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TO: Senate Judiciary Committee  
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio  
DATE: May 15, 2019  
RE: Senate Bill 3 – Proponent Testimony

To Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for this opportunity to present proponent testimony on Senate Bill 3.

First, the ACLU of Ohio would like to thank Senate President Obhof, and Senators Eklund and O'Brien for introducing SB 3. After the failure of Issue 1 in last November's election, we recognize it would have been far easier to change nothing and proceed with the status quo. Thankfully, the idea of doing nothing was rejected.

Instead, SB 3 is recognition something remains fundamentally wrong in Ohio. That is, we continue to lock people in cages because they struggle with drug addiction and substance abuse. After nearly 40+ years of trying to arrest, convict and imprison our way out of our drug problems, there is widespread and ever-growing recognition this not only does not work it also makes these problems far worse.

Yet, drug possession remains – by far – the number one reason people end up in Ohio prisons. As a result, our overcrowded and dangerous prison system continues on and is poised to reach record population numbers after last session's passage of Senate Bill 1 (fentanyl laws) and SB 201 (indefinite sentencing).

The biggest change contained in SB 3 is the plan to reduce 4<sup>th</sup> and 5<sup>th</sup> degree felony possession crimes to unclassified misdemeanors and to route defendants to treatment through local drug courts. This is obviously a positive and much-needed development. For the committee's benefit, I have included with my testimony a handout that analyzes this change.

One thing I wish to bring to the committee's attention is the number of roadblocks contained in this section of SB 3 that disqualify or potentially disqualify defendants from enjoying the benefits of this bill.

Indeed, defendants who commit two or more such offenses within three years will be shut out. Those who made a threat of violence as part of their possession offense may also be disqualified, subject to a judge's discretion. The same for those with a prior marijuana offense, including mere possession.

The ACLU of Ohio hopes the passage of SB 3 will benefit as many people as possible and so our desire is for less hurdles to get people needed help and we believe SB 3 should be changed accordingly.

On this same note, Ohioans would benefit tremendously from making these unclassified misdemeanor provisions retroactive so they apply to 1) those currently incarcerated, 2) those currently subjected to various sanctions for their offense(s), 3) and those who were previously incarcerated and/or subject to sanctions or community control.

We see retroactivity as the most substantial addition that could be made to SB 3. SB 3 exists because proponents realize change is needed. Again, the ACLU of Ohio's desire is for maximum impact and retroactivity would make SB 3 undeniably much better in this regard. Too many Ohioans now cannot get jobs, housing, and professional licenses, among other issues they face, because of their past felony possession offenses. We must not leave them behind if we are serious about reform.

Among other changes we have suggested to SB 3's sponsors is the desperate need for adequate data collection and reporting. Right now, all of us interested in Ohio's criminal justice system struggle with a lack of information regarding what works and should be continued and expanded versus that which does not and should be changed or abandoned.

SB 3 will usher in numerous changes but there is no requirement to collect and report on information such as: 1) how many people are being diverted from prison, 2) how many people are succeeding in drug courts, 3) how many are being denied the benefits of SB 3 because they are disqualified (as mentioned previously), and 4) how judges and courts are using their discretion under SB 3 as compared to other judges and courts. These are but four of numerous examples.

We have other suggestions for SB 3 but, for the sake of brevity, we will forward those to committee members as we already have for the bill's sponsors. But, I would like to take this remaining time to caution this committee against two things.

The first is to warn against what already is and will surely be more attempts by prosecutors, judges, and other opponents of reform to reduce SB 3 down to the point of total ineffectiveness. Too often over the years, these opponents have been successful at watering down and undermining reform-minded legislation. They, too, are addicted – addicted to the idea that the approach that has failed miserably for decades will suddenly, as if by magic, start to produce positive results.

The second is to resist putting off positive proposed changes to SB 3 for a later day. Time and time again, Ohioans are told a certain bill is merely a starting point and that additional legislation to compliment a particular bill or policies will soon be on the way. However, rarely do such bills materialize, at least when it involves criminal justice reform. In fact, SB 3 can be seen as a follow-up to HB 86 from the 129th General Assembly, enacted 7.5 years ago, which also addressed low-level felony drug offenses. If we must wait that long for additional legislation to improve upon or correct previously passed bills, it is far better to do as much as possible while we have the chance, and that chance is now with SB 3.

