

## FULL TEXT OF PROPOSED AMENDMENT

Be it Resolved by the People of the State of Ohio that Article XV of the Ohio Constitution<sup>1</sup> is hereby amended to add the following Section:

### **§12 Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment**

#### (A) Findings and Declarations.

The People of the State of Ohio find and declare that drug addiction is a serious societal problem that presents issues of public health and safety and incarcerating users rather than by providing treatment poses a threat to public safety and is an inefficient use of criminal justice resources, and further find and declare that prison spending should be focused on violent and serious offenses and preparing individuals for release through rehabilitation while maximizing alternatives for non-serious non-violent crime.

#### (B) Purpose of this Section and Savings Achieved from Prison Population Reduction.

(1) In adopting this Section, it is the purpose and intent of the people of the State of Ohio to ensure that state prison spending is focused on violent and serious offenses and to invest future savings generated from this Section into substance abuse treatment programs, crime victim programs, and other purposes consistent with this Section.

(2)(a) To support substance abuse treatment programs, crime victim programs, and other purposes consistent with this Section, such as adult and juvenile probation department programs, graduated responses programs, and rehabilitation programs for people in the justice system, the general assembly shall include in the State biennial budget appropriations of funds from the savings to the State achieved as a result of the implementation of this Section. The funds disbursed pursuant to this Section are intended to supplement, not supplant, funding obligations of the state and local governments.

(b) Seventy percent of the funds to be disbursed under this Section shall be disbursed to the state department of mental health and addiction services, or its successor, for a grant program funding substance abuse treatment programs, services, and supports throughout Ohio. The state department of mental health and addiction services, or its successor, shall award the grants pursuant to an application program with an emphasis on the demonstrated need of the population to be served by the applicant, the applicant's proposed use for the funds, and the applicant's demonstrated ability to achieve successful results with effective programs. The state department of mental health and addiction services, or its successor, shall conduct a biennial evaluation of the efficiency and effectiveness of the substance abuse treatment programs and services funded under this

---

<sup>1</sup> Making this a constitutional amendment means that not a single word can be changed without a subsequent statewide ballot. No flaws or mistakes of drafting can be fixed easily. Implementation legislation is possible, but to limited effect.

Section.

(c) Thirty percent of the funds to be disbursed under this Section shall be disbursed for purposes that are consistent with the intent of this Section, such as crime victim programs, adult and juvenile probation department programs, graduated responses programs, and rehabilitation programs for people in the justice system. To reduce further victimization of underserved victims of violent crime, at least half of such funds shall be disbursed to the attorney general for a grant program funding victim trauma recovery services. The attorney general shall conduct a biennial evaluation of the efficiency and effectiveness of the trauma recovery services for crime victims funded under this Section.

(d) The general assembly may adjust the ratio of funds to be disbursed pursuant to this division for substance abuse treatment programs, services, and supports and for other purposes consistent with this Section after the first three biennial appropriations and every three biennial appropriations thereafter. Under any adjusted ratio of funds by the general assembly, no less than fifty percent of the total funds shall be disbursed for substance abuse treatment programs, services and supports, and no less than ten percent for crime victim trauma recovery services.

(e) The funds disbursed under this division may be used by the recipients without regard to the fiscal year for which the funds were appropriated or disbursed.

#### (C) Sentence Credits for Rehabilitation.<sup>2</sup>

The Ohio Department of Rehabilitation and Correction<sup>3</sup>, or its successor, shall grant to an incarcerated individual one half of one day of credit toward satisfaction of the individual's stated sentence for each day they participate in<sup>4</sup> appropriate rehabilitative, work, or educational programming, up to a maximum of twenty-five percent of the individual's stated sentence. The Ohio Department of Rehabilitation and Correction may, at its discretion, grant up to thirty days of additional credit toward satisfaction of an

---

<sup>2</sup> There is a possible conflict with newly-enacted constitutional rights of victims of crime – voted into the Constitution just last year. This section applies to everyone in ODRC, not just offenders who are there on drug possession charges, so it includes violent offenders and other offenders with victims (Burglary, Vehicular Assault, Felonious Assault). The Ohio Constitution currently affords victims the rights of fairness and dignity and the right to be present at public proceedings related to early release. These rights could arguably be impacted by administrative early release decisions. Further, if a victim requests notice of proceedings involving an offender, a victim has a constitutional right to be informed of the offender's early release. If most offenders leave prison early, this could increase costs related to notification.

<sup>3</sup> This section allows the executive branch to reduce a judge's sentence, causing concerns of separation of powers.

