

## SPECIAL REVIEW & OVERSIGHT COMMITTEE MINUTES

OCTOBER 2, 2018

A Special Review & Oversight Committee meeting was held on October 2, 2018, at North Royalton City Hall, 14600 State Road. The meeting was called to order at 6:50 p.m.

**PRESENT:** **Committee Members:** Chair Dan Kasaris, Dan Langshaw, Paul Marnecheck; **Council:** Larry Antoskiewicz, John Nickell, Gary Petrusky, Cheryl Hannan; **Administration:** Mayor Robert Stefanik, Law Director Thomas Kelly, City Engineer Mark Schmitzer, Service Director Nick Cinquepalmi.

Moved by Mr. Langshaw, seconded by Mr. Marnecheck to **approve the September 4, 2018 Review & Oversight Committee minutes.** Roll Call: Yeas: 3. Nays: 0. **Motion carried.**

### NEW BUSINESS

#### 1. **State Issue 1**

Mr. Kasaris asked for this meeting to discuss State Issue 1. He said that it is his view that this is a pathetic excuse for a Constitutional amendment. He said that State Issue 1 is an awful idea. It is anti law enforcement, anti public safety, will result in the premature release of violent felons from prison, would mandate that all drug possession offenses, including the date rape drug, be prosecuted in municipal court prohibiting a person to be charged with a felony regardless of the type or amount of drug possessed. He said he wondered that if this gets approved how it would affect our Law Department because the county prosecutor's office would be prohibited from prosecuting drug abuse or possession cases and they would have to be handled on the municipal court level. He said that he asked our Law Director to look into this and asked him to report his findings. Mr. Kelly said that he had a discussion with both Donna Vozar and Jim McDonnell about this. He said that there is no question that the passage of State Issue 1 would shift very substantially the burden of prosecution of drug offenses from the common pleas court level to the municipal court level. Mr. Kasaris asked if we know how many drug possession cases we take downtown and prosecute. Mr. Kelly said that he doesn't have that number with him tonight but the point is we know that there is a substantial increase that would shift from the felony level to the municipal court level. He said that this does not mean that we couldn't handle it. Our prosecutors are solid individuals and both of them told him that they could do the job if that is what the State if Ohio determines is the appropriate course of action. He said that there is more to it than that and if you have done some research on this you would will find that the fact of the matter is that the burden that would be shifted to the municipal courts is shifted as a mandate but without any additional funding. So the increased number of felony drug cases that would now be labeled misdemeanor cases would substantially burden the municipal courts and that would have impacts in a reverberating manner back to the communities that make up the municipal court district. We would all have to pay for this operation. He said that Issue 1 is sadly a very unartfully drafted piece of legislation and is opposed by all the common please judge's associations, all of the prosecutor's associations and all of the law enforcement associations. Mr. Kelly said that if it were to pass, we would find that we would have substantial additional work both on the prosecutorial level and on the defense level. We have our own Public Defender that we pay to defend indigent cases in Parma Court and their work would be substantially increased by this experience. Mr. Kasaris asked if we would have to employ a second Public Defender. Mr. Kelly said that we would have to devote more financial resources whether it would be for more personnel or more budgetary allotment for handling a work load that was never anticipated when their salaries were fixed. Mr. Kasaris asked if this could include support staff. Mr. Kelly said yes and certainly on the Police Department level. He said that a lot of the work that is done in our Police Department gets shifted downtown and gets picked up by the personnel at the common pleas level. That would no longer be the case. State Issue 1 would create some substantial additional revenue burdens to our community aside from whatever position you take politically on whether this is a good or bad idea. Mr. Kelly said that whether you favor or oppose reducing penalties for possession of drugs or reducing the prison population by virtue of the fact that we have so many crowding issues, the fact is this is a wholly inappropriate way to go about it. The Constitution of the State of Ohio is not designed as a vehicle to respond to the kind of singular concerns that are addressed in this proposed amendment. This doesn't

mean we haven't had this kind of thing before, because we have. He is just saying that from the point of view of a lawyer who thinks about these things the Constitution is not the vehicle that should be used for this purpose. This should be addressed by the State Legislature, and the State Senate and House of Representatives. He said that the problem from the point of view of the proponents is that they have no hope of passing anything like this at the legislative level so their only hope of doing something along these lines is to put it before the voters and try to sell it. He said that it is a very poorly drafted piece of work and has all kinds of gross generalizations, contains a lot of aspirational goals and it lacks wholly any specificity. He said that in his opinion it is not a desirable piece of work and said that he would like to speak for the administration and say that we oppose it. Mr. Kasaris said that he forwarded to a local newspaper a copy of the Ohio Municipal League's official opposition media release to Issue 1. He wanted to bring this to the attention of the residents and to his fellow elected officials. He thinks that it is a serious matter that can do serious harm to our city and other cities simply by releasing people from prison who should not be released, in addition to what would be done with the drug abuse statutes. Mr. Kasaris said that police officers rely on informants to make arrests and many times we get an informant because we arrest them for possession and we turn them on other people because we have the ability to charge them with a felony. This would strip law enforcement of its ability to properly fight crime. He said that the OML provided at the end of its media release a sample resolution for opposition to Issue 1. He said that he handed out the OML information and also an email from the Chief Special Prosecutor of the State of Ohio Matt Donahue that he sent to his staff dealing with this legislation and what affect it would have on the state.

