

## **Poverty and the Criminal Justice System**

In the classic study of poverty and tenements, *How the Other Half Lives* by Jacob Riis (1890), the issue of crime was addressed like this: “By far the largest part—eighty percent, at least—of crimes against property and against person are perpetrated by individuals who have either lost connection with home life, or whose *homes had ceased to be sufficiently separate, decent, and desirable to afford what are regarded as ordinary wholesome influences of home and family.*”

The connection between poverty and crime is equally strong today, estimates of the number of poor people in our criminal justice system range from two-thirds to eighty percent. It is undisputed that the system is primarily dealing with poor individuals. So why don't we operate the system as if we knew that?

Most victims and perpetrators are poor. Even if you choose to ignore poverty as a causal factor, disregarding the implication of poverty to the system leads to more unrealistic interventions and operational issues. Training, education and counseling do not work for people who are struggling to meet their basic human needs. Court systems and correctional institutions can not be adequately funded off of fines, fees and penalties assessed against poor people.

We also cannot ignore the moral costs of perpetuating a system that offers such unequal justice. We marginalize a large segment of our population at the peril of our democracy. We must remove the unrealistic barriers to justice and seriously address the problem of poverty in order to best protect our fellow citizens and fulfill our promise of equal justice for all.

It is with these thoughts in mind that we offer the recommendations of the Athens County Reentry Task Force.

## **ATHENS COUNTY REENTRY TASK FORCE LEGISLATIVE AGENDA**

The Athens County Reentry Task Force has spent a significant amount of time looking at various issues faced by ex-offenders reentering into our community. During this review, one significant theme has become obvious. Currently, funding for the criminal justice system in Ohio is ever increasingly dependent upon the financial resources of poor people. The Task Force feels that this is bad public policy because it ignores the reality that poor people do not have the financial resources to fund the criminal justice system. The Task Force has determined that an appropriate over-arching theme for its legislative agenda is if the criminal justice system is to truly offer “justice for all,” that it must be free. Since we all benefit from the public safety provided by the criminal justice system, we must all share in the cost. We must change the failed and unrealistic policy of having poor people fund the criminal justice system.

The goals of the Task Force are to:

1. Improve public safety;
2. Increase ex-offender’s personal responsibility by making restitution to the victims and support of family a priority; and
3. Reduce the overall rate of recidivism.

The categories where legislative changes are needed are:

1. Sentencing reform;
2. Reforming collateral sanctions;
3. Elimination of user fees to fund the criminal justice system;
4. Reforms to allow more community service work;
5. Child support reforms;
6. Universal community access to substance abuse treatment programs and requiring DRC to provide more programs such as ABLE and mental health treatment;
7. Requiring the CDJFS to determine if the ex-offender is disabled; and
8. Requiring the CDJFS to coordinate the ex-offender’s post-release eligibility for benefits and available services.
9. Restructure the RECLAIM initiative to remove the incentive for felony charges for youth.

## *Sentencing Reform*

The following recommendations are made with the current state budget situation in mind. Ohio prisons are at 133% capacity. The fiscal year 2011 combined budgets for the Department of Rehabilitation and Correction and Department of Youth Services is more than \$1.8 billion. It is increasingly important to prioritize available resources to develop fair and effective approaches to strengthen public safety. The recommendations address the issues of prison overcrowding, probation and parole policies and sentencing alternatives.

Amend state sentencing guidelines under chapter 2925 of the Ohio Revised Code to divert people convicted of drug possession to mandatory treatment rather than prison, and eliminate sentencing enhancements for persons with prior convictions for drug possession. The average cost per prison inmate per day is \$66.31. The average daily cost for a person on community control is \$3.42. Community substance abuse treatment costs on average \$20,000.00 less per year than incarceration.

Implement “good time” credit for participation in education and vocational training, treatment and other services in prison.

