

Overcharging, Overspending, Overlooking



Cuyahoga County's Costly War on Drugs

*Published on the 40th anniversary of the failed war on drugs,
and with the support of the Drug Policy Alliance.*



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“[Y]ou have to face the fact that the whole problem is really the blacks. The key is to devise a system that recognizes this while not appearing to.”¹

-President Richard M. Nixon

From the diary of Nixon’s longtime advisor, H.R. Haldeman

On June 17, 1971, **President Nixon** declared a national war on drugs. Forty years later, the United States has spent over one trillion dollars and made over 40 million arrests in its crusade against illegal narcotics.² Instead of keeping America’s streets safe, the facts reveal the truth: the war on drugs is a terrible turn in social policy felt the most by those least able to defend themselves. While Caucasians and African Americans use drugs and sell drugs at a similar rate, people of color are incarcerated at a much higher rate. This reality is apparent in Cuyahoga County, Ohio, which includes the city of Cleveland. Officials perpetually overcharge

low-level nonviolent drug offenders, overspend on unnecessary felonies and overlook alternatives to felony convictions.

Overcharging

- Ohio’s prison population now stands at 50,485³ **placing Ohio as the sixth highest state for number of prisoners.**⁴
- Ohio’s current prison population is at 132% capacity.⁵ This number is expected to increase to 141% by 2018.⁶
- Out of 88 counties in Ohio, Cuyahoga County consis-

tently makes up 20% of yearly state prison admissions,⁷ even though **the county has 10.9% of Ohio’s adult population**⁸

Location, Location, Location

- Although our prisons are bursting at the seams, Cuyahoga County continues to sentence low-level offenders to prison. Fourth and fifth-degree nonviolent felonies constitute 53% of the county’s prison admissions, despite the fact that those charges could be reduced to misdemeanors.⁹
- The *Cleveland Plain Dealer* reported that more ex-offenders return to Cleveland than any other city in Ohio.¹⁰
- Similarly situated counties show very different sentencing practices. **Franklin County sends 82% of fifth-degree offenders to probation while Cuyahoga County sends only 66%.**¹¹ Related

Executive Summary

figures for fourth-degree felons in Franklin County show 63% were given probation and in Cuyahoga County only 51% were.¹²

- Four areas out of Cleveland's 36 neighborhoods account for at least 20% of the total prison sentences in the entire Cleveland area.¹³

Race Matters in Sentencing

- In fiscal year 2010, **prison diversion programs consisted of 56% Caucasians and 41% African Americans.**¹⁴ For jail diversion programs 71% of participants were Caucasian and 26% were African American.¹⁵ All residents should have equal access to sentencing alternatives.
- Between the years 2005 and 2007, more than 98% of drug convictions were the result of plea deals.¹⁶ During that period, Caucasians that pleaded guilty to a single low-level drug charge were 55% more likely to receive a reduction to misdemeanor charges than African Americans.¹⁷
- Accounting for diversions to the Greater Cleveland Drug Court, **prosecutors were 45% more likely to offer misdemeanor plea deals to Caucasians than African Americans.**¹⁸
- Caucasian offenders from the suburbs or out of town

were 77% more likely to receive a reduced misdemeanor charge as compared to African Americans.¹⁹

- The 2010 census found that of the state's population of 11,536,504, 82.7% were Caucasian and 12.2% were African American.²⁰ **However, the May 2011 inmate profile revealed that nearly half, 47.14%, of Ohio prison inmates were African American.**²¹
- In 2010 in Cuyahoga County, Caucasians accounted for 63.6% of the population and African Americans were 29.7%.²² However, African Americans accounted for 70.3% of those sent to prison from the county.²³

Overspending

- In 2008, there were nearly 535,000 ex-felons aged 18-64 in Ohio. As a result, there were approximately 65,000 fewer employed people than

there would have been had those individuals not had a felony record. **This accounts for a reduction of \$2.9 billion in Ohio's 2008 Gross Domestic Product.**²⁴

- Cuyahoga County exports assets and imports liabilities every time it sends low-level nonviolent offenders to prison. The U.S. Census will count a prisoner's correctional facility as their residence. The federal government uses the Census population data to allocate hundreds of billions of dollars.

