



Ohio Judicial Conference

The Voice of Ohio Judges

**TESTIMONY TO OHIO SENATE JUDICIARY COMMITTEE
AS AN INTERESTED PARTY TO PROPOSED SENATE BILL 3
Judge David Matia, Cuyahoga County Common Pleas Court
June 12, 2019**

Thank you for allowing me time to be heard today on proposed Senate Bill 3.

I am in my 21st year of serving as a Common Pleas Court Judge in Cuyahoga County. Three years ago, I was privileged with the honor of serving as President of the Ohio Common Pleas Judges Association. With over two decades of experience, my views of criminal justice have evolved.

As a younger Judge, I was more of a “protect the public and punish the offender” type of jurist.

Today, I realize that many who appear in court are there because they lack appropriate behavioral healthcare. People are in courts because our nation lacks the healthcare infrastructure they need to lead productive lives as functioning adults.

Ten years ago, I was fortunate to be given the opportunity to start our County’s first felony level Drug Court. Running the Drug Court is one of the most fulfilling and soul saving roles a judge can perform. As a Drug Court Judge, I oversee a team of stellar individuals who work with spiritually broken and drug dependent people to successfully turn their lives around. Sick people come to Drug Court to regain their health and reclaim their lives.

My partner judge, Joan Synenberg and I now oversee three separate Drug Court dockets. Collectively, we have served over a thousand individuals, returning the majority of those to productive healthy lives.

I view the role of the General Assembly and of the judiciary as being similar. We both work to improve the lives of our fellow citizens.

I am here to oppose certain aspects of Senate Bill 3. Despite its well-intentioned origins, it will not make Ohio safer, nor healthier.

Scheduled Drugs Should Be Felonies

Let's be clear. Cocaine and opioids are scheduled drugs for a reason, when misused, they can kill. Cuyahoga County is on track to lose 356 men and women to cocaine overdose this year. We will lose 177 to heroin overdose. Philosophically, I cannot support legislation that would take dangerous and deadly substances and call them anything other than felonies. To do so sends a message that these drugs are no longer considered dangerous. This is clearly a message that Ohio's government should not be sending.

Felony and Work

I understand there is an opposing argument that, in part, is driving this legislation: that individuals with felonies have difficulty obtaining employment. I agree that a felony conviction can have life affecting collateral sanctions. Renting an apartment with a record is a challenge. Obtaining a job is less so. We are in a full employment economy. Almost every day there is a new story about employers unable to find qualified individuals to work. The proposition that a felony disqualifies an otherwise able-bodied and work-forced prepared individual from the privileges of employment is false.

The reason that some people with felonies cannot find work is that they have an incomplete education, many jobs are too far away from a bus line, they lack the motivation to get up in the morning and get to work or simply, that they can still not pass a drug test. They still suffer from a substance abuse problem. The felony itself is not the true cause of lack of employment but it is the lack of work force basics and skills that employment requires, lacking in these individuals.

If it is the desire to make it easier for formerly convicted drug offenders to obtain employment that is driving Senate Bill 3, it is being driven by a false pretense.

Expungement and Diversion

Ohio has been an unusually friendly state in helping formerly convicted offenders clear their records through the expungement process. When I began my judicial career, Ohio was only one of two states that would grant felony expungements, Kansas being the other. The ability to expunge has been increased by the General Assembly over the years. An individual may now expunge up to five prior felony convictions. Let me say that again. An individual who has been convicted on five separate

occasions for driving a stolen automobile or stealing over a \$1,000 worth of merchandise or being in possession of a controlled substance may now expunge their entire record in Ohio.

Thousands of individuals in Ohio who are indicted complete felony diversion programs and never have to seek an expungement. Revised Code § 2951.041 gives a Common Pleas Judge the authority to enter a defendant in Intervention in Lieu of Conviction Program which if successfully completed results in the dismissal of their case. In Cuyahoga County, our Prosecutor's Office operates a separate diversion program in addition to Treatment in Lieu called the Early Intervention Program. It runs similarly to Treatment in Lieu of Conviction. The point is, that there are many diversion programs available to individuals who have made a "mistake" and want to live a law-abiding life without a criminal record. Thousands of Ohioans in the criminal justice system are already receiving the benefits of diversion every year. I have heard the H.B. 1 proposes expanding diversion even further. I support this for first-time offenders.

Jurisdiction

My biggest concern with Senate Bill 3 is its jurisdictional transfer of the newly created class of "unclassified misdemeanors" to municipal courts. Under Senate Bill 3, this would occur in any jurisdiction where a municipal court operates a certified drug court. This provision will shrink the availability of drug courts. In 2017, 12,074 indictments were brought in Cuyahoga County Common Pleas Court. 2,141 of these cases were filed with drug possession charges no higher than a 4th degree felony. Under proposed Senate Bill 3, most of these cases would be transferred to Cleveland Municipal Court. If Cuyahoga County had a county-wide municipal court, all of these cases would be transferred to Cleveland Municipal Court.

Municipal Courts such as Cleveland's, do not have the capacity or funding to handle 2,100 additional cases, let alone provide these high need drug defendants with the resources they need to return to health.

Because of the jurisdictional transfer tsunami created by Senate Bill 3, it is doubtful that any municipal court without a currently operating certified Drug Court would begin one. I support any amendment that keeps jurisdictional control as they currently exist.

