

HOUSE CONCURRENT RESOLUTION 3036  
TESTIMONY OF LAWRENCE R. KLEMIN  
SENATE JUDICIARY COMMITTEE  
MARCH 9, 2011

Mr. Chairman and members of the Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of House Concurrent Resolution 3036.

Section 13 of Article I of the North Dakota Constitution provides that a person accused of a crime for which the person may be confined for a period of **more than** one year has the right to a trial by jury of 12 persons. The crimes that the Constitution refers to are all felonies. The right to a trial by jury is not required in the Constitution for misdemeanors or infractions.

The maximum penalty for a Class A misdemeanor is one year's imprisonment, or a fine of \$2,000, or both. N.D.C.C. §12.1-32-01(5). The maximum penalty for a Class B misdemeanor is thirty days' imprisonment, or a fine of \$1,000, or both. N.D.C.C. §12.1-32-01(6). The maximum penalty for an infraction is a fine of \$500. However, a person who has previously been convicted of an infraction may be sentenced as though convicted of a Class B misdemeanor. In that case, the complaint must specify that the offense is a misdemeanor. N.D.C.C. §12.1-32-01(7).

North Dakota statutory law provides that a person charged with the commission of a felony or a misdemeanor has the right to a trial by jury. N.D.C.C. §29-01-06(5). The defendant, whether in a felony case or in a misdemeanor case, may waive a trial by jury and have a bench trial before the judge. N.D.C.C. §29-16-02.

In a Class A misdemeanor case, unless a jury trial is waived, the defendant has the right to a trial by jury of 6 jurors, but can make a demand for a trial before 12 jurors. A Class B misdemeanor case has trial by a jury of 6 jurors.

In 2009 and 2010, approximately 118 misdemeanor jury trials were held each year, at an annual cost of \$35,000 for jury compensation, plus mileage reimbursement. The Supreme Court does not currently keep separate statistics on the number of Class A and Class B jury trials, only the total number of misdemeanor trials.

The purpose of HCR 3036 is to conduct an interim study of misdemeanor jury trials, the cost of the jury trials, and a review of the jury trial process in other states for similar offenses. Since jury trials for misdemeanors are not required by the Constitution, the interim study could consider whether bench trials for either Class A or Class B misdemeanors, or both, provide sufficient due process of law. Another possibility is the elimination of any imprisonment for a Class B misdemeanor, with the maximum penalty then limited to a monetary fine.

I urge support of the interim study provided for in HCR 3036.

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE CONCURRENT RESOLUTION NO. 3036  
(Representatives Klemin, Boehning, Delmore)  
(Senators Hogue, Nething, Olafson)

A concurrent resolution directing the Legislative Management to study the trial by jury rights of a person charged with the commission of a misdemeanor, including the extent to which jury trials are conducted in the state for cases involving misdemeanor offenses; the costs of jury trials for misdemeanor offenses; the feasibility and desirability of eliminating the sentencing option of imprisonment for Class B misdemeanors; a review of the jury trial process of other states; and the right to a jury trial in civil traffic cases.

**WHEREAS**, Section 13 of Article I of the Constitution of North Dakota provides "[t]he right of trial by jury shall be secured to all, and remain inviolate"; and

**WHEREAS**, Section 13 of Article I of the Constitution of North Dakota also provides a person accused of a crime for which the person may be confined for a period of more than one year has the right of trial by a jury of 12; and

**WHEREAS**, North Dakota Century Code Section 29-01-06 provides in all criminal prosecutions, the party accused has the right to a speedy and public trial by an impartial jury; and

**WHEREAS**, the North Dakota Rules of Criminal Procedure provide if the defendant is entitled to a jury trial, the trial must be by jury unless the defendant waives a jury trial in writing or in open court, the prosecuting attorney consents, and the court approves; and

