



THE BUCKEYE INSTITUTE

Ohio Senate Bill 3: Sentencing Reform That Serves Justice and Treats Addicts By Applying Sensible Best Practices

Proponent Testimony
Ohio House Criminal Justice Committee
Senate Bill 3

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Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the Committee, thank you for the opportunity to testify today regarding Senate Bill 3 and drug sentencing reform.

My name is Robert Alt, and I am president and CEO of **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

Thank you for considering this critical issue and for your efforts to pursue sensible and effective criminal justice policy that balances due process, individual freedom, and our society’s need for vigorous law enforcement.

The policies in Senate Bill 3 will ensure Ohio remains a national leader in commonsense criminal justice reform, which keeps our neighborhoods safe and ensures nonviolent offenders are not overrunning our state’s prisons and courts.

For too long Ohio has incarcerated individuals convicted of low-level drug possession offenses when such offenders need treatment. At its core, Senate Bill 3 seeks to change that unfortunate reality by ensuring that those struggling with addiction get the help they desperately need. And it does so while accounting for a well-functioning society’s need to have criminal laws levy the proper punishments against those in the business of selling drugs.

Today I would like to first describe Senate Bill 3’s source material, then discuss the need for an updated structure to Ohio’s drug trafficking laws, and close by describing why the time is right for Ohio to reclassify most drug possession offenses from felonies to misdemeanors.

Senate Bill 3’s Source Material: The Ohio Criminal Justice Recodification Committee

In 2015, Ohio’s criminal code was a veritable hodgepodge of decades of piecemeal legislation, which included bloated, inconsistent, and difficult to understand laws. To help solve this vexing problem, the legislature established the Ohio Criminal Justice Recodification Committee. This diverse group of well-respected practitioners, judges, prosecutors, criminal defense attorneys, law enforcement officers, and prison officials studied national best practices and surveyed the latest research to propose significant reforms to clean up Ohio’s criminal code.

The Recodification Committee issued a 2017 final **report** containing some 4,000 pages of policy proposals to improve the Ohio criminal code. Among these reforms were comprehensive changes to Ohio’s drug sentencing law. The committee recommended changing the state’s mandatory sentencing structure after hearing from Case Western Reserve University researchers who had interviewed hundreds of people convicted of drug crimes. This National Institutes of Health-funded **study** helped determine whether the quantity of drugs in a convict’s possession made them more likely to be using themselves, selling to support an addiction, or preying upon those suffering from drug addiction.

Senate Bill 3 largely adopts the weight thresholds from the Recodification Committee’s final report, which are based upon real life scenarios and impartial university research. 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 still holding those in the business of selling drugs accountable for their actions.

Failures with Ohio’s Existing Sentencing Law

A recurring criticism of Senate Bill 3 is that it does not impose sufficiently long prison sentences for offenses. This criticism relies upon current Ohio law as a benchmark of what the sentences should be, but is based on a logical fallacy: Ohio’s current law should not form a normative baseline because it fails to adequately address data on best practices, and therefore imposes sentences that don’t adequately address addiction or deter criminal behavior. Additionally, it costs the state a great deal of money to deliver these uninspiring results. We know that the current law is not working, so why are we using it as the baseline arbiter of whether the proposed changes are sufficiently rigorous?

Policymakers should instead look to best practices as a baseline. To that end, a core insight from the Case Western Reserve University **research** upon which the Recodification Committee relied is 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 are more likely to be users themselves who are selling to support their own habit.

Under the Recodification Committee’s approach, addicts 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 many of the committee’s other recommendations to ensure that defendants with underlying addiction issues are given treatment-based options. The reason for this distinction is simple: **data** show that incarceration is not an effective way to reduce drug use, recidivism, or overdose deaths. By instead treating these addicted middlemen, we can remove their reason for engaging in drug transactions—thereby achieving better results at lower costs.

Using the Recodification Committee’s findings, which synthesized current sentencing research, as the appropriate baseline, we can easily see that in many cases Senate Bill 3 proposes *stiffer penalties* for mid-level trafficking offenses than the Recodification Committee suggested. Senate Bill 3 reserves the stiffest penalties for those whom research indicates are profiting from the addictions of others. If there is any valid criticism for Senate Bill 3, it is that there is not a sufficient justification for its upward deviation from the data-driven baseline into the stiffer penalties that Senate Bill 3 imposes, not that the bill is *too lenient*.

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.

The Need for Reclassification of Possession Offenses

Individuals struggling with drug addiction need two things to overcome their addiction and reintegrate as productive members of society: treatment for their addiction and a job. Unfortunately, a drug-possession felony conviction saddles those struggling with addiction with **more than 500 collateral consequences** that make it incredibly difficult for those in recovery to find a job and restore a productive life.

