



BUCKEYE POLICY BRIEF

EVIDENCE-BASED SENTENCING REFORM THE RIGHT POLICY FOR OHIO

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Introduction

Senate Bill 3 proposes commonsense and comprehensive reforms to Ohio drug sentencing law. The bill seeks to hold those in the business of selling drugs accountable for their conduct, while ensuring those convicted of non-violent drug possession get the treatment that they need. To do that, the bill reclassifies some offenses and changes the drug quantities required to convict for others. The bill relies upon extensive data-driven research on the habits of drug users and dealers, and adopts drug-quantity thresholds largely consistent with the Ohio Criminal Justice Recodification Committee's 2017 recommendations.¹ Modeled on the committee's approach and recommendations, Senate Bill 3 takes significant strides toward making Ohio's drug-sentencing laws more effective, flexible, and just.

The Criminal Justice Recodification Committee's Approach

In 2015, the Recodification Committee set out to repair Ohio's criminal code that decades of piecemeal legislation had left bloated, inconsistent, and difficult to understand. The diverse committee of well-respected practitioners, including judges, prosecutors, criminal defense attorneys, law enforcement officers, and prison officials, relied upon empirical research and extensive criminal justice experience in reaching a consensus and recommending commonsense reforms worth serious consideration.

Current law fails to distinguish between those in the business of selling drugs and those dealing drugs to support a habit.² The committee recommended changes to the state's mandatory sentencing structure after hearing from Case Western Reserve University researchers who had interviewed hundreds of people convicted of drug crimes to help determine whether the amount of drugs in a convict's possession made them more likely to be using, selling to support an addiction, or preying on those

¹ Ohio Criminal Sentencing Commission, **Sentencing and Criminal Justice Committee Meeting Minutes**, May, 17, 2019.

² **R.C. 2925.03**.

suffering from drug addiction.³ The current law’s failure to draw this nuanced distinction “ties judges’ hands with mandatory prison sentences that often prevent them from reaching just results for some individuals.”⁴

The Recodification Committee addressed this shortcoming by recommending changes intended to “clearly delineat[e] the most culpable (those in the business of selling drugs and harming others) from the least culpable (those caught in the cycle of addiction). To that end, strict mandatory penalties were retained for aggravated trafficking of large amounts, while expanded treatment paths and supervision were added to assist those with addictions to better themselves.”⁵

Patterned after the Recodification Committee’s recommendations and underlying empirical research, Senate Bill 3 restores sentencing flexibility so that judges can secure just results for every defendant under the unique facts and circumstances of each case. The recommended reforms will help ensure that Ohio treats those caught in the cycle of addiction fairly, while holding those in the business of selling drugs accountable for their actions.

Senate Bill 3 and the Recodification Committee Recommendations

Senate Bill 3 designates three categories of drug trafficking offenses: major trafficking, aggravated trafficking, and trafficking. These new categories more accurately reflect the nuances in drug distribution operations and assign legal culpability more consistent with the facts on the ground.

Major Trafficking

For the most severe drug trafficking offenders, those convicted of first and second-degree felonies, the Recodification Committee and Senate Bill 3 take the same approach, retaining mandatory minimum sentences for the most serious first-degree felonies and removing the current law’s mandatory minimum sentences from certain second-degree felony offenses. Recent criminal justice research supports these changes inasmuch as mandatory minimum sentences have not proven effective at increasing public safety or reducing illicit drug use in the community. Since the 1980s, harsh mandatory minimum sentences, for example, have yielded “no decrease in crack use.”⁶ Accordingly, the Recodification Committee advised removing the major drug offender classification from certain drugs. Senate Bill 3 appears to have taken the committee’s advice and restores sentencing discretion to Ohio judges, allowing them to consider the facts and circumstances of each individual case and sentence each offender appropriately.

³ Lee Hoffer and Shah Jamal Alam, “**Copping’ in Heroin Markets: The Hidden Information Costs of Indirect Sales and Why They Matter**,” *Social Computing, Behavioral-Cultural Modeling, and Prediction*, Volume 7812 (2013).