Increase the use of day reporting, electronic monitoring and community service as alternatives to being sent to prison for violations of conditions of supervision. In 2008, 10,000 fourth and fifth degree felony property and drug offenders were sentenced to Ohio prisons at a cost of \$189 million. 72% were returned to the community with no supervision.

Increase funding for locally-based services in housing, employment, substance abuse and other areas to increase prospects for successful reentry and to reduce community control revocations for technical rule violations. Enact statewide “Ban the Box” legislation to only permit employers to ask job applicants about their criminal record when selected for an interview. This would not eliminate background checks, but these would occur at a later step in the hiring process.

Amend ORC 2953.31 et seq. to allow more people who have completed their sentences and period of supervision to have their records sealed (often called expungement). The current statute is very limited and very few who are convicted of felonies qualify.

Decisions as to which offenders will be under supervision should be based on an assessment of a person's risk to re-offend rather than the level of offense. We currently spend vast resources on those least likely to pose a future risk to society, rather than on adequate supervision of the more dangerous ones.

Implement "good time" credit for those under supervision to reduce the length of the suspended sentence for good behavior and to encourage participation in programs.

Ohio Senate Bill 22, and its companion, House Bill 386 which are currently pending in the state legislature, address some of the above issues and would result in significant savings in incarceration costs. The bills include provisions that:

- Expand good time credit to five days per month for inmates who participate in job training, education and substance abuse prevention programs;
- Expand eligibility for treatment in lieu of conviction;
- Reduces mandatory sentences for certain drug offenses;
- Increases monetary threshold for making a theft offense a felony from \$500 to \$1,000;
- Implements an inmate reentry plan by guiding the inmate's rehabilitation program during imprisonment and assess needs upon release;
- Establishes community alternative sentencing centers; and
- Gives preference to sentencing non-support offenders to alternative community sanctions.

## *Reforming Collateral Sanctions*

There are a number of sanctions applied to ex-offenders that go beyond the direct punishment provided by the court. These are primarily legislative restrictions that apply to various occupations or civic activities and restrict the participation of the offender. These have become so numerous that they cannot be listed without a computerized database, which has yet to be completed. Many of these restrictions are logically connected to the offense involved and are prudent ways to protect the public. Unfortunately, many also have been developed that have no nexus to the offense involved and seem to serve no useful purpose. These often unfairly restrict the employment opportunities for ex-offenders who are already struggling with the difficulties of finding a job with a felony record.

Due to the fact that there are so many of these collateral sanctions, we propose that all of them be eliminated in a “sunset” provision as of three years from now. That would give the General Assembly ample time to review them and re-adopt those that are rationally related to the offense committed and actually necessary to protect the public’s safety.

## *Elimination of User Fees to Fund the Criminal Justice System*

### Fines, Fees, and Penalties

Poor people don't have any extra money. They use every dime they have just to meet their basic needs. Yet, we have built our criminal justice system around trying to collect user fees in the form of fines, fees and penalties from poor people as a significant funding source. Oddly enough, it is not working. In many cases, it is simply creating deeper poverty and insurmountable barriers to reentry.

Everyone, including indigent perpetrators, must be held accountable for their actions. They must take responsibility for the damage they have caused others and the need to support themselves and their families.

Given the very limited capacity for repayment by offenders, we feel that the top priority for any repayment should be for restitution for their victims. That must be the highest priority in terms of how any of their earnings are directed.

Secondly, any additional available funds should be directed to the support of the offender's family. Again, remember that most offenders are coming from poor families in the first place and the best chance of having a secure social structure to improve any chance of successful reentry often depends on their family remaining viable.

Inmates should not be required to pay for the costs of the incarceration or bear excessive costs for services within the institution.

Of course, the basic financial needs of the offender themselves cannot be ignored. Decent housing, adequate food, transportation and access to basic healthcare and behavioral health assistance must be available as well.

In an attempt to determine how much money is collected from financial obligations in user fees, fines and other court costs imposed on individuals with criminal convictions, we determined that there is little, if any coordinated effort or attempt to track such money in the broad scope, especially at the state level and would require all 88 counties to review and track the numerous fees and fines that are dispersed in a multitude of directions to other organizations and levels of government, in what appears would be an “accounting nightmare” for clerks of courts.

