



Ohio Judicial Conference

The Voice of Ohio Judges

House Finance Committee

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House Bill 49 – Felony Five Sentencing Proposal

April 5, 2017

Chairman Smith, Vice-Chair Ryan, Ranking Member Cera and members of the House Finance Committee, I appear today on behalf of the Ohio Judicial Conference to respectfully request a simple, but critical amendment to HB 49 as introduced. We propose the deletion of all language found on Page 725, line 22506 to line 22525 of HB 49. That is all of the language proposing to further limit the ability of judges to send certain Felony 5 offenders to prison after July 1, 2018.

You have heard today articulated by Judge Harcha many of the reasons this language is problematic for judges. May I offer for your consideration today some essential facts and the resulting consequential questions for which no answer can be found in HB 49.

1) In calendar year 2016 Ohio Common Pleas Judges sentenced 4089 Felony 5 offenders to prison for a total of fifty-two different criminal offenses. Exhibit A - Source ODRC

Under the language in HB 49 which of those fifty-two Felony 5 offenses would still qualify for sentencing to an ODRC prison facility?

2) In the ORDC budget, line item 501407 is increased roughly \$20 million in FY 18 and \$40 million in FY 19. We are informed by ORDC that these funds will be used in a grant program "Targeting Community Alternatives to Prison" or "T-CAP". In FY 19 that would amount to roughly \$3.50 statewide per capita, but the grant funds would be distributed based on an undisclosed weighted formula. Exhibit B - Source ORDC.

Where in HB 49 is T-CAP defined? Where is the distribution formula set out? What are the criteria to qualify for the grant? Who controls the receipt and distribution of the funding in each county?

3) Within the past six months ODRC began "Pilot T-CAP" programs in eight Ohio counties. Each program is voluntary and contractual. In the northwest Ohio five county pilot both Felony 4 and 5 offenders are included. They are not in Medina, Clinton and Ross counties.

Does "pilot program" not imply a period of time to implement, tinker, and study? The language we request be deleted from HB 49 presumes, by July 1, 2018, success of the "Pilot T-CAP" program without study, analysis, or further report to the General Assembly. An eight county "pilot" becomes an eighty-eight county mandate without legislative review.

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4) Jail capacity is already seriously stretched in most Ohio counties. Presumably the Felony 5 offenders that were sent to prison in 2016 were there because Ohio judges determined they needed a period of incarceration.

What are the Common Pleas judges to do with the 3,400 Felony 5 offenders that ODRC projects will be diverted to Community Control annually under the provisions of HB 49? Have we not just learned the tragic current limitations of electronic tracking devices?

The Judicial Conference does not seek to undermine the efforts of Director Mohr and ODRC to expand the local capacity to handle low level Felony offenders, especially for those addicted to drugs. That is a worthy goal. We urge in that mission you do not handcuff Ohio's Common Pleas Judges by undermining judicial discretion to impose a term of prison for felony crimes when necessary.

Thank you. I would be happy to answer any questions that you have.

EXHIBIT A

2016 Non-Violent/Non-Sex Offender/Non-Mandatory Felony 5 Commitments		
Offense	Number	Percent
DRUG POSSESSION	1894	46.32%
THEFT	522	12.77%
DRUG TRAFFICKING	348	8.51%
BREAKING AND ENTERING	297	7.26%
RSP	281	6.87%
NON-SUPPORT DEPENDENTS	176	4.30%
FORGERY	162	3.96%
PROTECTION ORDER	45	1.10%
IDENTITY FRAUD	39	0.95%
VANDALISM	33	0.81%
POSSESSION OF CRIMINAL TOOLS	33	0.81%
BURGLARY	23	0.56%
HARRASSMENT BY INMATE	22	0.54%
FORGERY	19	0.46%
CCW	19	0.46%
PERMIT DRUG ABUSE	19	0.46%
UNAUTHORIZED USE OF VEHICLE	16	0.39%
OBSTRUCTING JUSTICE	14	0.34%
FAILURE TO NOTIFY CHANGE ADDRESS	14	0.34%
BAD CHECKS	13	0.32%
MISUSE OF CREDIT CARD	11	0.27%
TRAFFICKING IN FOOD STAMPS	10	0.24%
PHONE HARRASSMENT	7	0.17%
ILLEGAL PROCUREMENT DRUG DOCUMENTS	7	0.17%
FAILURE STOP ACCIDENT	6	0.15%
UNLAWFUL POSSESSION FIREARMS	5	0.12%
DECEPTION TO OBTAIN DRUGS	5	0.12%

**2016 Non-Violent/Non-Sex Offender/Non-Mandatory
Felony 5 Commitments**

Offense	Number	Percent
ABUSE HARMFUL INTOX	5	0.12%
VOR	5	0.12%
ARSON REGISTRATION VIOLATOR	4	0.10%
SALE COUNTERFEIT DRUGS	4	0.10%
DISRUPTING PUB. SERV.	3	0.07%
TELECOMMUN FRAUD	3	0.07%
ENDANGERING CHILDREN	3	0.07%
TAMPERING COIN MACHINE	2	0.05%
WUD	2	0.05%
ILLEG MANUFACT DRUGS	2	0.05%
FAILURE TO REGISTER SEX OFF	2	0.05%
VEHICULAR VANDALISM	1	0.02%
RAIL VANDALISM/INTERFER WITH OPERATIONS	1	0.02%
SAFECRACKING	1	0.02%
TAMPERING WITH EVIDENCE	1	0.02%
RESISTING ARREST	1	0.02%
WEAPONS DETENTION FACILITY	1	0.02%
CORRUPT ANOTHER DRUGS	1	0.02%
ABUSE OF CORPSE	1	0.02%
ETHNIC INTIMIDATION	1	0.02%
FAIL TO APPEAR	1	0.02%
FIREARMS SPEC	1	0.02%
FAILURE TO VERIFY ADDRESS	1	0.02%
TAMPERING VIN NUMBER	1	0.02%
DRUG LAW VIOLATION	1	0.02%
Total	4089	100.00%

**Ohio Department of Rehabilitation and Correction
Targeted Community Alternatives to Prison (TCAP)**

The information provided below is intended to serve as a general guide to stakeholders to understand the possible funding levels that counties may expect through a TCAP grant. ODRC developed a weighted formula that considers county population, common pleas court case filings, and a 3-year average of the targeted population commitments. The targeted population is non-violent, non-sex and non-mandatory Felony 5 prison commitments. The overlap in funding amount by category is a result of the weighted formula. No county will receive less than \$50,000 or more than \$2,500,000 per year.

The estimated funding levels in this document are dependent on several factors and are subject to change. First, the levels are based on the proposed budget. Should the General Assembly choose to change allocations to ODRC or diminish the targeted population pursuant to the budget process, the funding levels will necessarily change. In addition, funding levels are also reliant on prison population projections. Should future criminal sentencing legislation cause unforeseen increases in the prison population, funding levels may also necessarily change.

Ohio Department of Rehabilitation and Correction Targeted Community Alternatives to Prison (TCAP)		
County Category	County Population	Estimated TCAP Funding Range
Large Category	200,000 or greater	\$675,000 to \$2,500,000
Mid Large Category	75,000 to 199,999	\$200,000 to \$715,000
Mid Small Category	40,001 to 74,999	\$90,000 to \$385,000
Small Category	40,000 or less	\$50,000 to \$230,000