



Ohio Judicial Conference

The Voice of Ohio Judges

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Senate Judiciary Committee

Sub. SB 3 Interested Party Testimony

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee. My name is Jack Durkin, and I am a judge in the Mahoning County Court of Common Pleas. Thank you for the opportunity to testify. I was invited by Senator O'Brien, along with Chairman Eklund, to an interested party meeting almost one month ago. It's clear that many concerns and issues that have been raised since SB 3 was first introduced have been addressed with some of the amendments that have been made to the original bill, so thank you for your willingness to listen.

I am very familiar with the arguments raised by both the proponents and opponents of this important legislation. So I do not intend on repeating, at least intentionally, what you have already heard.

My hope, though, is to offer some insight from having fought this battle for longer than I would like to admit. I am a former prosecutor. I am a former defense attorney, and I also represented the Mahoning County Children Services Board, handling abuse, neglect and dependency cases.

So when I decided to run for judge in 1996, I knew that our criminal justice system was in need of reform. I knew that recidivism rates were unacceptable. I knew that we needed to treat those people we were mad at and to punish those people that we were afraid of.

And that is why, in 1997, when I was elected and took the bench, I started the second drug court in the State of Ohio. I have witnessed the transformation of lives through recovery in the criminal justice system. I am incredibly proud that the recidivism rate for those people who successfully complete our program is less than 9%. It's why I continue to preside over the drug court, along with my other civil and criminal cases. And it is why I am here this morning.

I would like to begin with what is most certainly one of the most important issues in this legislation, and that is reclassifying low level felony possession cases to unclassified misdemeanors. I understand the rationale behind it. Low-level felony possession offenders do not, without something more, belong in prison. We need to do more to address the collateral sanctions that result from a felony conviction.

And so, the “million dollar” question is this. Is there any benefit that comes with the threat of a felony? Tim Young addressed this in his testimony. He wanted to provide research rather than anecdotes. He cited a study from the Pew Foundation that concluded that “making possession a felony does not deter use...and that the threat of prison does not reduce the demand for drugs.”

I completely agree. We don't need research to demonstrate that people will continue to use drugs no matter the consequence, whether the charge is a felony or a misdemeanor; whether they face jail or prison; whether they face losing their jobs or even losing their children.

But there is a problem with that study. It doesn't ask the right question. It doesn't address the critical issue this Committee must decide. It's not whether a felony charge deters use. It's not whether the threat of prison reduces the demand.

The real question is this: once a person is arrested, is the threat of a felony more likely to keep someone engaged in treatment? The Pew Foundation's research didn't ask or answer that question. I am going to attempt to.

If you have not had the opportunity to read Dr. Parran's testimony, I would encourage you to do so. He is a humble man, and what his written testimony does not tell you is that he was the medical chief resident at Johns Hopkins. He is the medical director at Case Western Reserve School of Medicine. He is Board Certified in Internal Medicine and Addiction Medicine. He knows more about substance-use disorder and effective treatment in the criminal justice system than anyone I have ever met. And his opinion should, in my estimation, carry great weight.

Dr. Parran believes that maintaining substance-abusing offenders in a felony level offense increases the chance of adherence, sobriety, and decreases the chance of relapse and recidivism. He also believes that the optimal time to implement sentencing reform guidelines would be after a reasonable period of sobriety and adherence (typically 18-24 months).

The reason for that opinion is evidence-based. The longer we keep someone engaged in treatment, the better the outcome. Once that time period runs, let's make it much easier to completely erase the felony charge. Maintain the hammer, but expand the carrot and benefits at the end. For those who aren't successful, if it's a simple possession case without more, drastically shorten the period of time for expungement, and expand its application.

I have two final suggestions. The first relates to the jurisdictional issue. I believe this Committee should give additional thought and consideration to the language that gives the county prosecutor the authority to determine whether a possession case is filed in

either the municipal or county court or the Court of Common Pleas. Whether this Committee ultimately determines that these cases should remain a felony or become an unclassified misdemeanor, if a county prosecutor is left to this decision, you can ultimately have not only different and disparate outcomes county by county, but different outcomes in the same county case by case.

Please make the call on this one. As the Judicial Conference has stated, municipal and county courts are overwhelmed with cases. As effective as some municipal specialized dockets are, they would be overwhelmed if these possession cases were filed there. These cases should be statutorily mandated to be filed in the Common Pleas Court. My final comment involves prison overcrowding. It was a major issue with State Issue 1, and absolutely merits discussion and legitimate change needs to occur. I know that the Senate and House have already taken many steps to address this issue. But as it relates to this amendment, if local jail time becomes the only option for sentencing, there are many counties who simply don't have adequate jail space to house this population. If a person is able to hit the street before the paperwork is filed because of jail overcrowding, people are going to continue to use, ultimately leading to higher recidivism rates and overdose.

I do not envy your position. You have been tasked with making dramatic, needed change to our criminal justice system through drug policy reform. Whatever actions you ultimately take, I would only ask that you safeguard and expand the programs in our state that have been so successful in saving lives and reducing recidivism.

Thank you so much for your time.