As state and local budgets continue to shrink and everyone is looking at how to protect their budgets by adding new fees or raising the dollar amounts of current fees, collectively, no one seems to be considering the sensibility and conflicts of interest with current policies and practices; or whether they are fiscally prudent for the state, counties, and locally – including local communities, offenders and their families.

A number of recent studies, working papers, and other publications have looked at the issues of fees, fines, and the severe – and often hidden - debt that is imposed on communities, taxpayers, and indigent people convicted of crimes. Including specifically, Ohio’s Report and Recommendations of The Joint Committee to Study Court Costs and Filing Fees, which was created by the Ohio General Assembly in Substitute House Bill 336 of the 126<sup>th</sup> General Assembly to specifically study court costs and filing fees in civil and criminal actions and proceedings in the state.

Other key publications included, but weren’t limited to:

- *Report and Recommendations of The Joint Committee to Study Court Costs and Filing Fees*, 2008; and their letter to Governor Strickland as a reminder of their recommendations for consideration during the creation of the state operating budget FY 2010-2011.
- *Criminal Justice Debt: A Barrier to Reentry*, Brennan Center for Justice, 2010.
- *In for a Penny: The Rise of America’s New Debtors’ Prisons*, American Civil Liberties Union, 2010.
- *Collateral Costs: Incarceration’s Effect on Economic Mobility*, The Pew Charitable Trusts, 2010.

- *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, The West Coast Poverty Center, 2010.
- *Repaying Debts*, Council of State Governments Justice Center, 2007.
- *Sentencing for Dollars: The Financial consequences of a Criminal Conviction*, Center for Community Alternatives Justice Strategies, 2007.

Across the board, these studies had several key findings:

- Many people released from prisons have a substantial amount of debt to repay, including court costs, fees, victim restitution, and child support.
- The broad array of fees, fines and other costs, while small in isolation, regularly total hundreds or thousands of dollars in total debt.
- The vast majority of people detained in prisons are in poverty prior to arrest; and deeper in debt upon release.
- Most people returning to the community face great barriers to employment due to the collateral sanctions of felony convictions (often without nexus to the crime committed).
- Victims, families and criminal justice agencies often compete for a share of what, if any, money an ex-offender may have.
- Ex-offenders typically owe payments to a host of agencies, including courts, child support enforcement agencies, probation departments. There is rarely a coordinated effort or single agency tracking all of an individual's court-ordered debts.
- As government budgets continue to shrink, the trend has been to increase current fees, introduce new fees, and impose other financial obligations not for traditional criminal justice purposes such as punishment, deterrence, or rehabilitation, but rather to fund tight budgets.
- Collections efforts have been intensified, often without regard to the person's ability to pay and utilize "poverty penalties" - additional late fees, payment plan fees, and interest when individuals are unable to pay, which are often exorbitant amounts

that exceed standards of fairness. All of which significantly cripple the ex-offender's ability and efforts to succeed in reentry.

- The overdependence on fees, fines and cost revenues compromise the function and fairness of courts and correctional agencies. Costs and fees cannot and should not be considered "income" and should not fund any special interests.
- There has been little study of the collection and disbursement of fine money; with an entity charged with ongoing review of costs and fees to keep costs reasonable, nominal, and related to the direct administration of justice.

## ***Reforms to Allow More Community Service Work***

Prisons already have a community service component for offenders:

*Community Service* - Productive and meaningful work provided by offenders benefiting 501(c)(3) tax-exempt organizations: government agencies, schools, churches, and charitable and non-profit organizations.