Overlooking

- Numerous treatment and rehabilitation options would avoid the stigma of a felony conviction. Some existing alternatives include diversion to the Greater Cleveland Drug Court, community based correctional facilities, halfway houses, treatment, job training and electronic monitoring systems.

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Overcharging

Cuyahoga County perpetually overcharges low-level nonviolent drug offenders. **In 2009, Cuyahoga County had the highest number of commitments to prison of all Ohio counties, constituting 19.9% of the total intake of the Ohio Department of Rehabilitation and Correction.**²⁵

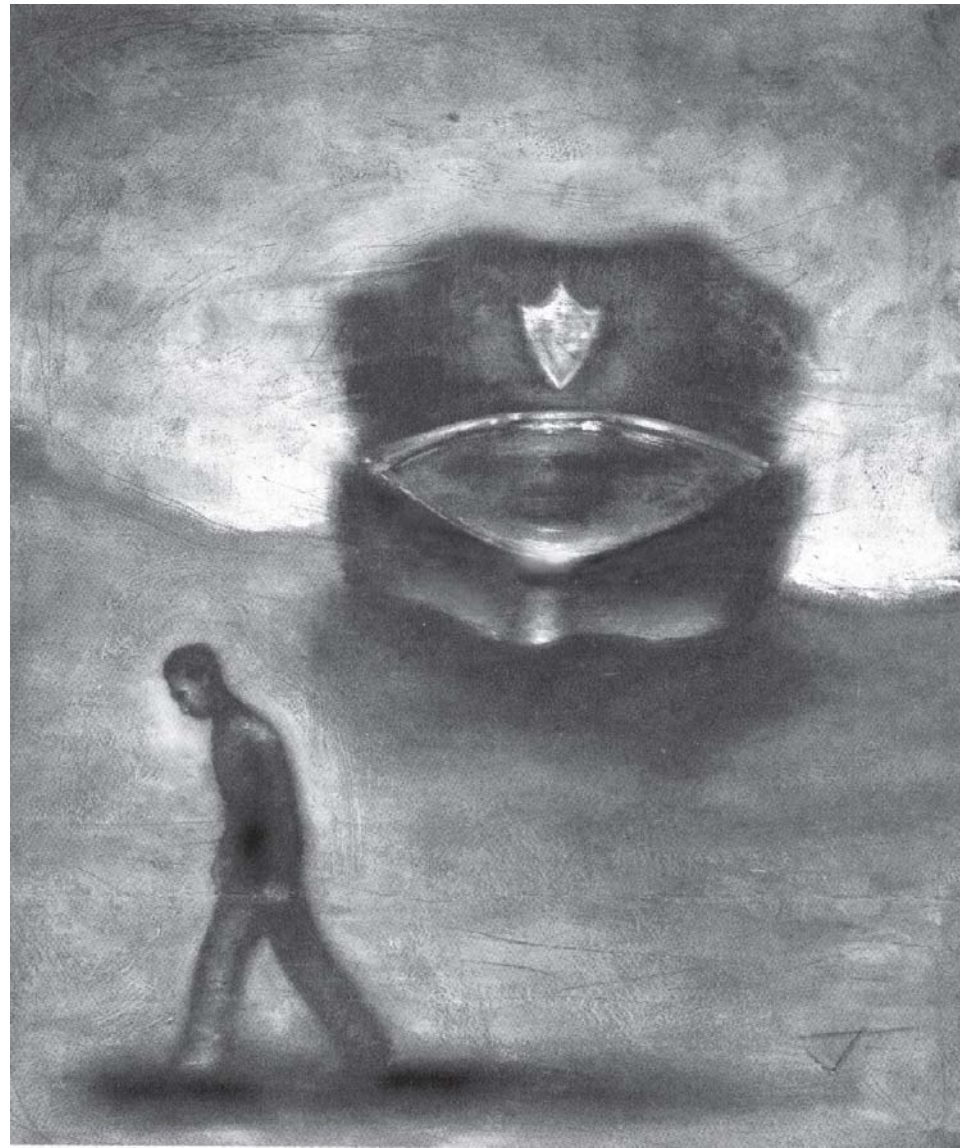
To put this in perspective, Cuyahoga County has only 10.9% of the state's population, yet it contributes nearly 20% of yearly prison admissions.²⁶ A study of Ohio by the Council on State Governments found that 56% of prison admissions in 2008 were due to low-level fourth- and fifth-degree felonies including drug offenses.²⁷

However, offenders admitted to prison make up just a fraction of those convicted of felonies for low-level drug offenses. An individual can be charged with a felony, never be incarcerated and still face the debilitating stigmas of being an ex-felon. Despite the sentence — prison or probation — Cuyahoga County overcharges individuals and destroys lives through felony convictions.