**WHEREAS**, the North Dakota Supreme Court has found a constitutional right to a jury trial in civil traffic cases; and

**WHEREAS**, in 2009 and 2010 approximately 118 misdemeanor jury trials were held each year in the state; and

**WHEREAS**, the annual cost of jury compensation for misdemeanor trials in the state is approximately \$35,000 plus mileage reimbursements;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Management study the trial by jury rights of a person charged with the commission of a misdemeanor, including the extent to which jury trials are conducted in the state for cases involving misdemeanor offenses; the costs of jury trials for misdemeanor offenses; the feasibility and desirability of eliminating the sentencing option of imprisonment for Class B misdemeanors; a review of the jury trial process of other states; and the feasibility and desirability of eliminating a jury trial right for civil traffic tickets; and

**BE IT FURTHER RESOLVED**, that the Legislative Management report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-third Legislative Assembly.

**ALEC Mental Health Diversion Subcommittee Conference Call**

Michael Hough [mough@alec.org]

Sent: Thursday, September 15, 2011 10:16 AM

To: Klemin, Lawrence R.

---

Problem viewing this email? [Click here](#) for our online version

**Public Safety & Elections Task Force Call/ Mental Health and Corrections September 22nd at 2:00 pm EST**

ALEC's Public Safety & Elections Task Force is forming a Mental Health Diversion Subcommittee to deal with the issue of the large number of mentally ill individuals who end up in the criminal justice system. This new subcommittee will be chaired by Rep. Paul Ray (UT) and Pat Nolan of Prison Fellowship Ministries.

Since the mass closure of state-run mental hospitals in the 1960's -80's, a large number of mentally-ill individuals, upwards of 300,000, now end up in jail and prisons.

Our special guest for the phone call will be Los Angeles County Sheriff Leroy Baca, who commands the largest Sheriff Department in the United States with a \$2.4 billion budget. The Los Angeles jail has unfortunately become one of the largest mental hospitals in the nation. Sheriff Baca has ushered in a number of important reforms in this area to aid police in dealing appropriately with these individuals.

Please join us on September 22 at 2:00 pm EST by calling (712) 432-0075 dial-in code 448313. We would appreciate if you RSVP in advance to [mough@alec.org](mailto:mough@alec.org). All Task Force members are encouraged to join the call.

For more information on this issue please check out the following:

[http://www.floridasupremecourt.org/pub\\_info/documents/11-14-2007\\_Mental\\_Health\\_Report.pdf](http://www.floridasupremecourt.org/pub_info/documents/11-14-2007_Mental_Health_Report.pdf)

<http://consensusproject.org/>

Sincerely,

Michael Hough  
ALEC Public Safety Resident Fellow  
202-742-8530

American Legislative Exchange Council | 1101 Vermont Ave., NW 11th Floor, Washington, DC 20005  
ph: 202-466-3800 | fax: 202-466-3801 | [Our website](#) | [Send to a friend](#)

To opt out of this newsletter, please [click here](#)  
To unsubscribe from all of ALEC's electronic communications, please [click here](#)





Subscribe now



Customer Service

# Dayton Daily News

Dayton, OH  
 H: 61° L: 43°  
 Forecast | Set Location | Feels Like: 49°

- Home
- Local News
- Sports
- Business
- Entertainment
- Life
- Opinion
- Photos & Video
- Help
- Jobs
- Cars
- Homes
- Classifieds & Deals
- Local Directory

- News feeds
- E-mail alerts
- Mobile
- Text alerts
- Twitter
- Facebook
- site
- web
- Web search by YAHOO!

- Classifieds
- Autos
- Real Estate
- Jobs

Home > News > Ohio News

## PRISONS

# Prison sentence reductions may save \$1B

Bill with sweeping criminal justice reform likely to be enacted.

