

Criminal Justice Issues and Prisoners' Rights

<https://www.acluohio.org/en/news/sub-senate-bill-3-proponent-testimony>

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Below is our Chief Lobbyist Gary Daniels' proponent testimony on Sub. Senate Bill 3. This was delivered to the House Criminal Justice Committee on November 10, 2020.

To Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for this opportunity to present proponent testimony on Substitute Senate Bill 3. SB 3 is a dense but thankfully not complicated bill if we all keep in mind the crux of it is to make long overdue changes to Ohio's drug possession laws and route people to drug treatment instead of prisons. This is accomplished via SB 3 by changing, with various exceptions, some current felony offenses of Drug Possession to a misdemeanor. Instead of prison, more Ohioans will hopefully get the help they need via a drug court and treatment in their local community. **BACKGROUND** For the committee's benefit, I have included with my testimony a document with various Drug Possession statistics and trends. The takeaways, according to the most recent data, are:

Together with Drug Trafficking, these two offenses fuel mass incarceration in Ohio although they are far from the only contributors. **SIGNIFICANT PROVISIONS** Because the following are sometimes overlooked, the committee should be aware of at least these two positive provisions that further strengthen SB 3: Definition of "technical violations" In Ohio, approximately 20% of our prison population at any given time consists of people locked up for a "technical violation" i.e. a violation of a supervision condition imposed upon them that is not its own criminal offense. This issue itself is long overdue for meaningful reform. A good first step is establishing a common definition and SB 3 provides one. Data collection Adequate data collection and reporting regarding Ohio's criminal justice system has not yet been realized. In recognition of this, SB 3 tasks the Ohio Criminal Sentencing Commission with specifically studying and reporting on the effects of SB 3 after it is enacted. **SUGGESTIONS FOR FURTHER IMPROVEMENT** Suffice to say, the ACLU of Ohio has a host of suggestions to improve SB 3. We also do not wish to delay any further SB 3's passage this session so my goal is not to do so. Still, if SB 3 will be further amended and as others make suggestions and requests, we briefly offer these three: Retroactivity So many of your constituents, for so many years, have been impacted by Ohio's drug laws. They also need the relief SB 3 provides and this can be done by making SB 3 retroactive. That is, to apply in such a way that past felony convictions, now covered by SB 3, will not impact their employment, housing, education, and the other effects of being saddled with a felony record. Expand eligibility Currently, SB 3 does not apply to those with 2+ offenses in the past 3 years. In other words, it is designed to primarily help those with first offenses. Given the widespread and ongoing drug problems in Ohio, we want SB 3 to provide maximum help to those in need. Fentanyl-related offenses In Ohio, we treat any drug, or even non-drug, substance with any amount of fentanyl as all fentanyl. Last session, the General Assembly passed Senate Bill 1. SB 1 dramatically increased fentanyl penalties for even the smallest amounts. SB 3 currently does not apply to those with fentanyl offenses. Because it does not, a large number of people needing assistance will be unnecessarily and automatically disqualified from SB 3's sentencing benefits. **IMPORTANCE OF THIS SESSION** Having worked on this issue for many years inside and outside the Statehouse, I know opportunities in the General Assembly for bills like SB 3 are not common. Because of that, Ohio often remains a lonely island in a sea of bipartisan reform across the country. The last time the OGA considered a bill with the potential impact of SB 3 was House Bill 86, which took effect all the way back in September 2011. Like SB 3, HB 86 addressed certain categories of Drug Possession convictions with the goal to get people help and keep them out of prison. As you saw from the data I provided about Drug Possession and Ohio prison numbers, much improvement is still needed. SB 3 represents an immense amount of work for, and advocacy by, members of this body, their staff, numerous stakeholders, and local, state, and national advocates from across the political and ideological spectrum. But, too many times, bills that do not cross the finish line during lame duck must await reintroduction the following session. However, priorities for busy legislators can and do change. Many other factors can lead to a bill not being reintroduced or it is significantly changed from its previous version. The ACLU of Ohio's top priority is to provide whatever help and assistance we can to this committee to pass SB 3 this session. Please do not hesitate to contact me directly (gdaniels@acluohio.org) with any questions, requests, or further discussion. Likewise, you will soon be hearing from other organizations and people across Ohio, including those who directly benefit from these changes, to encourage your support. The sooner we can all contribute to positive change the sooner people are helped. The ACLU of Ohio asks for this committee's support in passing Substitute Senate Bill 3. **Addendum (Page 1-3) to Sub. SB 3 Testimony - House Criminal Justice Committee - 11/10/20 from Gary Daniels, Chief Lobbyist, ACLU of Ohio: DRUG POSSESSION - DRC COMMITMENT DATA** Data available here - <https://drc.ohio.gov/reports/commitment> NOTE: Data broken down by felony level exists via DRC website for only CY 2019 & 2018. **DRUG POSSESSION COMMITMENTS - ALL YEAR TOTAL FI F2 F3 F4 FS** CY 2019 2,608 15.47 98 266 661 141 1,442 CY 2018 2,469 14.03 97 245 449 171 1,507 CY 2017 2,738 14.70 CY 2016 2,926 14.71 CY 2015 2,728 13.75 CY 2014 2,426 12.12 CY 2013 2,268 11.05 CY 2012 2,179 10.84 CY 2011 2,213 10.70 CY 2010 2,694 11.62 **DRUG POSSESSION COMMITMENTS - MEN YEAR TOTAL FI F2 F3 F4 FS** CY 2019 2,037 89 209 545 115 1,079 CY 2018 1,926 91 202 364 140 1,129 CY 2017 2,068 CY 2016 2,238 CY 2015 2,086 CY 2014 1,929 CY 2013 1,778 CY 2012 1,739 CY 2011 1,771 CY 2010 2,147 **DRUG POSSESSION COMMITMENTS - WOMEN YEAR TOTAL FI F2 F3 F4 FS** CY 2019 571 9 57 116 26 363 CY 2018 543 6 43 85 31 378 CY 2017 670 CY 2016 688 CY 2015 642 CY 2014 497 CY 2013 490 CY 2012 440 CY 2011 442 CY 2010 547 **Addendum (Page 2-3) to Sub. SB 3 Testimony- House Criminal Justice Committee - 11/10/20 from Gary Daniels, Chief Lobbyist, ACLU of Ohio DRUG POSSESSION - DRC COMMITMENT DATA- COMPARING CY YEARS 2019-2010** Data available here - <https://drc.ohio.gov/reports/commitment> Calendar Year// Rank re: all commitments // Total of all // Percentage of all YEAR RANK