⁴ Daniel J. Dew, legal fellow, The Buckeye Institute, **Testimony** before the Ohio Senate Judiciary Committee, June 12, 2019.

⁵ Ohio Criminal Sentencing Commission, **Sentencing and Criminal Justice Committee Meeting Minutes**, May, 17, 2019.

⁶ Lauryn Saxe Walker and Briana Mezuk, “**Mandatory Minimum Sentencing Policies and Cocaine Use in the U.S., 1985-2013**,” *BMC International Health and Human Rights*, Volume 18, Issue 1 (November 2018).

Aggravated Trafficking

For mid-level trafficking offenses, Senate Bill 3 offers significantly harsher penalties than the Recodification Committee recommended. For cocaine, for example, Senate Bill 3 opted for a more serious third-degree felony and trafficking offense for the threshold possession amount that the committee recommended be punished as a fourth-degree felony *possession* offense.⁷ Similarly, for heroin and fentanyl, much of the possession range for which the Recodification Committee recommended a fourth-degree felony, Senate Bill 3 treats as a third-degree felony.⁸ Likewise for Schedule I/II drugs,⁹ which include methamphetamine and similar compounds, amounts that would warrant a fourth-degree possession felony under the Recodification Committee, Senate Bill 3 makes a third-degree felony and a trafficking offense.

The difference between the Recodification Committee’s recommendation and Senate Bill 3 leads to significantly longer potential sentences: fourth-degree felonies may be punished by up to 18-months in prison, whereas third-degree felonies carry up to three years in prison.¹⁰ Senate Bill 3 takes steps in the right direction, but it could more consistently reflect the empirically based advice of the Recodification Committee.

Trafficking

Senate Bill 3 also amends the current law’s approach to certain cocaine, Schedule I/II drugs,¹¹ and heroin trafficking offenses. Here again, Senate Bill 3 mirrors the Recodification Committee’s recommendations that relied on extensive research by Dr. Lee Hoffer of Case Western Reserve University.¹² Dr. Hoffer found, for example, that drug users often employ middlemen or “brokers” to purchase drugs. Although these “brokers may represent themselves to others as dealers, they do not invest in a quantity of drug to resell” and were more likely to be users themselves who were selling to support their habits.¹³ Brokers, according to Dr. Hoffer, behave differently than predatory dealers or traffickers, and typically need treatment for their underlying addiction.

In light of Dr. Hoffer’s research, the Recodification Committee delineated between user-dealers—or “brokers”—and those at higher levels of drug operations. Under the Recodification Committee’s approach, brokers who purchase drugs for someone else using that person’s money would face lighter penalties for such offenses in accord with the prescribed weight thresholds. Senate Bill 3 adopts these distinctions and the committee’s recommendation to ensure that defendants with underlying addiction issues are given treatment-based options.

⁷ Proposed R.C. 2925.04.

⁸ *Ibid.*

⁹ **R.C. 3719.41.**

¹⁰ **R.C. 2929.14.**

¹¹ **R.C. 3719.41.**

¹² Lee Hoffer and Shah Jamal Alam, “**Copping’ in Heroin Markets: The Hidden Information Costs of Indirect Sales and Why They Matter**,” *Social Computing, Behavioral-Cultural Modeling, and Prediction*, Volume 7812 (2013).

¹³ *Ibid.*

Conclusion

Senate Bill 3 reforms Ohio's drug sentencing laws without making it easier to traffic drugs. The bill takes a commonsense, evidence-based approach to ensure that Ohio law adequately reflects the complex nature of addiction and drug trafficking by providing treatment for those possessing drugs and by continuing to hold drug traffickers accountable for their crimes.

About the Author

Andrew Geisler is a legal fellow at The Buckeye Institute's Legal Center. In this capacity, Geisler works on criminal justice policies that focus on how to make Ohio's communities safer, reduce spending, and help people become contributing members of society.



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