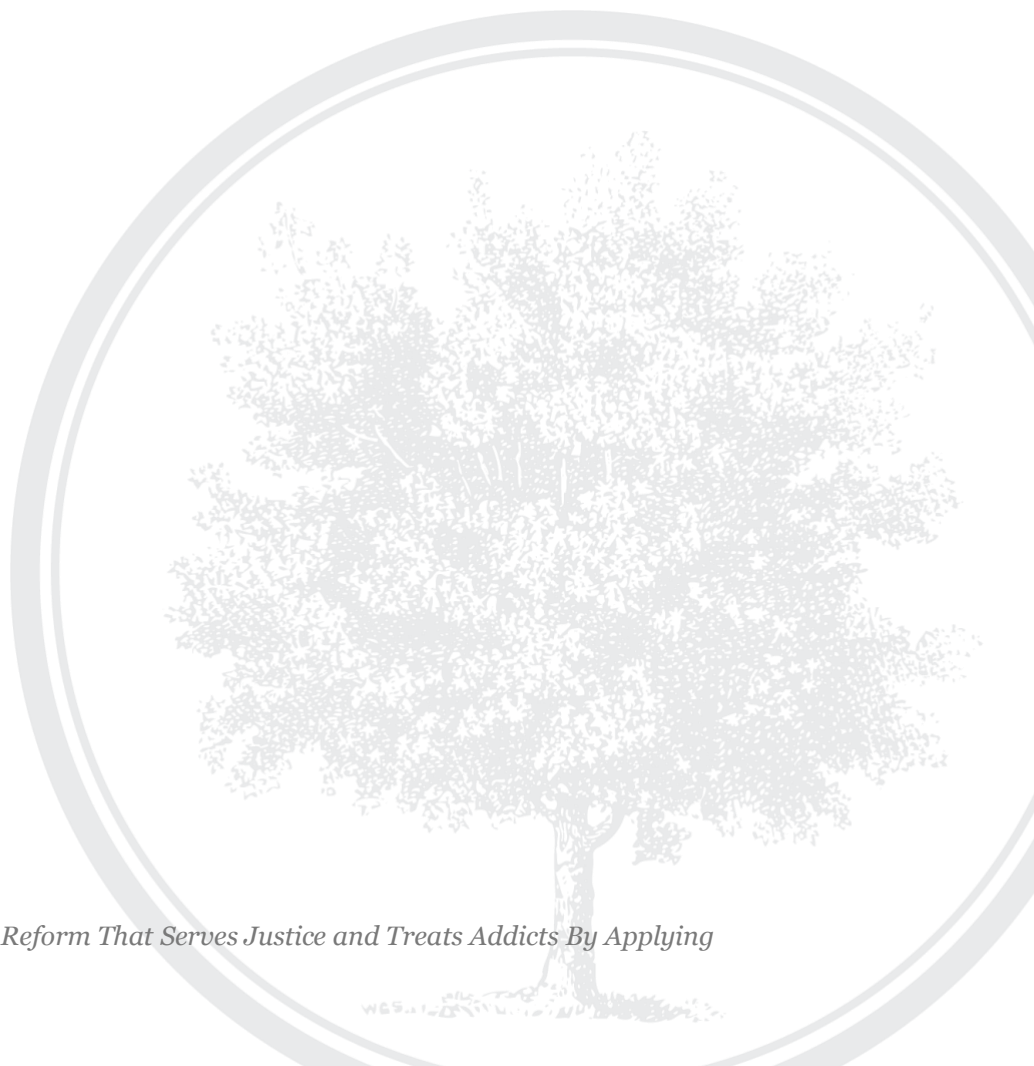
As the former Ohio Department of Health Medical Director Dr. Mark Hurst **put it last year**, long term change for an individual in the throes of addiction “requires counseling, it requires medication frequently, and it requires rebuilding the life. So when [Senator Eklund] mentioned how we would have less felony convictions, we would have more people who would be on a misdemeanor kind of level, I think that’s really important. Because employment is a really important part of recovery and rebuilding somebody’s life. And a felony conviction is a major barrier to that.” Many Ohioans already face significant financial hardship exacerbated by the persistent economic consequences of COVID-19, so the state should not impose additional and unnecessary barriers to employment or send people in need of treatment into the corrections system.

Study after study shows that harsh prison sentences for individuals convicted of drug crimes do not deter drug use, drug arrests, or reduce overdose deaths. An independent 2018 Pew Charitable Trusts **study**, for example, found no correlation between imprisonment and the rates of drug use, overdose deaths, or drug arrests. The study found 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.” Accordingly, the authors suggest enhancing treatment options and reforming drug-sentencing laws to keep people out of the corrections system and shift them instead into treatment programs. Senate Bill 3 follows these suggestions, building upon the success of Ohio’s Targeted Community Alternatives to Prison program, by ensuring that those addicted to drugs do not sit in jail or prison at taxpayer expense, but instead get the rehabilitative help they need to reintegrate into the community and labor force.

Conclusion

The Buckeye Institute commends the General Assembly’s serious criminal justice reform efforts in recent years, including the Certificates of Qualification for Employment program; serious criminal intent (*mens rea*) reform; civil asset forfeiture reforms; the Targeted Community Alternatives to Prison program; expansion of intervention in lieu of conviction eligibility; and enhancing judicial discretion in record sealing decisions. Adding the policies in Senate Bill 3 to this impressive list of sensible reforms will enhance Ohio’s standing as a national leader in criminal justice reform and ensure our criminal justice system treats all Ohioans fairly.

Thank you, and I am happy to answer any questions you may have at this time.



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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