*“The community service program allows inmates an opportunity to give back to the community while at the same time supporting the Department’s restorative justice initiative of making a contribution to society. The program alleviates boredom and tension in prison, resulting in a safer environment for both staff and inmates. Safer prisons help establish a sense of security within Ohio communities and give offenders a sense of pride and accomplishment as they provide needed services to various organizations throughout the state.”*

Community service needs to be extended to ex-offenders. Some counties are already doing this; however, every county should have a community service program. Community service should be imposed after a prison sentence to enable ex-offenders to work off the fines, fees and penalties assessed against them and to engage in community projects with the goal of employment.

Oftentimes, there are large financial sanctions placed on an offender that creates barriers to successful reentry. All fines, fees and penalties should be subject to community service work. Most offenders are poor and cannot afford the financial sanctions imposed upon them. Working off these financial sanctions through community service would enable them to be productive in society and engage in services to prevent reoffending. The state should not be imposing fines, fees and penalties on this population to create general revenue funds as a regressive taxation of the poor. Money earned by the offender needs to be used to pay for victim restitution and to take care of their family first and foremost.

There is already a means to which the judicial system can alleviate this problem for misdemeanors and nonresidential sanctions for felonies.

### ORC 2929.28 (B) – Financial sanctions – misdemeanors

If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court shall consider imposing and may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of imposing a financial sanction or court costs. If the court does not determine that the offender is indigent, the court may impose a term of community service under division (A) of section 2929.27 of the Revised Code in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. The court may order community service for a minor misdemeanor pursuant to division (C) of section 2929.27 of the Revised Code in lieu of or in addition to imposing a financial sanction under this section and in addition to imposing court costs. If a person fails to pay a financial sanction or court costs, the court may order community service in lieu of the financial sanction or court costs.

### ORC 2929.17 (C) – Nonresidential sanctions – felony

(C) A term of community service of up to five hundred hours pursuant to division (B) of section 2951.02 of the Revised Code or, if the court determines that the offender is financially incapable of fulfilling a financial sanction described in section 2929.18 of the Revised Code, a term of community service as an alternative to a financial sanction;

Each county's Department of Job and Family Services (CDJFS) already offers a Work Experience Program (WEP) for public assistance clients. Worksites are developed with government and non-profit agencies to enable WEP participants to gain employability skills. Since most ex-offenders are poor, they will likely seek assistance from the CDJFS for their basic needs and would therefore be assigned to the WEP program.

WEP participants are required to work off their benefits at a rate of minimum wage on a monthly basis. This same concept can be applied to ex-offenders to work off their fines, fees and penalties and capped at forty (40) hours per week. The restriction placed by ORC 2947.23(A)(1)(a) limiting the number of hours to forty (40) hours per month would need to be corrected. The number of hours worked would be tracked by each CDJFS through their WEP assignments.

Special consideration of worksites for ex-offenders should be given to all government entities and private non-profits engaged in environmental protection, public safety and maintenance of public facilities (i.e.: parks, energy conservation, etc.).

Programs to create worker owned cooperatives to offer employment and work experience should also be developed.

Worksites can be gauged at the county level in line with ODRC policies:

*When reviewing/referring offenders under supervision to community service projects, factors that shall be taken into consideration by the supervising parole officer may include:*

- a. Offender's risk level;*
- b. Court orders;*
- c. Parole Board conditions;*
- d. Offender's skills and interests;*
- e. Offender's supervision accountability plan;*
- f. Violations sanctions; and*
- g. Offender's offense.*

Counties will work cooperatively with their local Adult Parole Authority (APA) to establish appropriate worksites and assignments.

WEP participants also engage in local one-stop employment and training services, which can be extended to ex-offenders. These services include job search, resume assistance, interviewing techniques and more. In addition, one-stops often have vast information and referrals services to other community organizations that provide support for such things as childcare, literacy programs, training institutions and behavioral and mental health programs.

Disabled ex-offenders will be required to comply with Social Security disability determination. Until SSA can determine disability, each local CDJFS also has a disability determination process and can be responsible for tracking eligibility. Each ex-offender would be evaluated by the CDJFS to determine eligibility in the community service program based on factors surrounding their needs and/or disabilities.