Nonviolent Offenses, Lifelong Consequences

Cuyahoga County continues to overcharge and imprison individuals even when violent crime in the county is down.

Ohio's Department of Rehabilitation and Correction defines truly nonviolent offenders as those with "no violent current conviction or indictment offense, no prior felony conviction for a violent or sex offense, no gun



time, and no weapon involvement in the current offense."²⁸

Although local politicians tout the recent successes of law enforcement agencies in tackling violent offenses, statistics indicate Cuyahoga County's overcharging tendencies have yet to ease. **Mayor Frank Jackson** publicized during his State of the City Address of 2011 that, since 2006, violent crime is down 21% in the City of Cleveland.²⁹ However, since 2006, the percentage of individuals incarcerated from Cuyahoga County has not dipped

below 19.2%. In fact, over 18% of all inmates committed due to truly nonviolent offenses from the 88 counties in Ohio came from Cuyahoga County.

Of those low-level nonviolent offenders in Cuyahoga County in 2009, 61.2% involved drug related offenses.³⁰ These figures illustrate that Cuyahoga County actively overcharges nonviolent offenders even though a felony conviction brings lifelong consequences.

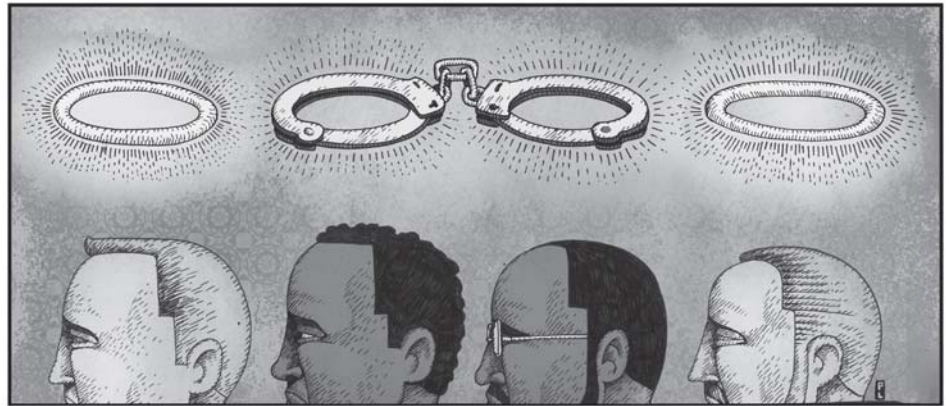
Location, Location, Location
Whom Cuyahoga County

Overcharging

chooses to charge as a felon for low-level nonviolent drug offenses more often depends on geography. In his instructions to a grand jury in 2003, **Judge Burt Griffin** noted the “differential prosecution” of drug cases in Cuyahoga County.³¹ He told a grand jury that only in Cleveland and not in the suburbs are certain drug cases pursued as felonies.³² Since that time, not much has changed.

Regardless of crime or known drug use in a particular jurisdiction, police often target the same neighborhoods to make drug arrests. Police routinely use proactive methods of drug enforcement which lead to disproportionate arrest rates for certain areas. The predominant methods they use involve officers actively posing as buyers or doing sweeps in specific areas the police choose.³³ Police use these practices in select neighborhoods despite the fact that studies done by federal and state agencies show diverse and widespread drug usage throughout Cuyahoga County.³⁴ Cleveland is the eighth most segregated city³⁵ in the country with a predominantly African American east side and Caucasian west side. **The areas that had more highly concentrated arrests were those from the mainly African American east side.**³⁶

Additionally, the Council on State Governments reported that specific neighborhoods in the Cleveland area account for significantly more admissions than their surrounding neighborhoods.³⁷ **Four out of 36 neighborhoods in Cleveland — De-**



troit Shoreway, Glenville, Mt. Pleasant and Union-Miles Park — send between 5.01% and 8.72% of the city's total fourth- and fifth-degree felony admissions to prison.³⁸ Three of these

are located on the east side. Law enforcement practices lead to highly disproportionate felony drug convictions for African Americans within Cleveland of about four times that of Caucasians. “Since the mid 1990’s over four of every five felony drug possession arrestees in the city was non-White.”³⁹ **During 2005 in Cuyahoga County, 69% of drug possession arrests were made within Cleveland city limits.**⁴⁰ Taking into consideration the county’s population, this arrest rate is approximately double what one would expect.⁴¹ These statistics demonstrate the disproportionate outcome of long-standing law enforcement policies that target African American communities.

