determine, in retrospect, whether or not it was a good idea that works without adverse consequences.

In the area of criminal sentencing, particularly on drug crimes, we have lived the future results of past policy decisions and while it might be hyperbolic to say that it is dystopian, in many respects it's getting close to it.

You've heard many of the numbers and in the course of this exercise you'll hear them again. Intractably high prison and jail populations; 25% of people sent to prison are going to serve less than a year; the number one offense for which Ohioans go to prison is drug possession, almost \$2 billion budgeted to operate prisons in Ohio.

Too often our criminal sentencing scheme removes legitimate discretion from judges, and mandates ever-increasing prison terms for people who need treatment much more than they need punishment (notwithstanding that we now have analysis tools to identify who they are and new ways to treat them).

I applaud you all for your support of criminal justice reform efforts we have undertaken over the years. But while our efforts have been purposeful, at times they have been intermittent while the flow of new bills that criminalize heretofore non-criminal behavior and enhance penalties continues, persistent and unabated.

What we need is sentencing reform that does what it is meant to do—punish those who are dangerous and treat those who we're simply mad at. It will take an effort informed by policies that recognize our primary obligation to protect Ohio's citizens, to promote the physical and mental well-being of everyone, to be fiscally responsible and to enhance opportunities for rehabilitation and redemption.

Our challenge will be to do so in a manner that maximizes freedom in a system of ordered liberty, and I know we can meet that challenge.<sup>43</sup>

The obvious strategy to meet that challenge is to gather the courage and leadership to manage expectations, allow voices to be heard, seize opportunities, and achieve meaningful outcomes by crafting genuine, real world, and measurable reform. We must rebuff bureaucratic paralysis—everyone doing something and nothing getting done.

It bears repeating that the most sensible, credible, and results-driven approach for Ohio to break out of the infinite loop of underperforming and failed reform efforts is for the Commission to harness the data and lead the way. The value of data—established baseline information and the ability to measure implementation results—cannot be overstated.

The prospective work of the Commission is to improve the connectivity and integration of criminal justice data in Ohio, despite the challenges. The Commission stands ready and implores Ohio's state government leadership to move toward a data-informed environment that allows for the comprehensive understanding and analysis of the criminal justice system by its own actors and those making policy decisions. In a data-informed approach, qualitative and quantitative data are used to help inform or guide<sup>44</sup> those in decision-making roles, thus ensuring needed information is available and used in the creation of policy. A data-informed approach contributes to sound state policy, which leads to maximized public safety, a reduction in recidivism, and equalized justice.<sup>45</sup> But first, the data must be available, and shareable, from all points in the criminal justice system—a goal that transcends any one branch of government because it is the only objective way to make sure what we're doing works and is (or isn't) achieving the intended result(s).

Integration of data allows for a person-centered approach and enables agencies to share information about a person's risks and needs, contributes to the development of proactive strategies to address them, and reduces duplication of efforts or, worse, counterproductive approaches.<sup>46</sup> Data at the aggregate level will provide Ohio a framework designed to move people with drug and mental health needs into treatment that works and reduce criminal justice involvement. It will modernize processes while realizing and reaping tangible results from post-Issue 1 reform efforts. And, it will launch a (much-needed, long-overdue) reasoned approach to ensuring fair sentencing and enhancing justice through understanding county- and state-level patterns and creating the fundamental foundation needed for better and ongoing evaluation of state criminal justice policies.

In other words, the charge before us is two-fold: (1) recognizing that incarceration without effective treatment results in higher recidivism and risk of overdose, and (2) determining how we best address addiction-motivated criminal behavior, divert those individuals into needed treatment and rehabilitation, and avoid collateral consequences of conviction. We must embrace and harmonize the voices of many while thoroughly vetting reform options to advance the best and most impactful, comprehensive reform. The expectation is, simply stated, proactive recommendations that change lives and deliver on the fundamental purposes and principles of sentencing: to protect the public from future crime and punish the offender using the minimum sanctions that the court determines accomplish those purposes, without imposing