CDJFS and local courts should also collaborate with their respective Department of Disabilities to develop sheltered work environments for high risk or low functioning ex-offenders.

Ex-offenders participating in community service should be excluded from the workers compensation requirement. This is already in ORC 2744.03(A)(4); however, it is not being applied.

(4) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2152.19 or 2152.20 of the Revised Code, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community work for or in the political subdivision.

DRC also has the following policy:

*If an offender is injured while completing a community service project, it is the offender's responsibility to seek medical treatment on his/her own accord and is responsible for any associated cost.*

Since most ex-offenders are poor, they may be covered under Medicaid. This will be especially true with the expansion of health care reform in 2014. Medicaid will greatly expand their access to mental health and substance abuse counseling. Until then, we also need rural publicly funded health clinics.

## *Child Support Reforms*

There are five (5) main areas within child support that need reforms so that the ex-offender does not come out of prison with a mountain of unmanageable debt and has the chance of meeting his/her obligations to provide for his/her children, while at the same time being able to support himself/herself. These are:

1. Reducing the maximum charge for criminal non-support of a dependent from a felony to a first degree misdemeanor;
2. The automatic suspension of the child support obligation after the obligor has been incarcerated for more than thirty (30) days;
3. Adding “having been convicted of a felony” to the list of criteria for when an obligor is entitled to a modification review of an existing child support order;
4. Adding “having been convicted of a felony” to the list of criteria for deciding when and how much income to impute to someone who is currently unemployed or underemployed; and
5. Adding a community service requirement to any seek work obligation.

Rationale for suggested reforms:

1. *Reducing the maximum charge for criminal non-support of a dependent from a felony to a first degree misdemeanor.*

Under current law, ORC 2919.21, someone who has failed to provide support for a total period of twenty-six weeks out of one hundred four consecutive weeks, can be convicted of a felony. While the failure to provide support of one’s children can have a dramatic negative effect on the children involved, the parent failing to provide support is not generally, by this conduct alone, a threat to the safety of the general public requiring serious incarceration. Felonies should be reserved for those crimes that do pose a serious threat to the safety of the general public.

Additionally, convicting an obligor of a felony is counter-productive to that person’s ability to obtain and retain stable employment through which the obligor can provide support to the children. Re-enforcing the

obligor's personal responsibility for support of his/her dependents is the ultimate goal of criminalizing non-support.

2. *The automatic suspension of the child support obligation after the obligor has been incarcerated for at least thirty (30) days.*

One of the more difficult barriers that ex-offenders face when they leave prison is the large debt for unpaid child support that can accumulate while behind bars. Under current law, there is no provision for the automatic suspension of a child support obligation when someone is incarcerated. When someone is incarcerated they lose the ability to work and provide support. Current law allows for the monthly support obligation to simply accumulate, growing larger each month of incarceration. The custodial parent can make a strong argument that the cost of providing support for the child(ren) continues even while the obligor is incarcerated. However, it seems clear that the barriers to the obligor providing support upon leaving prison are greatly increased if the obligor faces a huge debt burden upon release. It is a matter of prioritizing increasing the long-term chances of the ex-offender providing support.

3. *Adding "having been convicted of a felony" to the list of criteria for being entitled to a modification of an existing child support order.*

The administrative rules governing the circumstances when an existing child support obligation can be reviewed for modification should be revised to include having been convicted of a felony. An obligor who had been employed before the felony conviction is often not able to return to the same position previously held. Also, a felony conviction can be a significant limiting factor for someone seeking employment. Many, if not most, employers refuse to even interview applicants that indicate that they have a felony conviction without even considering the relevance of the felony to the employment situation. Both of these circumstances would indicate that there is a substantial likelihood that the obligor has experienced a loss of income that should be reviewed in the context of his/her child support obligation.