That said, the ACLU of Ohio understands SB 3 will not and is not designed to address every criminal justice and prison system problem across the state. But generations of Ohioans, especially communities of color, have waited far too long for relief in getting their and their loved ones' lives back together. We need to do as much as we can for them and our state.

Senate Bill 3 is not perfect. But it is undoubtedly an improvement over our current failed and counterproductive approach. The ACLU of Ohio will continue to advocate for changes to this bill and we will continue to be grateful for the introduction of SB 3 and the desire of the bill's sponsors and Senate President Obhof to change that which does not work.

We ask for this committee's favorable consideration of Senate Bill 3 and to make it the best bill possible.

## Senate Bill 3 & Unclassified Misdemeanors

Addendum to SB 3 Proponent Testimony (May 15, 2019)

Gary Daniels, Chief Lobbyist, ACLU of Ohio

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SB 3 downgrades current lower-level felony drug possession offenses, turning them into unclassified misdemeanors. This is how it would work:

- 1) Municipal courts would only be permitted to hear these cases if they operate a drug court. If they do not operate a drug court, the local common pleas court would have jurisdiction.
- 2) Presumption in SB 3 is the defendant will be sentenced to treatment (*while I do not think SB 3 explicitly says, the intention is a defendant could turn down treatment and proceed with the case in normal fashion*).

### Exceptions:

- A) If, in committing or as related to the offense, defendant made threats of violence to any person.
    - \* If they did, a court may sentence them to any sanctions under Sec. 2929.21-2929.28 except the court may:
      - i) impose a jail term no more than 364 days
      - ii) fine the offender no more than \$1,000
      - iii) impose a term in a CBCF no more than 6 months
  - B) If the defendant committed 2+ offenses of this section in 3 previous years, the offense is an F5 and Sec. 2929.13(B) applies when determining whether to impose a prison sentence.
  - C) If the defendant violated this section re: possession of sexual assault-enabling drugs that are Schedule 1 or 2 drugs, the offense is an F5 and Sec. 2929.13(B) applies when determining whether to impose a prison sentence.
  - D) If the defendant violated this section re: possession of sexual assault-enabling drugs that are Schedule 3-5 drugs, offense is an M1. If they have previously committed a drug abuse offense, this possession offense is an F5 and Sec. 2929.13(B) applies when determining whether to impose a prison sentence.
- 3) If the person committed an offense that is an unclassified misdemeanor or violated Sec. 2925.111 (marijuana possession other than a minor misdemeanor), the court may hold the prosecution in abeyance and stay all criminal proceedings if all the following apply:
- A) Defendant has not previously been convicted of or plead guilty to aggravated trafficking, major trafficking, trafficking, or marijuana possession
  - B) Defendant agrees to enter and complete drug treatment and comply with all terms and conditions imposed by the court
  - C) Defendant waives their right to speedy trial and related rights

\* A person shall not be required to plead guilty to an unclassified misdemeanor for the court to hold prosecution in abeyance and stay proceedings.

4) If the court holds a prosecution in abeyance and stays all criminal proceedings, all the following apply:

A) Court shall issue an order establishing terms and conditions of the drug treatment program and shall place the defendant under control and supervision of the county probation dept., adult parole authority, or other appropriate agency, if one exists, as if defendant was on a community control sanction imposed under Sec. 2929.25.

B) If defendant completes drug treatment, court shall dismiss proceedings against person:

\* Court may order sealing of record related to this offense.

\* Court shall inform defendant of process of record sealing.

C) If person fails to comply with any terms or conditions, the supervising authority shall advise court of the failure. If this happens, the court shall hold a hearing to determine if the person failed to comply. If the court determines the person has failed to comply, the court shall do one of the following:

\* Issue an order continuing person under same treatment program, with same terms and conditions as before or

\* Issue an order continuing person under same treatment program, with different terms and conditions or

\* Issue an order subjecting person to new treatment program and establish terms and conditions or

\* Continue the prosecution that was held in abeyance.