### Hot Topics

- Tag it. Sell it. Place your garage sale ad
- Planning a garage sale? Get a FREE kit here
- Looking for a garage sale? Find area listings

### Latest local news

- Victim in front-yard shooting is identified by coroner 5:27 p.m.
- Martial arts fighter indicted, faces up to 23 years for officer assault 5:16 p.m.
- House explosion an intentional act, investigators say 4:54 p.m.
- Beavercreek issues harsh outlook if Nov. 8 levy fails 4:28 p.m.
- Ex-health aide admits to raping mentally-disabled patient 3:52 p.m.
- > More headlines

By Laura A. Bischoff, Lynn Hulsey and Joanne Hulst Smith, Staff Writers

Updated 10:18 AM Thursday, June 23, 2011

E-mail this page

Print this page

Larger type

**COLUMBUS** — Thousands of nonviolent Ohio prison inmates would have their sentences reduced under a bill passed by the state Senate on Wednesday in an effort to save the state nearly \$1 billion in prison costs.

The bill does the following:

- Directs judges to sentence nonviolent, first-time offenders to community control, job training or treatment programs;
- Increases the threshold for felony theft from \$500 to \$1,000;
- Equalizes the penalties for crack and powdered cocaine and reduces some of the mandatory sentences for marijuana and hashish offenses;
- Makes prison officials justify why they are keeping parole-eligible inmates 65 or older;
- Allows early release for certain offenders after they have served 80 percent of their sentence;
- Gives the state parole authorities options for penalizing parolees who don't report to their officers, rather than sending them back to prison;
- Creates sentencing alternatives for parents who fail to pay child support;
- Requires judges to justify giving stiffer sentences.

It also contains a provision that allows the state Department of Rehabilitation and Correction to issue a certificate of achievement and employability to ex-cons. Employers who hire certificate-holders would be immune from negligent hiring claims.

If passed, the legislation will dramatically change how Ohio handles roughly 10,000 nonviolent first-time offenders, 50,000 state prison inmates and 260,000 people on probation.

Legislative analyses predict the measure would ease prison overcrowding and save taxpayers up to \$78 million a year.

Ohio's prison population is on track to grow to 55,000 by

## Breaking news by e-mail

Start your day with top headlines in your inbox and get breaking news e-mail alerts at any time by subscribing to our Headlines e-mail newsletter. See Sample | Privacy Policy

SIGN UP

## Most popular in Local News

HEADLINES	GALLERIES	SEARCHED
-----------	-----------	----------

- 2 guilty of duct-taping 3-year-old
- Ex-health aide admits to raping mentally-disabled patient
- Body discovered near Miami Twp. hotels
- Beavercreek issues harsh outlook if Nov. 8 levy fails
- Victim in front-yard shooting is identified by coroner

### NATIONAL NEWS VIDEOS: EDITOR'S PICKS

### NEWS PHOTOS & VIDEOS

2018, up from 50,694 today but state officials project that the changes will reduce the inmate count to 46,000 by 2015 by diverting low-level, first-time offenders to community corrections and drug treatment programs.

The changes will allow the state to avoid spending \$925 million to build and operate new prison beds over the next several years.

The Senate voted 30-3 in favor of House Bill 86 on Wednesday. The House is expected to agree to Senate changes to the bill as early as today, and then it goes to Gov. John Kasich, who plans to sign it into law.

"I believe this is the most sweeping criminal justice reform bill that we have passed, certainly, in the last 16 years," said state Sen. Bill Seitz, R-Cincinnati, the primary driver behind the reforms.

The package was three years in the making and won backing from the Kasich and former Gov. Ted Strickland's administrations, ACLU of Ohio, Buckeye Institute, Ohio Supreme Court, Ohio Judicial Conference, Ohio Chamber of Commerce and others.

The Ohio Prosecuting Attorneys Association opposed some provisions, particularly allowing certain inmates to earn time off their sentences if they complete treatment, education and training programs and don't cause disciplinary problems behind bars.

The state spends \$1.7 billion a year to incarcerate inmates at 31 prisons and employ 13,338 workers, including 1,231 in the Dayton area. The idea is to reserve the state prison beds, which cost \$24,000 a year on average, for the most violent criminals and use less costly options for low-level offenders.

Local officials reacted positively to some of the changes, particularly the plan to award a "certificate of achievement and employability" because they believe it will help ex-offenders once again become contributing members of the community.