4. *Adding “having been convicted of a felony” to the list of criteria for deciding when and how much income to impute to someone who is currently unemployed or underemployed.*

Under current law, ORC 3119.01 includes “potential” income when calculating the child support obligation. Potential income includes imputing (or estimating) income for obligors who are voluntarily unemployed or voluntarily underemployed. Case law has established that obligors who, by virtue of their voluntary decision to participate in criminal activity, become incarcerated and/or unemployed are voluntarily unemployed or voluntarily underemployed and income should be imputed to them. While the current law allows for the consideration of “any other relevant factor,” given the difficulties that ex-offenders face in obtaining employment because of the fact that they have been convicted of a felony, this should be specifically included in the list of factors to be considered when imputing income.

5. *Adding a community service requirement to any seek work obligation.*

An obligor who is unemployed and has no assets can be ordered “seek work.” Until paid employment can be obtained, an obligor subject to a seek work order should be subject to performing community service.

***Universal community access to substance abuse treatment programs and requiring DRC to provide more programs such as ABLE and mental health treatment***

Drug and alcohol addiction are a huge community problem that is the other overriding influence in the criminal justice system, besides poverty. The attached information clearly demonstrates that our failure to address the challenge of drug and alcohol abuse will prevent any meaningful chance at solving our community crime problem.

One of the suggested sentencing reforms is that the state should implement “good time” credit for those under supervision to reduce the length of the suspended sentence for good behavior and to encourage participation in programs. This reform can only be successful if the Ohio Department of Rehabilitation and Corrections is required to provide these services at all institutions and make them available to all inmates. The majority of inmates enter prison with low educational attainment, limited work experience and job skills, and high rates of drug and alcohol addiction and mental illness. Additional resources should be directed towards addressing these issues while a person is incarcerated.

***Requiring the CDJFS to determine if the ex-offender is disabled; and***

One of the primary goals of the Task Force is to see that ex-offenders meet their responsibility to provide for themselves and their family. It is also important for ex-offenders to explore eligibility for Medicaid as Medicaid coverage will greatly expand access to mental health and substance abuse counseling. Both of these goals can be achieved if the ex-offender is disabled and eligible for Social Security Disability or Supplemental Security Income (SSI) benefits.

The CDJFS is currently responsible for helping applicants who believe that they are disabled pursue eligibility for Medicaid through the County Medical Services (CMS) process. That disability process uses the same guidelines and standards the Social Security Administration uses for determining SSI eligibility. Since the CDJFS is currently involved in the disability determination process for purposes of establishing Medicaid eligibility, the CDJFS should be responsible for helping each potentially disabled ex-

offender apply for and pursue eligibility for disability through Social Security.

***Requiring the CDJFS to coordinate the ex-offender's post-release eligibility for benefits and available services.***

As indicated above, the estimates of the number of poor people in our criminal justice system range from two-thirds to eighty percent. These folks were in all likelihood receiving benefits through the CDJFS prior to becoming involved with the criminal justice system and will in all likelihood be eligible for benefits offered through the CDJFS upon release. The CDJFS currently provides a range of services needed by ex-offenders such as cash, food, medical, and job search assistance. The CDJFS has expertise with case management for both individuals and families and in establishing supervised work sites for community service. The CDJFS also has expertise in coordinating services across a broad range of social service providers. There is no need to reinvent the wheel. Each county has an established local presence that can offer the assistance that ex-offenders need. ORC 2951.02 already allows the CDJFS to manage, place, and supervise offenders eligible for community service work. The CDJFS is the one stop for ex-offenders.

***Restructure the RECLAIM initiative to remove the incentive for felony charges for youth.***

RECLAIM Ohio is a funding initiative which encourages juvenile courts to develop or purchase a range of community-based options to meet the needs of each juvenile offender or youth at risk of offending. By diverting youth from Ohio Department of Youth Services (DYS) institutions, courts have the opportunity to increase the funds available locally through RECLAIM. The problem is that the basic premise of the funding rewards courts which charge a high number of youths with felonies and penalizes those that have already worked to reduce the severity of charges against youthful offenders. The incentive structure needs to be modified to reduce the number of youth charged with felonies in the first place.