

Issue 1: Reducing incarceration, improving communities

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Executive Summary

Ohio spends \$1.3 billion a year to keep nearly 50,000 people in prison. Only thirteen states imprison a higher share of residents and only two states have a higher share in the probation system. Incarceration has more than tripled from fewer than 14,000 people in 1980.

Many of these Ohioans have not committed a violent crime and are incarcerated only because they were drug users. Others are in prison only because they violated probation in some minor way, missing an appointment or staying out past curfew. And currently incarcerated Ohioans would emerge from prison better able to work and be part of society if they had more reason to be part of rehabilitation and education programs.

Ohio Issue 1 will appear as a constitutional amendment on the November 2018 statewide ballot in Ohio. Issue 1 would reduce incarceration and free up over a hundred million dollars a year for Ohio to redirect toward treatment, community safety and victim services.

This analysis finds that Issue 1 would divert more than 10,000 Ohioans from expensive incarceration, treating them instead in the community, where they can better participate in work and family life. This would free up more than \$136 million dollars in the first year of full implementation.

Issue 1 reclassifies non-violent drug possession as a misdemeanor; prevents re-imprisonment when the only new infraction is a minor probation violation; rewards rehabilitation by reducing sentence terms for participation in education, behavioral, and treatment programs; and directs savings to treatment, safety and victim recovery.

Reducing incarceration through this measure would lower costs in the prison system, reduce overcrowding, help more Ohioans work and contribute to their families and communities, and enable better treatment for crime victims and offenders.

Of the 49,512 Ohioans currently in prison, we estimate that 2,688 were sentenced for drug possession as their most serious offense; on average, about 4,019 of those newly sent to prison each of the last five years were re-incarcerated for minor probation violations (about one in five new inmates); and at least 3,628 would be eligible for earlier release in the first year because of better rewards for participation in rehabilitation, work or education. In total, the projected reduction in the prison population is 10,335.

Ohio spends nearly \$27,000 per prisoner each year or about \$73.76 a day. The amendment stipulates that \$30 per inmate per day be redirected to community purposes for diverting technical probation violations and that \$40 per inmate per day be redirected for other elements of the initiative. With 10,335 fewer prisoners, \$373,210 a day or \$136 million a year will be redirected. The initiative requires that this be spent on public safety, victim services, trauma recovery and addiction treatment.



Ohio citizens should take advantage of the opportunity to save costs, reduce addiction and address public safety by supporting Issue 1.

Introduction

Ohio Issue 1, which Ohio citizens will vote on in November, could substantially reduce incarceration of non-violent Ohioans and redirect resources toward treatment and community safety.

The initiative¹ is designed to increase public safety and reduce incarceration in four major ways. It reclassifies non-violent drug possession as a misdemeanor and assigns those Ohioans to treatment or other community-based approaches. It prevents re-imprisonment of formerly incarcerated community members when their only new infraction is a probation violation that is not itself a crime. It rewards rehabilitation by allowing those in prison to earn credits that reduce sentence terms if they take part in education, behavioral, and treatment programs. Finally, it redirects savings from reduced incarceration to treatment, safety and victim recovery programs for Ohioans of all ages, which should improve safety and reduce addiction.

Reducing incarceration through this measure would lower costs in the prison system, reduce overcrowding, help more Ohioans get jobs and contribute to their families and communities, and enable better treatment for crime victims and offenders.²

Reduced incarceration

Ohio incarcerated 49,512 residents as of January 2018.³ Only thirteen states lock up a larger share of residents than Ohio does and almost all are in the south. Incarceration has more than tripled from fewer than 14,000 in 1980, with most of that increase in the 1980s and early 1990s.⁴

Of these imprisoned Ohioans, 5.4 percent (2,688 people) were sentenced for drug possession as their most serious offense. The typical woman who is incarcerated in Ohio is a non-violent,

Ohio needs Issue 1

- Ohio spends more than \$1.3 billion a year to keep nearly 50,000 people in prison.
- Only 13 states incarcerate a higher share of residents.
- Only two states have a higher share on probation.
- Incarceration has more than tripled from fewer than 14,000 in 1980.
- Many are in prison only for violating probation or using drugs.
- Ohio prisons are at 132% of capacity.
- Issue 1 would reduce incarceration by more than 10,000 people.
- Issue 1 would enable more than \$373,000 each day (\$136 million a year) to be spent in communities instead of prisons.
- Issue 1 would free resources for drug treatment, community safety and victim services, making Ohio safer and healthier.

