

June 6, 2019

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

SENT VIA E-MAIL

Dear Sen. Eklund:



AMERICAN CIVIL LIBERTIES UNION

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Jack Guttenberg
President

J. Bennett Guess
Executive Director

This letter is in response to the fourteen possible amendments to Senate Bill 3 circulated recently by your office. Below are brief thoughts regarding some of the most impactful amendments.

The ACLU of Ohio supports adoption of Amendment 0234, to remove marijuana and hashish offenses as disqualifying factors regarding holding cases in abeyance. Such an amendment improves the chances more people benefit from SB 3, which is always and remains the goal of the ACLU of Ohio.

We also support Amendment 0499, which tasks the Ohio Criminal Sentencing Commission with gathering data about the effects of SB 3 and reporting the same to the Ohio General Assembly. As you are aware, the ACLU of Ohio routinely advocates for more and adequate data collection, and we are grateful this amendment would accomplish this, at least as it applies to SB 3. However, as always, we must be aware how the lack of a unified court system often prevents even the identification and collection of necessary data and information.

Regarding Amendment 0230 (and part of 0229), expanding SB 3's unclassified misdemeanors provisions to include those who have, at the time of SB 3's enactment, not yet been convicted or sanctioned for their drug offense, is an improvement. That said, the ACLU of Ohio will continue to advocate for SB 3 to be expanded even further to include those who have been convicted and/or sanctioned but:

- (1) who are now no longer subject to incarceration or sanctions and;
- (2) who are still serving their sentence or subject to any sanctions.

This is the type of retroactivity we believe is absolutely necessary with SB 3.

Regarding potential amendments we believe will clearly weaken SB 3, we do not know if the plan is to introduce all or most of the amendments. But, if the plan is to offer and accept all (or any of) the amendments, we are concerned SB 3 will be significantly weakened. Taken as a whole, these amendments would:

- Allow judges to decide if a defendant is routed to a specialized docket (such as a drug court) (AMDT 0229). As you know, under the current version of SB 3, judges are required to do this.
- Allow defendants to be jailed for an additional six months, bringing the total potential jail time to 18 months instead of 364 days (AMDT 0525 and AMDT 0525x1).
- Allow judges to choose whether the defendant serves their time in jail or prison (AMDT 0582).

In other words, under a version of SB 3 with all these amendments accepted, defendants can still be denied the benefits of drug court and then be locked up for up to 1.5 years in jail. Or, even worse, they can still serve their time in prison instead of jail.

In our opinion, any of these three amendments are unwelcome for inclusion into SB 3. If they are all offered and accepted then we fear the overall positive effects of SB 3 will be minimal and SB 3 will very closely resemble the system as it is today. Clearly, we are opposed to adoption of any of these amendments.

We also oppose Amendment 0231, to enhance sentences that occur in the vicinity of schools or minors. The ACLU of Ohio is opposed to these enhancements in current law and so we are naturally concerned about any attempt to insert or re-insert provisions such as these.

Finally, we will continue to research and consider the changes to Ohio's civil commitment laws as proposed in Amendments 0233 and 0235. Our civil commitment law and its implications are complex and we wish to be fully informed before commenting but we also know your desire is for feedback sooner rather than later. Suffice to say, the greatest power (other than capital punishment) any government has is its ability and authority to lock people away and, as we always do, we urge caution in this regard whenever changes are considered to current law.

Once again, we thank you for your interest in reforming Ohio's drug sentencing laws. We know you have spent much time and effort on Senate Bill 3 and we remain appreciative of your work. We hope you also agree, with all of this effort, the end result should be helping as many Ohioans as possible.

As always, never hesitate to contact us regarding Senate Bill 3 and related matters.

Sincerely,


Gary Daniels
Chief Lobbyist
ACLU of Ohio