

Testimony before the:

Senate Judiciary Criminal Justice Committee

128th General Assembly

**Sentencing Reforms
Senate Bill 22/House Bill 1
Department of Rehabilitation and Correction**

**Presented by:
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Good morning Chairman Grendell, Vice Chairman Hughes, Ranking Minority Member Roberts, and members of the Senate Judiciary Criminal Justice Committee. I appreciate the opportunity to speak to you today in support of sentencing reforms contained in Senate Bill 22 and House Bill 1, the FY 2010-11 operating budget. I have provided each committee member with a written copy of my testimony and supporting materials.

Introduction

Today Ohio's prison population stands at 50,621, which is near the all time high of 51,356 reached in November of 2008. We are currently at 132 % of our rated bed capacity. While the state's prison population declined between 1998 and 2005, we have been experiencing accelerated growth in recent years, with the population rising by over 7,000 offenders since February 2005 (see attached Chart A). Record setting intake each fiscal year from 2002 through 2007 has been a primary factor in this population increase. Although intake slowed in 2008, average length of stay is increasing at all felony levels. Our research indicates that without policy changes, the state's prison population will continue to grow reaching nearly 60,000 inmates by 2018.

As I testified earlier this month before the House Finance and Appropriations Committee and last week before the Ohio Criminal Sentencing Commission, we are at a critical and urgent stage. Do we continue on the existing path? Or, do we look for new ways to deal with a very expensive problem. So, I believe we have to get "Smart on Crime" which does not mean, nor should it be translated as "Soft on Crime." Common sense sentencing reform says we must change and understand that some people can be punished and held accountable for their actions without being placed behind prison fences. I want to be perfectly clear and understood that I'm all for putting assaultive, predatory violent offenders in prison. In fact, some of these

inmates may never get out of prison, but we have to separate the “bad” from those we are just “mad” at.

As you can see from Chart B, in your packets, 57 percent of the offenders sent to the Department each year serve less than one year sentences, with many of these persons having committed non-violent offenses such as theft, drug abuse, and failure to pay child support.

We believe that many of these persons could be appropriately punished and held accountable for their actions in community correction alternatives. Such programs allow for offenders to be punished in their local community while ensuring that the offender is held accountable for continuing and/or seeking employment, paying taxes and child support, and maintaining family support and responsibilities. A recent survey of Judges, Prosecutors, and Defense Attorneys by the Ohio Criminal Sentencing Commission indicated that Ohio should make expanding non prison sanctions a priority. The Department’s budget proposal prioritizes additional funding for Community Correction Act prison and jail diversion programs, as well as expansion of Community Based Correctional Facility beds to assist in these efforts.

Senate Bill 22 parallels key sentencing reforms that are included in House Bill 1, the Executive budget proposal. Before describing these reforms in more detail, I would like to thank Senator Seitz for his vision and leadership in addressing these difficult public policy issues. Let me now just briefly elaborate on the four key areas of the legislation:

Non Payment of Support --527 annual prison bed savings

Annually, nearly 800 offenders are committed to Ohio’s prisons for failure to pay child support. House Bill 1/Senate Bill 22 incorporates provisions originally contained in HB 610 to encourage judges to sentence offenders to local non-payment of support diversion programs, if they exist in their area. DRC currently funds 7 county pilot programs through Community Correction Act (CCA) funding that have significantly increased child support collections and

diverted offenders from prison. The language in House Bill 1/Senate Bill 22, in combination with additional funding of \$2 million annually in DRC’s budget, will allow expansion of this program. We believe the majority of these offenders may be diverted from prison, thereby freeing up several hundred scarce prison beds, and ensuring that families and children receive vital support dollars. This is not saying or implying that non-support cases cannot come to prison, it grants judges another option. We are currently working with the Ohio Judicial Conference and other stakeholders to insure that the language provides judges with appropriate discretion.