Race Matters in Sentencing

In deciding who receives reduced charges on drug felonies, studies indicate that race matters in Cuyahoga County. Since the power to determine

the charge of conviction rests exclusively with the prosecution for the 85 % of the cases that do not proceed to trial, mandatory minimums transfer sentencing power from the court to the prosecution.

Between the years 2005 and 2007, more than 98% of drug convictions were the result of plea deals.⁴² During that period, Caucasians that pleaded guilty to a single low-level drug charge were 55% more likely to receive a reduction to misdemeanor charges.⁴³ Even accounting for diversions to the Greater Cleveland Drug Court, Caucasians were 45% more likely to plead to a misdemeanor than African Americans.⁴⁴ Caucasian offenders from suburban or out-of-town areas were 77% more likely to receive a reduced misdemeanor charge as compared to African Americans.⁴⁵ These biases highlight the unnecessary overcharging of some individuals due to their race or geographic location. If Caucasian and out-of-town offenders can receive reduced charges for drug offenses, there should be no reason African Americans or Clevelanders cannot as well.

Overspending

Cuyahoga County continues to overspend on felony convictions, which drains precious state and local government funds. In 2008, 54% of those admitted to prison from Cleveland were convicted of lower level offenses including drug charges.⁴⁶ **Those admissions cost the state \$27 million in one year alone.**⁴⁷ Cleveland has the highest rate of returning ex-offenders from state prisons of any city in the entire state.⁴⁸ As a result of stigmas and collateral sanctions, people with felony convictions have a more difficult time finding employment and must seek more government aid, adding to the financial drain of county resources.

Ohio is feeling the effects of the recent economic downturn, and **Governor John Kasich** has indicated budget cuts are looming.⁴⁹ Due to loss of revenue, the state's proposed biennial budget for 2012-2013 would cut \$35.7 million from Cleveland's 2011 and 2012 budgets.⁵⁰ These budget concerns compelled Cleveland Mayor Frank Jackson to consider laying off police and other public safety workers. Yet, as the city considers cutting its police force that helps keep Cleveland safe, it continues to overspend by underutilizing misdemeanor charges for alleged low-level nonviolent drug offenders.

Every individual felony conviction strains the city's limited financial resources. As an example of this unnecessary drain on government resources, Cleveland police may benefit financially when a person is charged for a felony versus a misdemeanor. The most recent

Cleveland police contract explicitly allows overtime for police appearances in court for felony cases.⁵¹ **For every court appearance, an officer could expect to spend three to four hours and make one and a half times their normal pay.**⁵² Since misdemeanors usually do not require the presence of the arresting officer, officers have a lucrative incentive to underutilize less costly misdemeanor

charges. In addition, prosecuting felonies is more expensive.⁵³

Cuyahoga County bears heavy costs for every alleged felony offender. In general, felonies have higher costs across the board in terms of:

- arrest costs;
- jail or custodial costs;
- indigent representation;
- direct court costs, since they require probable cause proceedings (which also



Overspending

extends to added law enforcement costs since officers almost always testify in these proceedings); and,

- the final sentence or punishment costs.⁵⁴

Since counties handle felony cases, they exclusively bear the cost. In the face of rigid budget constraints, there is no reason for the county to continue its costly underutilization of misdemeanor charges for low-level nonviolent drug offenses.

