

POLICY MEMO

SENATE BILL 3: MYTH VS. REALITY
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Introduction

Senate Bill 3 would comprehensively reform Ohio's drug sentencing laws. And that is a good thing. Evaluating the true effect of such reform, however, requires separating fact from fiction and myth from reality.

Myth: Prison sentences for low-level drug offenders and addicts are cost-effective deterrents to drug use, drug crime, and drug overdose.

Reality: According to a **study** in the *Journal of the American Medical Association* (JAMA), a prison sentence has little, if any, deterrent effect on future drug use by nonviolent drug offenders. The study found that "On average, incarceration in the United States costs approximately \$22,000 per month, and there is little evidence that this strategy reduces drug use or drug-related re-incarceration rates for nonviolent drug offenders." A separate **study** of 15 states (including Ohio) by the Bureau of Justice Statistics found that one-quarter of individuals incarcerated for drug crimes returned to prison within three years. The JAMA study concluded that drug treatment for drug-abusing offenders is more effective than prison terms for advancing public health and safety.

Similarly, a 2018 Pew Charitable Trusts **study** found no correlation between imprisonment rates and the rates of drug use, overdose deaths, or drug arrests. The study concluded that the "absence of any relationship between states' rates of drug imprisonment and drug problems suggests that expanding drug imprisonment is not likely to be an effective national drug control and prevention strategy." The Pew study suggests that enhancing treatment options and reforming drug-sentencing laws to keep people out of the corrections system will be more effective than prison at reducing drug use.

Senate Bill 3 pursues these recommended approaches by modifying Ohio's drug-sentencing policies and sending low-level drug offenders to treatment centers rather than jail. The bill builds on the success of Ohio's Targeted Community Alternatives to Prison program by ensuring that people who are addicted to drugs do not sit in prison, but get the rehabilitation they need. Ohio's Legislative Service Commission **estimates** that such an approach will save Ohio \$75 million per year.

Myth: Threatening drug addicts and low-level drug offenders with felony convictions and prison sentences is the best way to encourage drug treatment and reduce drug crime recidivism.

Reality: Individuals struggling with drug addiction need effective drug treatment to correct the harmful, mental effects of narcotics. Without proper treatment, the threat of a felony conviction and a longer prison term will have little deterrent effect upon addicts. Whatever short-term inducements the threat of a felony conviction might provide are undermined by the long-term residual effects of such convictions. Felony convictions come with hundreds of severe collateral

consequences beyond prison time, including limiting future employment prospects. As rehabilitated addicts rebuild their lives and regain their footing, sustainable employment is a key to their long-term success. Making employment more difficult only makes it harder for recovering or rehabilitated drug users to succeed.

Myth: Senate Bill 3 is unnecessary because Ohio's current drug sentencing regime is adequate.

Reality: Ohio's drug sentencing laws are the unfortunate result of outdated, ad hoc legislation, and are out of step with more recent drug and criminal justice research. In 2017, the Ohio Criminal Justice Recodification Committee, a group of judges, prosecutors, defense attorneys, victim advocates, legislators, and law enforcement officials **suggested** 4,000 pages of policy proposals to improve Ohio's criminal code. Among these suggestions were comprehensive changes to Ohio's drug sentencing law. Senate Bill 3 builds on the Recodification Committee's work.

Myth: Senate Bill 3's drug trafficking weight thresholds are too lenient on traffickers.

Reality: Senate Bill 3's weight thresholds for high-level trafficking offenses are based upon the collaborative efforts of the Recodification Committee. In formulating the weight thresholds for various offenses, the committee relied upon a National Institutes of Health funded **study** carried out by Case Western Reserve University researchers who interviewed hundreds of people convicted of drug crimes. From these interviews, researchers and the committee determined which drug quantities were consistent with individuals acting to support their addiction, as opposed to those engaging in predatory trafficking behavior. Using this information, Senate Bill 3 imposes the stiffest penalties for those profiting from the addictions of others, while ensuring that defendants with underlying addiction issues receive treatment-based options.

Myth: Senate Bill 3 would make Ohio's drug trafficking laws weaker than neighboring states, making our state a haven for drug dealers.

Reality: Indiana, Kentucky, Michigan, Pennsylvania, and West Virginia do not punish the highest level of drug-trafficking offenders with stiff mandatory minimum sentences. Ohio does. Under Senate Bill 3, Ohio would continue punishing high-level drug trafficking offenses with these same serious mandatory prison sentences.

Myth: Senate Bill 3 and House Bill 1 are competing criminal justice reform proposals.

Reality: House Bill 1 and Senate Bill 3 are complementary, not competing proposals. House Bill 1 creates a presumption for intervention in lieu of conviction, which allows a person to avoid a conviction by completing a demanding treatment program. And House Bill 1 also proposes a back-end reform by expanding record sealing.

House Bill 1, however, does not tackle the intermediate period between low-level drug-conviction and eligibility for record sealing. Senate Bill 3 ensures that those convicted of low-level drug possession offenses do not have the almost insurmountable hurdle to finding employment a felony conviction creates. Senate Bill 3, paired with House Bill 1, would help remove public policy

barriers that prevent those in recovery from finding work—an essential step on the long road to recovery.

Myth: Ohio voters rejected Senate Bill 3's drug crime reclassification when they voted against Issue 1 in 2018.

Reality: There are significant differences between Issue 1 and Senate Bill 3. Chief among them is that Issue 1 would have made drug sentencing a matter of state constitutional law. A constitution's purpose is to prescribe a government's structure and describe the basic rights and obligations supporting that structure. A constitution should not be a specific policy document, particularly in a policy area in which strategies can change based on data. And Ohio voted to keep it this way. Senate Bill 3, by contrast, reclassifies most low-level drug possession offenses by changing the Ohio Revised Code, keeping the details of the policy open to later revision by the General Assembly consistent with changes in the relevant data.

Conclusion

Separating myth from reality is an important part of any public policy debate. The commonsense reforms in Senate Bill 3 do not create the problems and concerns that the myth suggests. Reclassifying low-level drug possession crimes from felonies to misdemeanors will better ensure that those suffering from addiction get the treatment they need instead of a prison sentence. Senate Bill 3 avoids exacerbating the rehabilitation efforts of recovering drug users, it relies upon current academic and criminal justice research, maintains stiff penalties for predatory drug traffickers, and complements the criminal justice reforms proposed by the Ohio House of Representatives.