"I think it would help without question," said U.S. District Judge Walter H. Rice. "Anything that represents that a given person has taken positive steps to try to turn his or her life around would help that person surmount the barrier of having a felony and having served prison time."

He said one barrier to employment is businesses may fear a civil lawsuit alleging negligent hiring if they knowingly hire an ex-offender who gets in trouble on the job.

"I think this is big. The certificate provides a level of comfort to employers," said Montgomery County Commissioner Debbie Lieberman, who with Rice co-chairs the county's ex-offender re-entry task force. "It's hard to say if the certificates will really help them get a job."

She, Rice and Dayton City Commissioner Dean Lovelace also praised the provision equalizing penalties for crack-cocaine and powder-cocaine possession.

"I think certainly the lack of that has affected persons of color," said Lovelace, noting that blacks have been disproportionately imprisoned on crack cocaine charges.

Lieberman was less enthusiastic about a provision requiring prisons to justify why they are keeping parole-eligible inmates 65 or older and another provision that would allow release of

## Latest news blog posts

East Dayton brawl sends two women and one man to jail

- ▶ U.S. Reps. Turner, Austria react to new U.S. House districts
- ▶ Ohio House committee unveils U.S. House map
- ▶ New ad slams Ohio politicians
- ▶ CSU president to step down
- > More news blogs

## From our news partners

- ▶ Video sheds light on Orlando police brutality case
- ▶ Police shoot raccoon that wandered onto school bus
- ▶ Dozens sick after church potluck dinner
- ▶ TBS picks up new sitcom produced by Conan O'Brien
- ▶ Did 'Debbie Cakes' reference spark beating?
- ▶ Man sentenced to six years for posing as dermatologist
- ▶ 2 guilty of duct-taping 3-year-old
- ▶ Manny Ramirez arrested in Fla. on domestic battery charge
- ▶ Man in Keys accused of exposing himself through sunroof
- ▶ Lawyers: Giants fan's medical costs to top \$50M

FULL-FEATURED BUSINESS INTERNET

\$24.99

/month

High-Speed Internet

- Up to 40Mbps
- 5GB Web Storage
- Free Installation
- Business Class Security

CenturyLink Business

Price for first 3 months with a 3-year service agreement. Restrictions apply.

Click Here

## About our ads

About our ads

inmates who have served 80 percent of their sentences.

"I don't think we've talked about these enough. I think it should be done on a case-by-case basis," Lieberman said. "Just because you're 65 doesn't mean you're not going out to re-offend."

Lovelace and Rice both noted that releasing nonviolent offenders into the community will only work if there is funding for programs to provide them with services and keep the community safe. Lovelace called it a "hollow gesture" to allow for early release, but to not provide state funding for programming.

"I like the idea of sending fewer people to prison as long as the safety of the community isn't threatened," said Rice. "When I say 'help' I don't mean 'hug a thug.' I mean give that person some tools so they can succeed in the community."

The Associated Press contributed to this story.

Share this article



**Penny Stock of the Day**  
Rated #1 Penny Stock Newsletter on the net  
VictoryStocks.com/

**Hot Stock Pick - OMVS**  
Newest Solar Technology.  
Investment, Stocks, Trade, News.  
www.OMVSolar.com

**CD & Money Market Rates**  
Compare CD Rates From Top Bnaks.  
Interet Calculator & Savings Tips.  
Bankrate.com

Ads by Yahoo

Home | News | Sports | Business | Entertainment | Opinion | Life | Recreation | Photos & Video | Cars | Homes | Find Dayton Jobs  
Advertising Media Kit | Online Ad Studio | Advertiser Tools | Customer Service | Contact Us | Our Partners | RSS | Site Map

Copyright © Tue Sep 13 17:53:34 EDT 2011 Cox Ohio Publishing, Dayton, Ohio, USA. All rights reserved.

By using this site, you accept the terms of our Visitors Agreement and Privacy Policy. About our ads. You may wish to note our other business policies.

AGAP ENABLED