Increase from 1 to 5 days earned credit each month for active participation in approved earned credit programs as per existing ORC 2967.193. 7 days– 2,644 annual bed savings. 5 days – 2,080 annual bed savings

Prior to the enactment of Senate Bill 2 in 1996, prisoners could get both “good time” and “7 days earned credit”. SB 2 reduced earned credit to 1 day and eliminated good time. Qualified prisoners could earn seven days per month of earned credit for each month they productively participate in education, vocational, employment in prison industries, substance abuse, or other constructive programming. This reform would only reinstate the ability to receive seven days in the Executive budget proposal, or 5 days of earned credit in SB 22, based on monthly program completion, which is a strong enrollment incentive for inmates. Neither Senate Bill 22 nor the Executive Budget attempts to restore good time, and earned credit is not good time. Some will tell you that earned credit is synonymous to good time, but in fact they are exact opposites. Furthermore, studies have shown offenders who participate in earned credit programs recidivate less. The recent Sentencing Commission survey indicates that reducing inmate recidivism is a top three priority for judges, prosecutors, and defense attorneys. Also, as you can see from attached Chart C, not every inmate is eligible to receive earned credit.

Redefine Statute Regarding Parole Violators who Abscond from Supervision--591 annual prison bed savings.

Under current law, offenders who abscond supervision can be charged with a new offense “escape from detention”, ranging from a Felony 1 to 5, depending on the severity of the underlying offense. The Department proposes replacing this current statutory authority since the APA already has the ability to utilize various sanctions pursuant to ORC 2967.15 for these same offenders, up to and including return to prison.

Raise Theft Threshold from \$500 to \$750 -- 300 annual prison bed savings

The dollar threshold for merchandise to be considered a felony has been left unchanged by the legislature since the passage of Senate Bill 2 in 1996. Adjusting the current \$500 limit to \$750, would keep some low level offenses as misdemeanors, thus saving DRC 300 beds annually.

I believe these common sense sentencing proposals will give more alternatives to judges resulting in a reduction of low level offenders entering prison. At the same time, they will hold people accountable for their actions, while meeting our goal of stabilization and eventually reducing the prison population and saving the state dollars. In total, we believe these diversions could save up to 6,736 valuable prison beds over time.

The rapid growth in DRC population and the state’s deteriorating economic situation necessitate that we take even bolder actions to preserve scarce prison beds for those offenders who are violent, predatory, and assaultive. There have also been on going discussions in recent months between the Department, the Governor’s Office, Chairman Grendell, bill sponsor Seitz, the Ohio Judicial Conference, and other key stakeholders, about additional amendments that could enhance the introduced version of the bill. Some of these are concepts were discussed in the context of House Bill 130 last session, and others have arisen more recently. I welcome

additional dialogue with the committee regarding these proposals as Senate Bill 22 and the budget work their way through the hearing process.

Conclusion

In conclusion, passage of House Bill 1/Senate Bill 22 will send a strong message that Ohio intends to think differently about its approach to crime and punishment. It will signal that we intend to be “Smart on Crime, not Soft on Criminals”. Ohio’s prison system now stands at a “critical tipping point”. Failure to act is no longer an option. We are at a crossroads where either we look at and adopt a different approach, or we prepare to embark upon an expensive prison construction program, spending billions in capital and operating dollars. History shows that building our way out of prison crowding has failed, with over \$800 million in construction and \$684 million in annual operating dollars being spent (see attached chart D); yet, crowding percentages are near pre-building levels. Today as I stand before you, we would need over 12,000 new prison beds at roughly \$90,000 per bed, with hundreds of millions annually in operating costs. Another less expensive option is to accept a holistic approach that encompasses providing more options to judges, prosecutors, and DRC to manage our prison population in a way that is sensible and does not compromise public safety. Passage of House Bill 1/Senate Bill 22 will be an excellent next step towards achieving this type of system, and preventing enormous cost increases which will only further burden Ohio taxpayers in the future.

Chairman Grendell and members of the Senate Judiciary Committee, I urge your support for swift passage of the sentencing reforms in House Bill 1 and Senate Bill 22. I would now like to address any questions that you or the committee may have.