TOTAL % OF ALL 2019 1 2,608 15.47% 2018 1 2,469 14.03% 2017 1 2,738 14.70% 2016 1 2,926 14.71% 2015 1 2,728 13.75% 2014 1 2,426 12.12% 2013 2 2,268 11.05% 2012 2 2,179 10.84% 2011 2 2,213 10.70% 2010 1 2,694 11.62% **Addendum (Page 3-3) to Sub. SB 3 Testimony- House Criminal Justice Committee-11/10/20 from Gary Daniels, Chief Lobbyist, ACLU of Ohio DRUG POSSESSION - DRC CENSUS DATA Jan 2011-Jan 2020 Comparison** Data available here - <https://drc.ohio.gov/reports/institution-census> NOTE: Over the course of the 10 years analyzed below, there have been 3 different mechanisms/standards for sentencing people for Drug Possession (among other offenses). They are 1) Before SB 2 ("B42"), 2) Under SB 2 ("SB 2"), 3) Under HB 86 ("HB86"). This data is also divided by men/women. YEAR TOTAL % TOTAL MEN 842M 582M HB86M WMN 842W 582W HB86W JAN 20 **3,005** 6.18 **2,546** 0 119 2,427 **459** 0 6 453 JAN 19 **2,681** 5.49 **2,246** 0 152 2,094 **435** 0 10 425 JAN 18 **2,688** 5.43 **2,260** 0 200 2,060 **428** 0 20 408 JAN 17 **2,858** 5.67 **2,389** 0 281 2,108 **468** 0 33 435 JAN 16 **2,693** 5.33 **2,238** 1 401 1,837 **454** 0 45 409 JAN 15 **2,495** 4.94 **2,146** 1 620 1,526 **348** 0 72 276 JAN 14 **2,435** 4.82 **2,101** 1 1,035 1,066 **333** 0 130 203 JAN 13 **2,429** 4.88 **2,097** 0 1,577 520 **332** 0 226 106 JAN 12 **2,547** 5.08 **2,223** 0 2,223 **X 324** 0 324 **X** JAN 11 **2,869** 5.65 **2,493** 1 2,492 **X 376** 0 376 **X** Over the past 5 years, Drug Possession ranks here among offenses for which people are incarcerated in Ohio pr isons: YEAR RANK JAN 2020 #6 JAN 2019 #8 JAN 2018 #8 JAN 2017 #7 JAN 2016 #7

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