Community Costs of Felony Convictions

Cuyahoga County cripples itself when it convicts individuals for felonies involving low-level nonviolent drug offenses. The **American Bar Association** defines collateral sanctions as any “legal penalty, disability or disadvantage, however denominated, that is imposed on a person automatically upon that person’s conviction for a felony, misdemeanor or other offense, even if it is not included in the sentence.”⁵⁵ In 2006, **Russell R. Brown III**, deputy court administrator of the Cleveland Municipal Court, released a report stating collateral sanctions follow an ex-offender throughout their life and can have devastating consequences on matters such as seeking employment and receiving government benefits.⁵⁶ A recent study by the **Pew Research Center** found that previously incarcerated males receive nine fewer weeks of annual employment and a 40% decrease in yearly earnings compared to males who had not been incarcerated.⁵⁷ Quality



employment is the “number one factor” that determines whether an ex-offender will recidivate.⁵⁸ **The best way to ensure low-level nonviolent offenders do not reoffend is to charge them fairly and give them a better opportunity to seek quality employment.**

Collateral sanctions heavily burden ex-felons’ employment opportunities and harm the community. Whether sentenced to prison or not, individuals with previous felony convictions face a lifelong struggle with economic collateral sanctions.⁵⁹ In Ohio, collateral sanctions for employment account for 72% of all punishments that can be given for committing a crime.⁶⁰ Some of these sanctions include the inability to apply for certain state licenses or state government jobs.⁶¹ Because many of these sanctions are mandatory under law, many ex-felons cannot escape their harmful

effects.⁶² The job prospects for some individuals with criminal records are so bleak that they ultimately return to crime.⁶³ As a result, ex-felons must seek out more government resources and are unable to financially contribute much to their communities. With Cuyahoga County facing revenue loss of \$36 million, handicapping an individual’s ability to be gainfully employed only serves to cut its own tax proceeds.⁶⁴ Underutilizing misdemeanor charges for low-level nonviolent offenders harms the community by adding to unemployment levels and needlessly destroys employment opportunities for the lives of thousands.

Not only do collateral sanctions affect people with felony convictions, they harm the entire community. The cost of hundreds of thousands of unemployed or underemployed ex-offenders weighs heavily on Ohio,

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Cuyahoga County and Cleveland.

The **Center for Economic and Policy Research** conducted a study on the economic effect of the loss of employment in 2008 for individuals with felony convictions.⁶⁵ **The Center found that the reduction in employment for ex-offenders accounted for a loss of 1.5 to 1.7 million workers nationally.**⁶⁶ Consequently, the U.S. economy lost an estimated \$57 to \$65 billion in 2008's gross domestic product.⁶⁷ **In Ohio, the Center found there to be about 535,000 ex-felons aged 18-64 in Ohio.**⁶⁸

Due to stigmas and collateral sanctions placed on ex-felons, approximately 65,000 fewer people were employed than would be otherwise. **This loss accounted for a reduction in state GDP of about \$2.9 billion.**⁶⁹

The more low-level nonviolent drug offenders the county incarcerates, the more it will have to pay out in services. This cycle has led to a continual spiral of felony conviction rates and drains on Cuyahoga County.

Exporting Assets, Importing Liabilities

By sentencing so many low-level offenders to prison outside Cuyahoga County, officials continually export assets and import liabilities. The U.S. Census Bureau allows the federal government to record a prisoner's correctional facility as their residence.⁷⁰ Every prisoner that Cuyahoga County sends to a facility outside the county may cost the county federal dollars. The financial impact of the loss of federal grant money could



severely limit the revenues of Cuyahoga County.⁷¹ It could also potentially affect grant funding to programs involving health services, community development, school funding, elderly care, and law enforcement.⁷²

A study of the 2000 Census found numerous counties lost millions in federal funding due to an undercounted population.⁷³ The top 58 undercounted counties between 2002 and 2012 were projected to lose federal funding in the amount of an estimated \$3.6 billion or \$2,913 per uncounted person.⁷⁴ Instead of Cuyahoga County receiving its fair share of federal dollars, the county's high prison admission rate could ensure the funds go elsewhere. By providing accurate census data and handing down unbiased sentences, Cuyahoga County could help to increase its funding.