an unnecessary burden on state or local government resources.<sup>47</sup>

## Notes

- <sup>1</sup> Groundhog Day (Columbia Pictures, 1993), in which the lead character experiences the same day repeatedly; see <https://www.dictionary.com/browse/groundhog-day> (“a situation in which events are or appear to be continually repeated”).
- <sup>2</sup> Ohio Issue 1, Proposed Constitutional Amendment, “To Reduce Penalties for Crimes of Obtaining, Possessing, and Using Illegal Drugs” (Nov. 6, 2018), <https://www.sos.state.oh.us/globalassets/ballotboard/2018/2018issuesreport.pdf> [hereinafter Ohio Issue 1 (2018)].
- <sup>3</sup> Ohio Issue 1, Proposed Constitutional Amendment, “Treatment in lieu of incarceration for certain drug offenders” (Nov. 5, 2002), [https://ballotpedia.org/Ohio\\_Drug\\_Treatment\\_in\\_Lieu\\_of\\_Incarceration\\_Amendment\\_1\\_\(2002\)](https://ballotpedia.org/Ohio_Drug_Treatment_in_Lieu_of_Incarceration_Amendment_1_(2002)) (accessed Jan. 24, 2019) [hereinafter Ohio Issue 1 (2002)].
- <sup>4</sup> See generally <http://www.supremecourt.ohio.gov/Boards/Sentencing/>.
- <sup>5</sup> Sara Andrews, *Sentencing in the Heartland: A Perspective from Ohio*, 30(2) Fed. Sent'g Rep. 94 (2017), <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/activities/FSRSentencingHeartland.pdf>.
- <sup>6</sup> E-mail from Robert Nichols, Retired Madison County (Ohio) Court of Common Pleas Judge (June 23, 2017) (on file with author).
- <sup>7</sup> Tamara Karel, *The Failure of Ohio's Drug Treatment Initiative*, 51 Clev. St. L. Rev. 203, 212 (2018).
- <sup>8</sup> Ohio Issue 1 (2002), *supra* note 3.
- <sup>9</sup> Karel, *supra* note 7.
- <sup>10</sup> State Issue 1, Official Tabulation (Nov. 5, 2002), <https://www.sos.state.oh.us/elections/election-results-and-data/2002-elections-results/state-issue-1/>.
- <sup>11</sup> Ohio Issue 1 (2018), *supra* note 2.
- <sup>12</sup> 2018 Official Elections Results, General Election (Nov. 6, 2018), <https://www.sos.state.oh.us/elections/election-results-and-data/2018-official-elections-results/>.
- <sup>13</sup> Memorandum from Sara Andrews, Director, Ohio Criminal Sentencing Commission, to Members of the Commission and Advisory Committee (Sept. 27, 2018), <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/StateIssue1.pdf>.
- <sup>14</sup> Karel, *supra* note 7, at 222.
- <sup>15</sup> *Id.* at 218.
- <sup>16</sup> *Id.* at 205.
- <sup>17</sup> Centers for Disease Control and Prevention, *Drug Overdose Deaths* (Dec. 19, 2018), <https://www.cdc.gov/drugoverdose/data/statedeaths.html>.
- <sup>18</sup> Ohio Criminal Sentencing Commission, *50 State Low-Level Drug Possession Review* (Oct. 31, 2018), <http://www.supremecourt.ohio.gov/Boards/Sentencing/resources/general/50StateDrugPossessionReview.pdf>.
- <sup>19</sup> Stark County Court of Common Pleas, *A Critical Analysis of Ballot Issue 1* (Sept. 2018) (on file with author).
- <sup>20</sup> Ohio Secretary of State, *Citizen-Initiated Constitutional Amendment* (n.d.), <https://www.sos.state.oh.us/legislation-and-ballot-issues/putting-an-issue-on-the-ballot/citizen-initiated-constitutional-amendment/#gref>.
- <sup>21</sup> Karel, *supra* note 7, at 229.
- <sup>22</sup> *Id.* at 212.
- <sup>23</sup> Maureen O'Connot, *Look closely at state Issue 1. It's a disaster*, Akron Beacon J., Aug. 30, 2018, <https://www.ohio.com/akron/editorial/maureen-oconnor-look-closely-at-state-issue-1-its-a-disaster>.

