



THE BUCKEYE INSTITUTE

Criminal Justice Reform in Ohio: Building on Success

Testimony Before the
Ohio House Criminal Justice
Subcommittee on Criminal Sentencing

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Chair Grendell, Chair Galonski, and members of the Committee, thank you for the opportunity to testify today and for your commitment to pursuing meaningful criminal justice reform.

My name is Daniel J. Dew and I am a legal fellow at **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

The Buckeye Institute has long supported **criminal justice reform** that promotes due process, individual freedom, and society’s need for vigorous criminal law enforcement. Buckeye has championed a number of criminal justice reforms, including civil asset forfeiture, criminal record sealing, and sentencing.

I will touch briefly on two topics today: current criminal justice reform proposals; and a policy improvement that will increase public safety even as it reduces the state’s prison population.

Current Criminal Justice Reform Proposals

Despite their opponents’ boisterous objections, the commonsense proposals in House Bill 1 and Senate Bill 3 could work together to reduce recidivism among low-level drug offenders. House Bill 1 would expand opportunities for intervention in lieu of conviction and speed-up the criminal record-sealing process. Senate Bill 3 would reclassify most low-level drug possession crimes as misdemeanors. Taken together, these policies would help keep those who comply with the demands of drug treatment programs out of prison, and improve their housing and employment prospects by sealing their court records and keeping “felon” off of future job applications.

Unlike misdemeanors, felony convictions pose huge barriers to employment and, by extension, long-term recovery. Employment is one of the biggest factors in successful rehabilitation and Ohio should be doing everything it can to encourage employment among those recovering from drug addiction. Holding a job requires regular check-ins, demands a lucid state of mind, and provides a paycheck and an invaluable sense of purpose and accomplishment. These are vital for the sustained success of those on probation or in treatment.

House Bill 1 and Senate Bill 3 would extend Ohio’s recent efforts to help low-level non-violent drug offenders in our communities. In 2011, House Bill 86 required probation for first-time nonviolent felony four and felony five offenders. And more recently, Ohio implemented the **Targeted Community Alternatives to Prison** (T-CAP) program, which gives counties Department of Rehabilitation and Correction (DRC) dollars in exchange for locally rehabilitating non-violent felony five offenders. Intervention in lieu of conviction, record sealing, and felony reclassification build upon this foundation.

Opponents of these reforms—and reclassification in particular—have leveled three primary objections that do not hold up under scrutiny.

First, some worry that Senate Bill 3 may help drug traffickers avoid a felony conviction if they only keep a misdemeanor's amount of drugs on-hand. But the proposed bill creates a new offense: "possession with intent to distribute," which allows prosecutors to charge possessors of even small amounts of drugs with a felony if the state believes that the accused intended to sell the drugs.

Second, some argue that House Bill 1 and Senate Bill 3 are unnecessary because so few go to prison for first-time, low-level drug possession under Ohio's current anti-drug laws. Assuming that is true, that suggests that Ohio already recognizes that low-level drug offenders should not be punished with prison sentences, but should be treated more as a health concern than a criminal one. And that tacit recognition, in turn, argues against saddling thousands of non-violent low-level drug possessors with the added burdens created by a felony conviction in the first place.

Third, opponents of Senate Bill 3's reclassification contend that Ohio drug courts will suffer without the threat of prison to coerce compliance with drug-treatment requirements. But the vast majority of Ohio's counties and drug courts already have voluntarily relinquished their authority to send many low-level drug offenders to prison. Sixty of Ohio's 88 counties volunteer to rehabilitate low-level offenders locally in exchange for DRC grant money to cover their costs. Specifically, T-CAP participating counties already accept state DRC grants for rehabilitation programs rather than sending their non-violent, non-sex felony five (Ohio's lowest felony) offenders to prison. Eighty-five out of 114 Ohio drug courts are operating in T-CAP counties and do not send felony five drug possessors to prison. Nevertheless, the reclassification proposed in Senate Bill 3 would not preclude incarceration for offender noncompliance. Under the Senate's proposal, judges may still send offenders to jail for up to 364 days.

Expand Access to "Earned Credit"

Ohio should improve its "earned credit" system for prisoners. Earned credit allows those serving prison sentences to earn early release by participating in education and rehabilitation programs. Allowing a mere eight percent maximum in earned credit ranks Ohio near the bottom nationally—and even that eight percent credit is not offered to many Ohio prisoners. By contrast, **Indiana** allows for 33 percent earned credit, **Connecticut** allows up to 50 percent for non-violent offenses, and the broadly heralded First Step Act signed by President Donald Trump allows federal inmates to earn time off prison sentences by participating in education and rehabilitation programs. Even among other "truth in sentencing" states, Ohio's eight percent maximum lags well behind the 15 percent offered by most.

Expanding access to earned credit will actually enhance public safety. **Ninety-five percent** of those who go to prison will return to their communities, giving Ohio a vested interest in seeing prisoners return to their communities better than when they left. Studies show that successful participation in and completion of education and rehabilitation programs for earned credit can **drastically reduce recidivism**.

Conclusion

The policies proposed in House Bill 1 and Senate Bill 3 will help low-level, nonviolent offenders maintain employment and housing. Removing barriers to jobs and housing will, in turn, help reduce recidivism rates and keep prior offenders on the straight-and-narrow. Objections to these commonsense reforms have been overblown. As part of Ohio’s continuing effort to reduce crime and protect the public, policymakers should study and emulate the success of expanded “earned credit” programs at the state and federal levels. The vast majority of prisoners will eventually reenter our communities and they should be encouraged to and “earn credit” for participating in education and rehabilitation programs.

Thank you for your time and attention. I welcome any questions that the Committee might have.



About The Buckeye Institute

Founded in 1989, The Buckeye Institute is an independent research and educational institution – a think tank – whose mission is to advance free-market public policy in the states.

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