¹ McTigue, Donald J. et al. 2017. *Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment: Summary Petition*. McTigue & Colombo, LLC. <https://bit.ly/2J4Cu3E>

² Researchers consistently find community-based corrections to be less expensive than prison or jail. Those served in communities are also closer to family and job opportunities. Drug and mental health treatment, job training and behavioral interventions offered in the community have been more effective than the same services in a prison setting if provided adequate planning and resources. See: Petteruti, Amanda, Nastassia Walsh, and Tracy Velázquez, 2009. *Pruning Prisons: How Cutting Corrections Can Save Money and Protect Public Safety*. Washington, D.C.: Justice Policy Institute, <https://bit.ly/1WVKy3W> and McGarry, Peggy, 2013. *The Potential of Community Corrections to Improve Safety and Reduce Incarceration*. Center on Sentencing and Corrections. Vera Institute of Justice. <https://bit.ly/2L4Qmlo>

³ Bennie, Craig R. 2018. *January 2018 Census*. The Ohio Department of Rehabilitation and Correction.

⁴ <https://www.sentencingproject.org/the-facts/#map>

low-level drug offender. These Ohioans would be redirected to community-based treatment under State Issue 1.

Over the last five years, 19.6 percent of new inmates were reincarcerated for minor probation violations on average,⁵ about 4,019 of the average 20,505 new commitments in each of the last five years. This share has gotten higher – in the most recent year of data from the Ohio Department of Rehabilitation and Corrections (ODRC), it is over one in five (22.3 percent). These new inmates are incarcerated for things as minor as missing an appointment with a probation officer. Ohio incarcerates a higher share of our population than many other states, but where we really stand out is in our high probation rate – only two states have a higher share of residents on probation. About 4,000 probation violators would be diverted to community-based programs each year under Issue 1.⁶

Currently, those leaving prison have served an average of 2.35 years.⁷ Prisoners can reduce sentences by up to 8 percent by participating in rehabilitation, work or education programs. The initiative would do more to encourage rehabilitation, allowing up to an additional 17 percent sentence reduction (25 percent total, up from 8 percent now). This could reduce time served, on average, to 1.95 years, conservatively assuming no change in participation, although program participation is likely to increase with this additional encouragement. This would reduce incarceration levels by 3,628 people, while also improving behavior and better equipping people to return to their communities.⁸

The prison population could likely be substantially further reduced because Issue 1 allows Ohioans to petition the court for retroactive application of the provisions – meaning people previously incarcerated under these provisions could be redirected to community programs. We were not able to estimate how many people would use this retroactive application and did not include that in our savings estimate.

Our estimates assume that prosecutors continue to charge offenders with similar crimes as under current laws and that judges will follow sentencing guidelines as they currently do. If prosecutors and judges respond to the new law by charging and sentencing more strictly, reductions will be more modest than our predictions.

In total, the projected reduction in the prison population is 10,335.⁹

Smoothen transitions to civilian life

Currently, more than 250 collateral sanctions bar entry or create major hurdles to jobs for Ohioans with felony convictions. These collateral sanctions are not imposed by a judge. They

⁵ From Bates et al. 2016. ODRC Intake Study, 2011 - 2015. <http://drc.ohio.gov/reports/intake>. The Census does not estimate probation-related incarceration. Other analysts use the 22.8 percent number, rounded, including Randy Ludlow of *The Columbus Dispatch*, Posted Nov 27, 2017, Ohio Organizing Collaborative, and Melissa Litteral, Director, Greene County Adult Probation, Xenia, Ohio.

⁶ Ohio has the third-highest probation rate and fourth-largest probation population in the U.S (Reynolds, Carl et al. 2018. *Justice Reinvestment 2.0 in Ohio*. Justice Center: The Council of State Governments) <https://bit.ly/2L6zJw1>. Non-criminal probation violations include things like missing a curfew or probation meeting, changing an address, drug or alcohol use, or failing to pay a fine or attend community service.

⁷ Chin, John Y. 2016. *Average Time Served Among Ohio Prison Releases, 2015*. ODRC. <https://bit.ly/2L34x0w>

⁸ With an average of 2.35 years served, 21,343 offenders were released in CY2015. With a reduction to 1.95 years served, 17,715 offenders would be released. This means, with a 17 percent sentence reduction based on this initiative, an additional 3,628 people will be released yearly.