Not only could Cuyahoga County lose federal funding, but political representation as well. The state uses Census data to redraw district lines for state and

local representatives. For example, 8.92% of the population of District 85 in Pickaway and Fayette counties in 2004 was made up of prisoners, most of whom were likely from outside the district.⁷⁵

This means that "every group of 91 residents in District 85 gets as much of a say over state affairs as 100 people in Columbus or Cleveland."⁷⁶

The shift in political power caused by exporting prisoners occurs in local governments too. In Mansfield, one city council ward had only 3,000 residents but due to the presence of out-of-town prisoners had the same "political power as the 8,600 residents of any one of the other" six wards.⁷⁷ In 2004 using 2000 Census data, Cuyahoga County had a net loss of 10,441 residents counted in other districts.⁷⁸ Since the overwhelming majority of prison admissions are African American, the county's policies effectively dilutes minority representation.

Overlooking

Choosing Alternatives, Saving Lives

Cuyahoga County has demonstrated an unwillingness to consider alternatives to felony charges and prison sentences for many low-level nonviolent drug offenders. Numerous treatment and rehabilitation options would avoid the stigma of a felony conviction. Some existing alternatives include diversion to the Greater Cleveland Drug Court, community based correctional facilities, halfway houses treatment, job training, and electronic monitoring systems. Alternatives to felony convictions provide varying levels of supervision and treatment, they are less costly than prison and provide numerous benefits for offenders and society.

High Cost of High Incarceration

Cuyahoga County overlooks alternatives to prison for low-level nonviolent drug offenders which ultimately costs the taxpayers more money. Currently, the daily cost per inmate in prison is \$68.76 with an annual cost of \$25,097.40.⁷⁹ By contrast, the Community Corrections Act prison diversion program costs \$1,812 annually.⁸⁰

Although some alternatives may have a more expensive daily cost, the number of days spent in these programs is usually far less than a prison term.⁸¹ For instance, the average cost per day for an individual in a community based correctional facility was \$80.11.⁸² However, the average length of stay for an offender was 124 days.⁸³

The alternatives the county overlooks when sentencing drug offenders afford benefits to the offenders that also help the community. While completing prison diversion programs, individuals have access to treatment and various other services. Halfway houses provide alcohol and drug counseling, academic training and employment assistance.⁸⁴ Community Based Correctional Facilities provide more intensive treatment⁸⁵ and offenders take advantage of it. Participation rates for services in CBCFs are 89.6% for drug abuse counseling, 53.1% for employment assistance and 48.7% for academic training.⁸⁶ Since both halfway houses and CBCFs incorporate drug testing and treatment into their program, the costs are already included.⁸⁷

Offenders in prison diversion programs like halfway houses and CBCFs earn money, help pay off obligations and contribute to the community. In fiscal year 2010 the 10,735 offenders admitted to prison diversion programs earned a combined total of \$22,252,861.⁸⁸ They also paid \$1,885,565 in restitution, \$1,777,998 for court costs and fines and \$666,778 in child support.⁸⁹ None of these payments would have been possible had these offenders been in prison.⁹⁰ In addition to responsible payments of obligations, offenders in prison diversion programs contributed to their communities. In total, they completed 159,388 hours of community service.⁹¹ These thousands of hours of community service would not have been possible had these offenders been incarcerated.⁹²

Conclusion

The war on drugs is a proven failure in Cuyahoga County. Research data on selective enforcement of drug laws and selective prosecution of drug arrestees reveal rampant bias based on race and geography. Thousands of low-level non-violent ex-offenders live in Cleveland with no hope of employment. Though the true cost of the war on drugs can never be calculated, it can be changed. No longer should we allow Cuyahoga County to overcharge, overspend or overlook nonviolent drug offenders. June 17, 2011 can be a new anniversary; the day when we, as a community, decided to take action against these practices and hold officials accountable.



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- ⁸⁵ Nancy A. Marion, "Community Corrections in Ohio: Cost Savings and Program Effectiveness," pp. 8.
- ⁸⁶ Community Corrections Act Fiscal Year 2010, pp. 4
- ⁸⁷ Nancy A. Marion, "Community Corrections in Ohio: Cost Savings and Program Effectiveness," pps. 9-10.
- ⁸⁸ Community Corrections Act Fiscal Year 2010, pp. 2
- ⁸⁹ Ibid.
- ⁹⁰ Nancy A. Marion, "Community Corrections in Ohio: Cost Savings and Program Effectiveness," pp. 16.
- ⁹¹ Community Corrections Act Fiscal Year 2010, pp. 2
- ⁹² Nancy A. Marion, "Community Corrections in Ohio: Cost Savings and Program Effectiveness," pp. 16.

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