Additionally, Senate Bill 3 works to reduce the capacity that the Common Pleas and Municipal Court drug court systems offer to drug dependent individuals in the State of Ohio. As of today, Cleveland Municipal Court operates a Drug Court along with the three Common Pleas Drug Court dockets. Judge Joan Synenberg and I oversee approximately 275 individuals at any point in time in our three dockets. Judge Lauren Moore in Cleveland Municipal Court handles roughly 100 individuals. Should a Senate Bill 3 jurisdictional transfer occur, it is doubtful that Cleveland Municipal Court would expand to be able to handle the transfer of cases from Common Pleas Court. Instead, at nearly 400 individuals getting the benefits of Drug Courts, only a little over a hundred would under proposed Senate Bill 3.

Additionally, Senate Bill 3 does not account for unique jurisdictional issues created by the creative practices of some municipal courts. Cleveland Municipal Drug Court has arrangements with some of the other municipal courts in Cuyahoga County to handle drug dependent offenders. For example, Judge Pat Carroll in Lakewood Municipal Court can send an individual to be supervised by Judge Lauren Moore's Cleveland Municipal Drug Court. Judge Carroll does not operate a Drug Court. Only Judge Moore operates a sanctioned Drug Court at the Municipal level in Cuyahoga County. Under Senate Bill 3, would a defendant arrested for drug possession in Lakewood, Ohio, indicted with the unclassified misdemeanor proposed by Senate Bill 3 end up in Cleveland Municipal Drug Court or Common Pleas Drug Court?

Drug Court Capacity

The challenge facing Drug Courts everywhere these days is not their effectiveness. That is no longer a question. Every study done shows that Drug Courts reduce recidivism and return individuals to health. The greatest problem that Drug Courts across the country face is having the capacity to handle all of the individuals who are eligible and willing to participate.

As I indicated a few moments ago, Cuyahoga County indicted 2,100 drug possessing offenders. Assuming most of those would be eligible for participation in our Drug Court, we only have the capacity to see 10% of those. That is the inequity that we must work to address. Drug Courts must

be open to all those who would benefit from them, not just those who have lawyers smart enough to point them in that direction.

Senate Bill 3 would be harmful to Ohioans because it would reduce the total capacity in both Common Pleas Court and Municipal Court available to treat drug dependent offenders. No new Muni Courts would start Drug Courts under the jurisdictional transfer provisions of Senate Bill 3 and where a Muni Court Drug Court exists, that Common Pleas Court would lose jurisdiction over individuals that it has the capacity to help.

Ohio remains at the epicenter of our nation's opioid crisis. In order to change this, we have to look at the big picture. Drug Courts have been an extremely effective tool in fighting this epidemic.

However, it does seem treating a public health issue under a criminal justice umbrella is extremely inefficient. Drug dependency is a chronic disease just like diabetes and hypertension.

Unlike diabetes and hypertension, drug dependency is under treated by mainstream medicine.

Behavioral health issues remain underserved by our health systems. This must change for real progress to be made against our nation's drug crisis.

Every hospital should have an operating detox unit. Every hospital should have a high percentage of its primary care physicians licensed with "X" waivers to be able to prescribe medication-assisted treatment to drug dependent individuals. Loan forgiveness programs should be enacted for individuals going into addiction psychiatry and chemical dependency counseling in order to increase the workforce needed to treat our sick neighbors. Reimbursement rates for care provided to those treating for drug dependency under mainstream medicine should be increased. A financial incentive must exist for medical providers to treat behavioral health issues. Mainstream medicine is not at the front of the battle that America calls the opioid epidemic and this results in the tragic and unnecessary deaths of thousands of our citizens every year.

We are in a foster care crisis because of the opioid epidemic. Ohio is spending additional millions on foster care because the healthcare infrastructure does not exist to treat the parents of children suffering from drug dependency.

In most counties, the largest clinical drug dependency practice occurs in a Drug Court rather than a hospital. This must change! The power of government funding must be leveraged to bring about this change.

Years ago, the federal government cajoled the states to lower their driving under the influence blood alcohol content rate to .08%. They did that by denying federal highway funds to states with a blood alcohol content limit higher than .08%. States did not have to lower their rate but if they chose to remain higher than .08%, they would not benefit from federal highway funds.

Government should consider adopting the same stance with regards to hospitals and healthcare systems. Ohio should consider doing something coercive, if possible, with Medicaid reimbursement rates. The federal government or Ohio doesn't have to mandate that a hospital have a certain number of detox beds or a certain number of addiction psychiatrists, but using the power of the purse, could cajole them into doing so by giving them a lower reimbursement rate for the patients they treat who are there with Medicare or Medicaid coverage.

I was a finance major at Miami University and then I went to law school. When I graduated, I never dreamed that someday I would have one of the largest clinical drug dependency practices in Cuyahoga County. I dream of the day that Drug Courts and Mental Health Courts funnel individuals to healthcare systems run by medical professionals. Until that day, I will do my best to fight for the continued privilege of helping sick Ohioans turn their lives around in a Common Pleas Drug Court setting.

Thank you for the privilege of allowing me to address you today. I am happy to answer any questions.