⁹ James Austin, in an analysis for the Alliance for Safety and Justice estimated the amendment would reduce prison population by a slightly lower 8,818 people. Austin used monthly reports to estimate reductions of 1,545 for reclassification of drug possession, 2,480 for diversion of probation violations, and 4,793 for reduced sentences for program participation. We believe the annual census is a more accurate source. Austin's source: Bureau of Justice Statistics and The Ohio Department of Rehabilitation and Correction. *Monthly Facts Sheet*, February 2018

are administrative rules that restrict access to jobs that are public, require licensing, or are in industries with government oversight. When people face major challenges to getting legitimate work, they are more likely to commit new crimes. By reclassifying felony drug convictions as misdemeanors, the ballot initiative will open pathways to work for thousands of Ohioans whose most serious crime is drug possession, allowing them to support their families and contribute to their communities.

Savings

In 2017 Ohio spent \$1.33 billion to incarcerate 49,512 residents, nearly \$27,000 per prisoner each year or about \$73.76 a day. Many costs are fixed. In a prison system at 132 percent of capacity,¹⁰ the reduction in prison population would not immediately reduce administrative or facility maintenance costs. Food, health, education and staffing costs would drop however. Further, providing treatment and rehabilitation in the community may be more effective, increasing public safety and better reducing future costs.

Of the \$1.33 billion ODRC budget, \$1.08 billion are costs that would shrink with fewer inmates, such as security, physical and mental health services, support services, education, and unit management. Costs that will remain the same include \$154 million for administration and \$95 million for facilities. Ohio spends \$59.95 per prisoner per day on marginal costs that would go down with lower populations. Issue 1 is written to use a share of those marginal costs for community programming, recognizing that some costs might not go down as much as anticipated in a system that is over capacity. It is likely that savings will be higher than what we cite here as resources freed up for use in the community.

Issue 1 projects redirecting to community use \$30 per inmate per day for diverting technical probation violations, and \$40 per inmate per day for reclassifying drug possessions to misdemeanors, allowing earned credits for good behavior, and retroactively reclassifying drug possession and minor parole violation.^{11 12} This accounts for new costs of community-based services. The cost difference reflects the fact that communities will have to spend more to treat drug offenders than it will to keep people on probation.

As Table 1 shows, if projections on reduced incarceration are correct, Ohio will have \$373,210 a day or \$136 million a year to spend in the community. These resources will then be available for other community needs. The initiative requires that they be spent on public safety, victim services, trauma recovery and addiction treatment.

This assumes that the state complies with the initiative, allots savings as directed in the ballot language, and does not reduce existing spending, particularly in community mental health and re-entry. Legislators often try to use new funding sources to backfill for existing general revenue funds. The amendment explicitly requires that this funding supplement – not supplant – current spending, but advocates will have to remain vigilant and monitor budget allocations to be sure that crime prevention, public safety, addiction treatment and victim services get the resources they are promised in the initiative.

¹⁰ Kasler, Karen, Statehouse News Bureau, *DRC Director Pushes Prisoner Diversion* 4/14/17, <https://bit.ly/2lJahig>

¹¹ Mohr, Gary. *Fiscal Year 2017 Annual Report*. ODRC. <https://bit.ly/2sn9lpJ> p. 19-21

¹² McTigue, Donald J. et al. 2017. <https://bit.ly/2J4Cu3B>.

Table 1				
Initiative would reduce incarceration by 10,335 people in first year Would free more than \$136 million for community investment				
	Number of people diverted	Daily projected spending to redirect	Total daily spending redirected	Total annual spending redirected to communities
Reclassifying drug possession as a misdemeanor	2,688	\$40	\$107,520	\$39,244,800
Preventing reincarceration for minor probation violations	4,019	\$30	\$120,570	\$44,008,050
Allowing earned time for participating in rehabilitative programming	3,628	\$40	\$145,120	\$52,968,800
Total	10,335		\$373,210	\$136,221,650

Conclusion

Ohio spends \$1.3 billion a year to keep nearly 50,000 of our residents in prison. We imprison a higher share of our residents than most other states, and only two states have a higher share of people in the probation system. Many incarcerated Ohioans have never committed a violent crime and are in prison only because they were drug users. Treating them through community-based rehabilitation would cost less and could do more to help them become drug-free and ready to work. Others are in prison only because they violated probation in some minor way, missing an appointment or staying out past curfew. Finally, currently incarcerated Ohioans would emerge from prison better able to work and be part of society if they had more reason to be part of rehabilitation and education programs.

Ohio Issue 1 would reduce incarceration, improve public safety, and free up over a hundred million dollars each year for Ohio to redirect toward treatment and victim services.

This analysis finds that more than 10,000 Ohioans could be taken out of expensive incarceration and served in the community, where they can better participate in work and family life. Doing so would redirect more than \$136 million dollars in the first year of implementation. Ohio citizens should take advantage of the opportunity to save costs, reduce addiction and improve public safety by supporting this ballot initiative.

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