<sup>4</sup> Participation, not completion, is all that is necessary.

individual's stated sentence for completion of appropriate rehabilitative, work, or educational programming. This division shall not apply to any individuals who are serving sentences of death or life without the possibility of parole, nor to individuals serving sentences for murder<sup>5</sup>, rape<sup>6</sup>, or child molestation.<sup>7</sup>

(D) Reclassification of Certain Non-Serious, Non-Violent Drug Offenses.<sup>8</sup>

With respect to state laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense, in no case shall any offense be classified higher than a misdemeanor.<sup>9</sup> The misdemeanor classification may be a general classification or a special classification for the offense. The sanctions authorized may not exceed those of a first-degree misdemeanor, and, for an individual's first or second conviction within a

---

<sup>5</sup> Does the amendment mean to refer just to Sec. 2903.02 Murder? There are other violent lethal crimes that may not be included: Sec. 2903.01 Aggravated Murder, Sec. 2903.03 Voluntary Manslaughter, Sec. 2903.06 Aggravated Vehicular Homicide.

<sup>6</sup> Does the amendment mean to refer just to Sec. 2907.02 Rape? There are other serious sexual crimes that may not be included, e.g. Sec. 2907.05 Gross Sexual Imposition.

<sup>7</sup> Child molestation is not a specified offense in the Ohio Revised Code; offenses such as Rape, Sexual Battery, Gross Sexual Imposition, and Sexual Imposition all carry increased penalties if the victim is a minor; there is also an offense of Unlawful Sexual Conduct with a Minor. "Child Molestation" could refer to any, some, all, or none of these.

<sup>8</sup> Current law does not provide charges for what would become misdemeanors under the amendment (in other words, a prosecutor will not be able to charge someone with a crime until a law is written that says "this specific activity is a crime and it is a misdemeanor"). Implementation legislation would be needed immediately. Currently, an M1 or M2 has a statutory speedy trial time frame of just 90 days and this may not be long enough to obtain results from drug labs. Implementation legislation would be needed immediately.

<sup>9</sup> This means that possession of 49 unit doses of cocaine, 49 unit doses of heroin, 49 unit doses of LSD, and 19 grams of fentanyl would all be would all become misdemeanors. It also means that someone with more than the bulk amount (up to 5 more) of what are known as "date-rape" drugs – 25 - 125 unit doses of GHB, for example – would be charged with a misdemeanor. Currently, all marijuana possession offenses are misdemeanors, except possession of between 200 and 999 grams, which is an F5 offense. It is rare under current law that someone guilty of marijuana possession (even at the F5 level) would be sent to prison. This section, in conjunction with the exclusion section (G) could be read to apply to possession offenses up to F1, which would make a misdemeanor possession offense involve much higher amounts. This section also causes disproportionate outcomes, where persistent disorderly conduct or reckless driving could lead to jail times but possessing large amounts of drugs would not.

twenty-four month period, the sanctions shall not exceed probation.<sup>10, 11</sup> If an individual has more than two convictions within a twenty-four month period, then sanctions may include jail time or probation in lieu of jail time.

(E) Graduated Responses for Non-Criminal Violations of Probation.

Within ninety days of the effective date of this Section, each trial court with jurisdiction to revoke an adult's or juvenile's<sup>12</sup> probation for a non-criminal violation shall prepare and submit for approval to the Ohio Department of Rehabilitation and Correction,<sup>13</sup> or its successor, guidelines for graduated responses that may be imposed for such violations. An individual who, on or after the effective date of this Section, is on probation for a felony offense shall not be sent to prison on a probation revocation for non-criminal violations of the terms of their probation. Non-criminal violations shall be dealt with in accordance with guidelines for graduated responses.<sup>14</sup>

(F) Retroactive Application of this Section.<sup>15</sup>

(1) Any individual who, prior to the effective date of this Section, was convicted under Ohio law of an offense of possessing, obtaining, or using a drug or drug paraphernalia, or was adjudicated a delinquent based on such an offense and who has not completed their sentence for such offense, may petition the court in which the conviction or adjudication

---

<sup>10</sup> As written, it appears that probation does not include Community Based Correctional Facilities (CBCFs) or any secure residential facilities. These are two effective methods of rehabilitating offenders in the community. It is unclear what sanctions remain available to judges under the amendment. Lastly, if a judge cannot compel someone to follow court orders (for treatment, for electronic monitoring, for visits with the probation officer), there is no reason for a person to follow those orders. Without the possibility of jail or prison, there is no effective enforcement of orders.

<sup>11</sup> Probation may be appropriate for some, even most, people who commit a drug offense, but not all. The offense could be committed at the same time as a more serious offense. The offender could be a registered sex offender for whom drug use represents a serious risk of recidivism. Applying an absolute standard that requires using only the lowest sanction available may not be consistent with the seriousness of the offense or the likelihood of recidivism.

<sup>12</sup> This provision puts ODRC in charge of a determination involving juvenile sentencing. For years, juvenile justice advocates have worked to maintain a system for juvenile justice that is wholly separate from the adult system maintained by ODRC. This is a step backwards for the juvenile justice system.

<sup>13</sup> The executive branch is determining the sentences of offenders. This is a separation of powers concern.

<sup>14</sup> This undermines specialized dockets, proven effective in reducing recidivism and drug use.

