

OHIO'S FRESH START: AN ALTERNATIVE APPROACH TO DRUG-RELATED OFFENSES

Keller Blackburn, Athens County Prosecutor

The objective of the Ohio Fresh Start (OFS) proposal is to increase treatment opportunities for those addicted to illegal narcotics while still protecting the public. Keeping dangerous drugs as a felony allows the existing treatment, probation, and criminal justice infrastructure to continue to provide services while expanding those services and removing prison as a sentencing option. Further, because most low-level felonies stem from addiction, to truly correct the problem those cases must also be treated as drug-addicted offenses. A second focus of this proposal is to reduce the collateral consequence of addiction offenses so that individuals can receive treatment but not suffer after they enter recovery from lost opportunities. This proposal is based on two overlying approaches, (1) reducing addiction drug offenses and (2) providing a multi-faceted sentencing plan that allows prosecutors and judges leeway in meting out sentences that merit the offense.

Addressing Addiction Drug Offenses:

The cornerstone of Ohio Fresh Start creates a new offense, Possession of Harmful Drugs.

Possession of Harmful Drugs will be an unclassified felony, punishable by five (5) years of community control, jail sanctions of no more than 45 days at a time, residential treatment, and

Community-Based Correctional Facilities not to exceed a total incarceration of 12 months.

There shall be no license suspension for this offense.

An individual, upon an admission or finding of guilt, can be placed on Community Control, in a Diversion Program or an Intervention in Lieu of Conviction program, yet still be subject to all of the above limitations unless this is the third offense within two years, in which case the offense shall be a Felony of the fourth degree.

Possession of Harmful Drugs will include the use, possession, sale, gift, purchase, attempt to purchase, offer to sell, or package to sell, up to:

- *Heroin*—up to 1 grams or 10-unit doses
- *Marijuana*—over 500 g-1KG (less than 500g joins current M1)
- *Cocaine*—up to 10 grams
- *LSD*—up to 15-unit doses or 1.5 gram
- *Fentanyl*—less than .5 grams
- *Schedule 1 or 2*—up to Bulk
- *Schedules 3, 4, and 5*—bulk to 5X bulk

If an individual is convicted of the offense, the offense is expungable one (1) year after successful completion of a treatment plan or community control. After three (3) offenses within two (2) years, the crime becomes a felony of the fourth (4th) degree.

PROTECTING CHILDREN: Committing the offense of Possession of Harmful Drugs while having a juvenile in their care and/or vicinity shall be a criminal offense of Endangering Children.

STOPPING INTERSTATE TRAFFICKING: There shall be created an offense of transporting illegal drugs across state lines, prohibiting the transport or causing to be transported across state lines dangerous drugs without a prescription if the amount is over bulk, as a felony of the third (3rd) degree and if the drug involved exceeds more than five (5) times bulk, a felony of the first (1st) degree.

POSSESSION WITH INTENT TO DISTRIBUTE: Anyone in Possession of more than the maximum amount of drugs listed in the Possessing Harmful Drugs Offense is presumed to be in possession with intent to distribute, and can be charged pursuant to Ohio Revised Code 2925.03(B). A defendant can overcome the presumption by showing by a preponderance of the evidence that the drugs were only for the offender's personal use.

NO MANDATORY TIME FOR POSSESSION: With the creation of possession with the intent to distribute standard mandatory sentences should be removed from Drug Possession Offenses in R.C. 2925.11. This will allow discretion for Judge's and Prosecutor's when dealing with offenders,

Sentencing Reform:

Amend the purposes and principles of sentencing to provide that the overriding principle in sentencing the offender is to protect the public, deter future crime by the offender and others, and provide the offender with the necessary treatment to reduce the likelihood of future crime, while not diminishing the seriousness of the offense committed by the offender.

To achieve this, individuals convicted of drug-related crimes¹ will be sentenced to *hybrid sentences* involving community control or alternative dispositions for addiction offenses and prison or community control for unrelated offenses. These sentences should include the following adaptations to current sentences:

1. All first-time Felony 4 and/or 5 offenders, not a sex offense or crime of violence, that the offender committed due to addiction shall be sentenced to a treatment plan and should be given an opportunity at an alternative disposition in lieu of conviction.
2. Municipal and County Courts shall recommend or provide treatment as a part of dispositions in criminal cases where indicated or the case is a drug related crime.
3. Prosecutorial Diversion under *Ohio Revised Code Section 2935* and other alternative disposition programs may use jail as a sanction and a Community-Based Correctional Facility upon agreement of the parties or order of the court.
4. All inmates sentenced to more than five years in prison who have completed one-half of their stated prison term, in addition to all mandatory time, may be eligible for to apply for judicial release if they have completed specific programs while incarcerated.
5. The Department of Corrections (DRC) may place any offender with less than twelve (12) months of a remaining prison term into a Community-Based Correctional Facility.
6. Felony convictions resulting from drug related crimes may be expungable one (1) year after the completion of a treatment plan at the discretion of a judge.

¹ Drug related crimes are cases in which the parties stipulate, the court finds, or by a showing of the preponderance of evidence that the offense was committed due to the offender's use of harmful drugs or by the offenders attempt to obtain dangerous drugs or funding to purchase dangerous drugs. If the offence results in serious physical harm to a victim it cannot be treated as a drug related offense. If the offense is a crime of violence it is not expungable.

7. Prosecutor Diversion Programs, Drug Courts, and other alternate disposition programs shall receive \$750 per offender admitted to the program from the DRC Budget that shall be used for programming and prevention.
8. The State shall provide to Counties \$50,000.00 per year plus \$3 per citizen in 2019 and \$8 per citizen in 2019/2020 for grants to address addiction/treatment/prevention from the savings of DRC Budget.
9. The court may retroactively apply these changes to offenders if the court finds the adjustment appropriate based on the offense committed and any agreement of the parties.

The Ohio Fresh Start initiative will provide judicial options not currently available to prosecutors and judges that function to bring the offender back as a valuable member of society. OFS seeks to balance the needs of the public with the best treatment programs for offenders cited with Possession of Harmful Drugs.