

March 12, 2019

Senator John Eklund
Senate Building
1 Capitol Square, 1st Floor
Columbus, Ohio 43215

SENT VIA E-MAIL

RE: Substitute Senate Bill 3

Dear Senator Eklund:

This letter is in response to your office's request for interested parties to provide brief feedback on Substitute Senate Bill 3. As always, the ACLU of Ohio thanks you for this opportunity and your ongoing interest in mass incarceration issues. Having reviewed Sub. SB 3, we offer the following thoughts:

1) Retroactivity and unclassified misdemeanors

In the interest of ensuring SB 3 positively impacts as many Ohioans as possible, while still remaining focused on the specific intentions of this bill, the ACLU of Ohio is now and will continue to advocate for SB 3's unclassified misdemeanor provisions to be made retroactive. This retroactivity should apply to those currently in prison, those undergoing criminal proceedings as a result of drug offenses relevant to SB 3, and those who have served a felony sentence for an offense that would be made an unclassified misdemeanor under this bill.

One of many positive benefits retroactivity would quickly bring is the removal of the numerous collateral consequences individuals face due to their felony record.

2) Data collection and reporting

SB 3 currently contains no provisions or language for data collection and reporting. All Ohioans have an interest in the effects SB 3 will have on drug sentencing, the prison population, and drug courts, among many other areas. With better data collection, we can identify what is working and what is not and adjust accordingly.

Because we know you wish these comments to be brief at this stage, we will send a separate list of the various provisions found in SB 3 where we believe data collection and reporting would be appropriate and should be part of any legislation of this type and scope.



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3) Technical violations of community control sanctions

SB 3 briefly touches on the issue of technical violations of community control sanctions by providing a definition in Ohio law of a "technical violation." The ACLU of Ohio urges SB 3 to go further in this regard by eliminating the ability of courts to incarcerate those who commit technical violations. Too many people struggle to reintegrate back into society following incarceration yet Ohio continually returns many of these same people to prison for violations that do not involve the commission of new crimes. We believe this does nothing to serve the rehabilitation of people in this situation and, instead, makes their productive return to society even more difficult. Again, we see this recommendation as ensuring the most people possible are positively impacted by SB 3.

4) Substance abuse treatment funding

With SB 3's intention to have more Ohioans entering treatment as opposed to prison or jail, the demand for treatment will naturally increase. Currently, adequate treatment options are lacking in many areas of Ohio. In other areas of Ohio, the wait to enter treatment is unacceptably long.

We know you are aware of this dynamic based on your comments on this subject at the recent SB 3 press conference and your mention of the coming state budget bill. Still, we feel compelled to mention it as a concern. Access to treatment is obviously a crucial variable now and will be even more so with the passage of SB 3.

5) Marijuana offenses and abeyance/stays

One very specific suggestion we have is removal of language that harshly penalizes those with even minor marijuana offenses on their records. More specifically, as you know, SB 3 allows for a process where courts may hold prosecution in abeyance and stay criminal proceedings if a defendant chooses treatment. However, defendants are ineligible for the abeyance and stay provisions if they have past trafficking offenses or marijuana offenses, as found under Sec. 2925.111 (a section created by SB 3 specific to marijuana offenses).

It strikes us as counter to the intentions of SB 3 to allow for a process to encourage treatment over incarceration and/or felony records, but then disqualify certain people for, in this case, previous misdemeanor marijuana possession offenses. Inclusion of this disqualifying offense in SB 3 will result in less, not more, people enjoying the benefits of SB 3.

6) Abeyance/stays provisions and judicial discretion

One final suggestion we have at this point is also related to the abeyance and stays provisions. Under SB 3, judges *may* hold prosecution in abeyance and stay criminal proceedings if a person meets certain criteria, including agreeing to enter drug treatment. The ACLU of Ohio suggests that language be changed from "may" to "shall". Again, we offer this suggestion with the hope of maximum impact of SB 3 on the lives of Ohioans.

As I expressed to you in person last week, the ACLU of Ohio is truly grateful for your interest in and hard work to bring positive change to Ohio's criminal justice system. Our comments and continued advocacy surrounding SB 3 will always reflect our desire to help as many people as possible. We look forward to ongoing discussion and deliberation on Substitute Senate Bill 3 and remain always available to assist with these shared goals.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Daniels".

Gary Daniels
Chief Lobbyist
ACLU of Ohio

Two solid black rectangular redaction boxes covering contact information.