- <sup>24</sup> Brian Elderbroom & Julia Durnan, *Reclassified: State Drug Law Reforms to Reduce Felony Convictions and Increase Second Chances* (Urban Institute, Oct. 2, 2018), <https://www.urban.org/research/publication/reclassified> (reproduced in this Issue of FSR).
- <sup>25</sup> Liz Essley Whyte, *Zuckerberg, Soros, and Steyer Spend Millions on Out-of-State Ballot Initiatives*, *The Atlantic*, Oct. 18, 2018, <https://www.theatlantic.com/politics/archive/2018/10/zuckerberg-soros-and-steyer-fund-ballot-initiatives/573304/>.
- <sup>26</sup> *Ohio Issue 1 (2018): Campaign Finance*, Ballotpedia (n.d.), [https://ballotpedia.org/Ohio\\_Issue\\_1,\\_Drug\\_and\\_Criminal\\_Justice\\_Policies\\_Initiative\\_\(2018\)#Campaign\\_finance](https://ballotpedia.org/Ohio_Issue_1,_Drug_and_Criminal_Justice_Policies_Initiative_(2018)#Campaign_finance)
- <sup>27</sup> Stark Judges, *Vote 'no' on Issue 1*, Canton Repository, Oct. 21, 2018, <https://www.cantonrep.com/opinion/20181021/stark-judges-vote-no-on-issue-1>.
- <sup>28</sup> § 12 Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment B(2)(b), *in Ohio Issue 1 (2018)*, *supra* note 2.
- <sup>29</sup> Karel, *supra* note 7, at 221.
- <sup>30</sup> Memorandum from David Diroll to Interested Persons, re: The Proposed Drug Initiative (May 20, 2002), at 3 (on file with author).
- <sup>31</sup> See Karen Kasler, *Chief Justice worries Issue 1 will take away drug court option, overload court system*, *Statehouse News Bureau* (Sep. 4, 2018), <http://www.statenews.org/post/chief-justice-worries-issue-1-will-take-away-drug-court-option-overload-court-system>.
- <sup>32</sup> The Ohio Safe and Healthy Campaign (2018), <https://yesononeoh.com/treatment/>.
- <sup>33</sup> Letter from Timothy S. Keen, Director, Ohio Office of Budget and Management, to Jon Husted, Ohio Secretary of State (Oct. 10, 2018) (with attachments), <https://www.sos.state.oh.us/globalassets/ballotboard/2018/2018-10-10-fiscalanalysis.pdf>.
- <sup>34</sup> *Id.* at 2 (letter), 13 (OBM analysis).
- <sup>35</sup> *Id.* at 1 (letter), 5 (OBM analysis).
- <sup>36</sup> Stark County Court of Common Pleas, *supra* note 19, at 3.
- <sup>37</sup> Ohio Justice Reinvestment 2.0 Ad Hoc Committee, <http://www.supremecourt.ohio.gov/Boards/Sentencing/committees/justiceReinvest/default.asp>. *Justice Reinvestment Initiative Brings Sentencing Reforms in 23 States*, Pew Charitable Trusts (Jan. 22, 2016), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/01/states-modify-sentencing-laws-through-justice-reinvestment>.
- <sup>38</sup> Stark County Court of Common Pleas, *supra* note 19, at 3.
- <sup>39</sup> Karel, *supra* note 7, at 222.
- <sup>40</sup> Ohio Criminal Sentencing Commission & Advisory Committee, Full Commission Meeting Notes, Sept. 27, 2018, <http://www.supremecourt.ohio.gov/Boards/Sentencing/materials/2018/December/092718Notes.pdf>.
- <sup>41</sup> Ohio Criminal Sentencing Commission, see Materials from Dec. 13, 2018, meeting, <http://www.supremecourt.ohio.gov/Boards/Sentencing/Materials/2018/default.asp#>.
- <sup>42</sup> Ohio Senate Bill 341, Intent to Enact Sentencing Law Reforms (n.d.), <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-SB-341>.
- <sup>43</sup> On file with author.
- <sup>44</sup> U.S. Department of Education, Office of Planning, Evaluation & Policy Development, *Implementing Data-Informed Decision Making in Schools—Teacher Access, Supports and Use* (Jan. 2009), <https://files.eric.ed.gov/fulltext/ED504191.pdf>.
- <sup>45</sup> Ohio Criminal Sentencing Commission, see Mission and Vision, <http://www.supremecourt.ohio.gov/Boards/Sentencing/default.asp>.
- <sup>46</sup> David W. Ball, *E Pluribus Unum: Data and Operations Integration in the California Criminal Justice System*, 21 *Stan. L. & Pol'y Rev.* 277, 281 (2010), <https://digitalcommons.law.scu.edu/facpubs/11/>.
- <sup>47</sup> Andrews, *supra* note 5, at 101.