<sup>15</sup> This could represent a significant increase in workload with no funding. It is unclear if there is any benefit to retroactively making a person's felony into a misdemeanor.

occurred to have such charge changed to the respective class of offense as determined by the general assembly in accordance with this Section, and shall be re-sentenced and/or released, unless the

court makes a finding and sets forth a particularized factual basis that the individual presents a risk to the public and should not be re-sentenced and/or released.

(2) Any individual who, prior to the effective date of this Section, was convicted under Ohio law of an offense of possessing, obtaining, or using a drug or drug paraphernalia, or who was adjudicated a delinquent based on such offense, and who has completed their sentence for such offense, may petition the court in which the conviction or adjudication occurred to have such charge changed to the respective class of offense as determined by the general assembly in accordance with this Section.

(G) Provisions Do Not Apply to Convictions for the Sale, Distribution, or Trafficking of Drugs.

Divisions (D) and (F) of this Section do not apply to convictions for the sale, distribution, or trafficking of drugs or to convictions for any drug offense that, based on volume or weight, and as of January 1, 2018,<sup>16</sup> was classified as a first, second, or third-degree felony offense.

(H) Provisions Do Not Apply to Convictions for Murder, Rape, or Child Molestation.

Nothing in this Section shall be construed as applying to, changing, or affecting laws or sentencing for the incarceration of individuals convicted of murder, rape, or child molestation.

(I) Calculation of Savings to the State.

(1) The general assembly shall include the appropriations set forth in Division (B) of this Section in each State biennial budget beginning with the budget commencing July 1, 2019, in a total amount equal to the projected savings in state costs that will result from the implementation of this Section during the biennium period.

(2) The projected savings in state costs shall be the sum of the following calculations:

(a) The State shall project the fewer number of days of incarceration that will be served in state prisons during the biennium as a result of Divisions (C), (D), and (F) of this Section and multiply the number by a per-diem amount of forty dollars.

---

<sup>16</sup> This constitutionally freezes in time Ohio's drug laws. As new drugs are developed or made more potent, Ohio will only be able to use the laws in place on January 1, 2018. It would take a constitutional amendment (another statewide ballot initiative) to change that.

(b) The State shall project the fewer number of days of incarceration that will be served in state prisons during the biennium as a result of Division (E) of this Section and multiply the number by a per-diem amount of thirty dollars.

(3) ) The general assembly shall enact a system to adjust appropriations under this Section at the close of the biennial budget period based upon true-ups of the projected savings.

(4) The per-diem figures used in this subdivision shall be adjusted each State biennial budget by the rate of inflation for the previous biennial budget period according to the consumer price index or its successor.

(5) In making the calculations required by this Section, the State shall use actual data or best available estimates where actual data is not available.

(J) Definitions.

As used in this Section:

(1) "Drug" means any controlled substance, compound, mixture, preparation, or analog intended to be injected, ingested, inhaled, or otherwise introduced into the human body as identified and regulated by the general assembly.

(2) "Possessing, obtaining, or using a drug " does not include possession of a drug for purposes of the sale, distribution, or trafficking of drugs

(3) "Drug paraphernalia" means any equipment, product, or material used or intended to be used in connection with the possession or use of a drug.

(4) "Possessing, obtaining, or using drug paraphernalia" does not include possession of drug paraphernalia for purposes of the sale, distribution, or trafficking of drugs.

(5) "Laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense" do not include laws that make it a criminal offense to possess a drug or drugs for purposes of the sale, distribution, or trafficking of drugs.

(6) "Graduated responses" means an accountability-based graduated series of sanctions and incentives designed to protect communities, hold people accountable, and prevent repeat offenses by providing appropriate responses for unlawful actions and by inducing and reinforcing law-abiding behavior. This schedule of responses may include, but is not limited to, drug treatment, community service, fines, electronic monitoring, detention other than in a county or municipal jail, detention in a county or municipal jail, but only upon the court making a finding and setting forth a particularized factual basis that the individual presents a risk to themselves or the public, and earned rewards, such as reduced sentences for compliant conduct as the trial court deems appropriate.

(7) "County or municipal jail" means a county, multicounty, municipal, municipal-county,

or multicounty-municipal jail or workhouse.

(8) ) A "non-criminal violation" of the terms of probation includes, but is not limited to, actions such as a drug use relapse, missing a curfew, missing or being late for a probation meeting, changing an address without permission, failing to timely pay a fine, or failing to perform required community service. An action that results in a criminal conviction is not a non-criminal violation under this Section.<sup>17</sup>

(9) "Probation" includes community control sanctions.

(K) ) Liberal Construction.

This Section shall be liberally construed to effectuate its purpose.

(L) Conflicting laws.

This Section shall supersede any conflicting state and local laws, charters, and regulations or other provisions of this constitution.

---

<sup>17</sup> This is not a clear definition and goes far beyond the current accepted standard of a new criminal *act*. Requiring a new *conviction* essentially guts the purpose of probation entirely (that purpose is to be able to suspend a sentence and allow a person to rehabilitate in the community; being able to sanction bad behavior under the suspended sentence is what makes probation work).