

Judge Matia's Issue 1 talking points

Once passed, Issue 1's changes will be permanently set in stone.

1. Constitutional amendments cannot be modified without an additional statewide ballot. Unanticipated changes are always necessary involving broad sweeping legislation. Ohio will not have the ability to make any needed modifications. It is doubtful that Issue 1's out of state backers who poured millions of dollars into its support will return for needed fixes.

Good bye, drug courts.

2. Common Pleas drug courts will be gutted as a result of turning 4th and 5th degree possession offenses into misdemeanors. Many if not the majority of cases in Ohio's drug courts solely involve drug possession cases. 63% (100/159) of the admissions to my drug court docket since January 2017 involved pure drug possession indictments. Common Pleas courts would lack jurisdiction over these cases under Issue 1 as misdemeanor cases are filed in Municipal Courts. If police even bother to bring these misdemeanor possession cases under the new law, they would be handled by municipal courts. Municipal courts generally do not have a existing infrastructure to treat these complex cases. It is doubtful that existing municipal courts without drug courts will start drug courts even with the new cases.

This amendment will cost Ohio millions of dollars and provide little in the way of additional treatment. The savings math does not add up.

3. There will be no savings under this constitutional amendment because even if the prison population is reduced by 10,000 individuals as is claimed by Issue 1's supporters, we will still be over the capacity of existing O.D.R.C. facilities. The capacity of Ohio's prisons is roughly 37,000 prisoners. The current census is at approximately 49,000 inmates. A reduction of 10,000 inmates (again, not likely to occur) will still leave the prison system with 2000 inmates over capacity.

O.D.R.C. will not close one facility while over capacity. No guards will be laid off. No real savings will be had. The large fixed costs of the prison system will still exist. Worse, the funding mandated by Issue 1 would have to come from the General Fund or from other existing sources. **Do we want to put the General Assembly in the position of taking money from education, healthcare or even highway funding to pay for the mandates of Issue 1?**

The calculated reductions in the prison population by Issue 1's proponents are too high.

4. There are roughly 49,000 people in prison in Ohio. In 2016 (the last year O.D.R.C. made figures available) Ohio committed 688 women and 2128 men to prison for drug possession cases. This involved **all** levels of felony drug possession, not just 4th and 5th degree felonies. So how do the proponents calculate that Issue 1 will result in 10,000 less inmates, if only 2816 are there for drug possession?

Issue 1's supporters wrongly assume that thousands of prisoners will be leaving the prison system early (every year) by participating in education, work or rehabilitation programs. These programs are already in such short supply that motivated prisoners have a hard time gaining admission. It is unlikely that the ODRC will find the funding to create enough programs to substantially reduce the prison population in this manner.

My guess is that the amendment would reduce the prison population by somewhere between 3,000 and 5,000. Additionally, the narrative of pro-Issue 1 groups' that the prisons are full of marijuana possessors is false.

Letting violent offenders out early merely because they worked while in prison is dangerous and irresponsible.

5. Many violent offenders will still leave prison early under the work release aspect of Issue 1. The early release provision of Issue 1 is applicable to all prisoners except for those convicted of murder, rape and the non-crime of "child molestation." Under Issue 1, all defendants (except murderers and rapists) get an automatic sentence credit of ½ day for every day they participate in, **but not necessarily complete** "appropriate rehabilitative, work or educational programming" up to twenty-five percent of the defendant's state sentence. The defendants that could reduce their sentence by up to 25% for merely working in the prison kitchen include those convicted of felonious assault, gross sexual imposition, domestic violence, aggravated robbery, aggravated burglary, failure to comply, etc.

Transforming 4th and 5th degree drug possession cases into misdemeanors is irresponsible.

6. Issue 1's proponents do not want drug possession offenders to be sentenced to prison under any circumstance. Under Issue 1, a person possessing enough fentanyl (any amount under 20 grams) to kill a busload of school kids and their first responders would now be a misdemeanor. Do we really want to do this? 49 unit doses of cocaine, heroin, and LSD would all be misdemeanors.

Issue 1 would leave the courts without significant ability to protect domestic victims.

7. Issue 1 will also adversely affect domestic violence victims. Domestic violence is a common crime in common pleas courts. Domestic violence felonies in common pleas courts start at the 4th degree level and increase to the 3rd degree level depending upon prior convictions. 4th degree felonies already enjoy a presumption of probation. Many if not most domestic violence cases end up on probation.

Issue 1 would prevent a judge from sending a domestic violence probationer (or a probationer for any kind of crime) to prison absent the commission of a new crime. Imagine a domestic violence victim whose abuser is put on probation and told to have no contact with the victim and complete a batterer's intervention program as a condition of probation. A defendant could visit, call or text his victim with no fear of prison. Violating a no contact order issued as a condition of probation is NOT a crime. Violating a T.P.O. is a crime, but a no contact order is merely a condition of bond or probation and its violation is not a new indictable crime in itself. Victims of domestic violence would lose their sense of safety knowing that a defendant could not be incarcerated for thumbing his nose at the conditions of probation absent the commission of a new crime.

Issue 1 puts the O.D.R.C. in charge of probation violation sanctions.

8. Each trial court will be required to prepare and “submit for approval to the O.D.R.C....guidelines for graduated responses that may be imposed for such violations.” “Non-criminal violations shall be dealt with in accordance with the guideline for graduated responses.” Issue 1 requires the O.D.R.C. to approve a court’s ability to sanction behavior that violates conditions of probation. Under Issue 1 it is likely that each of Ohio’s 88 counties will be operating under different guidelines or the O.D.R.C. could refuse to approve anything other than its own set of guidelines.

It is difficult to imagine putting together a comprehensive list of graduated sanctions that anticipates the myriad of ways probationers violate probation while treating all levels of crimes equally. Is it fair to show the same restraint when a 5th degree probationer with no prior criminal history violates as to when a 5th degree probationer with 10 priors violates probation in the same manner? Is it just to sanction someone who violates probation for forgery the same way as for aggravated robbery?

More serious offenders may lose a chance at probation.

9. This amendment may have the unintended effect of having judges sending more of a certain class of prisoners to the penitentiary. Now offenders who commit serious crimes sometimes overcome the presumption of prison because of their age or other reasons. This amendment forbids judges from sending an individual to prison once they have been put on probation absent a new crime. (Testing positive for drugs, ie. possessing a drug long enough to use it is not considered a crime under this amendment). Consider the case of an 18 year old with no prior criminal history who follows a bad crowd into committing a F2 burglary. Many judges would overcome the presumption of prison that exists with a second degree felony hoping that the young offender would complete his education, pay restitution and get his life on track. Knowing that prison is taken off the table absent a new crime, many judges would be reluctant to take a chance on probation for this type of case.

Most Ohioans would be appalled knowing the true effects of Issue 1.