Mr. Marnecheck said that we all are coming at this from different directions and thanked Mr. Kasaris for the information. He said that he ran into the person who looks into these things for the dioceses. He said that he thinks there is some value in looking at how we address individuals that have chemical dependency and he wanted to see if the Catholic Council of Ohio Bishops took a position on this matter. He said they did not but they did provide some thoughtful reflection that he is happy to share. He said it is his feeling that they are trying to jam this through in the Constitution because it would never get passed in the legislature. It is just too broad and it opens up so many other problems that the original intention gets lost in these mistakes. He said that if this is defeated, hopefully the legislature realizes that we do indeed have a problem on our hands but address it without causing more burden on the municipalities by not giving us the tools needed to solve the problem.

Mr. Langshaw said he agrees with much of what has already been said. He agrees that it is being rushed through. He said we have a general assembly for a reason and agreed that we need to do something about the opiate crisis. He said that there are things being done, but something like this should go through the legislative process and give people the opportunity to be heard in committees. He said that there may be good intentions, but this is a special interest group rushing to jam something into our state Constitution. He feel that this is bad public policy. He said that we have a General Assembly that is up for reelection this year and we should give them an earful of what we want to see them do in Columbus. He said he is also concerned about this as it relates to law enforcement and the courts. He agrees that we absolutely have a drug problem in Ohio and people are dying from preventable drug overdoses even in our own community. He said that Cuyahoga County has a high number of deaths and we are part of this epidemic and more needs to be done for treatment. He felt that our leaders in Washington are to blame as well. He said that he does not support Issue 1 and feels that it is not good for our community or our state.

Mr. Antoskiewicz said that he wanted to reiterate that he too spoke with Mr. McDonnell and was told that for him it would just make a longer day and he probably wouldn't need any additional help. Mr. McDonnell spoke to the Parma Municipal Court and it was their feeling that not only would it add additional burden to them but the cost factor would be an issue for them because they just don't have the resources to handle what this would require. He said that everything that has been said here tonight is pretty much on point.

Mrs. Hannan said that she did her due diligence as well and looked at the actual language of what they want to put on the ballot. She said that this will basically reclassify certain non-serious, nonviolent drug possession felonies as misdemeanors, it will prohibit courts from ordering persons on felony probation to

be sent to trial for non-criminal probation violations, it expands earned credits for a reduced sentence if inmates participate in drug treatment, work, and educational programs and it also requires the state to send the prison cost savings to local governments to deal with this. She said that she hears what Mr. Kelly and Mr. Kasaris are saying about the problem of putting it into our Constitution, but if it passes it goes back to the General Assembly to write the laws and make these things happen. However, the way that this came about was because our General Assembly has not done anything. There was a Sentencing Commission that studied this for two years and nothing got through the General Assembly. So what happened was the citizens in our state decided that they wanted to treat these low level possession crimes as an addiction and as an illness. So instead of criminalizing this they wanted to see treatment. This was a citizen initiative that gathered the second highest number of signatures in Ohio's history. She said she understands what others are saying, but she works at the court and she see what happens. She said there are ways that prosecutors can indict for criminal tools and that would be a felony and would take you back to court and then the drug courts can handle this and get people treatment. She thinks that this is a laudable goal. We have so many people dying from drug overdoses and something has to be done. Mass incarceration is not the answer. She understands the unintended consequences of the way they are going about this, but she said that this is one way of trying to address drug treatment.

Mr. Kasaris said that we have a very successful drug court that Judge David Matia runs in Common Pleas Court. Mrs. Hannan said so does Judge Synenberg. Mr. Kasaris agreed. He said that this would remove this from their courts. Mrs. Hannan said no it would not, they would still be able to do this. Mr. Kasaris said no it wouldn't because drug possession cases have to be prosecuted on the municipal court level, not on the federal level. Someone can't be charged with possession of criminal tools if all they possess are the drugs. In addition he said that he could possess as many as 50 date rape drug pills. Mrs. Hannan said that you would then be charged with trafficking. Mr. Kasaris said no he wouldn't because he is just possessing them. If he doesn't offer to sell anyone these drugs or do anything other than possess them, you can't prove a trafficking case and if they are only charged with possession, it has to be handled at the municipal court level. In addition, it causes the early release of felons. He felt that this is a poorly written proposal and thinks it is a bad idea for Ohio. Mrs. Hannan said that this is a very important issue for all Ohioans and they should do their due diligence and research and look at the different organizations who are for and against this. She said that there are very strong, sincere reasons both for and against. She said that she hasn't made up her mind yet on this issue and understands what both sides are saying and feels that this is something we need our voters to decide.

Mr. Nickell said he understands both sides as well. He said he recently watched a program about a bail bond project for lower income people. If you can't make bail for a few hundred dollars, then you are stuck in jail. They might have jobs where they have no paid time off and end up losing their jobs. He sees this problem at the schools as well. Sometimes kids get caught with small amounts of drugs or just fall in with the wrong people. He said that we won't be able to help everyone but treatment is very important to him. Mr. Kasaris said Mr. Nickell is right and said that the county is much better equipped to deal with and handle drug treatment. Mr. Nickell said that he acknowledges that he doesn't have full knowledge of how the treatment programs work when someone is incarcerated downtown. Mrs. Hannan said sometimes they get treatment and sometimes they don't. Mr. Kasaris said that counties are better off handling the addiction and treatment issues based on what he has seen in the work he has done in different counties. Mr. Nickell said that this Issue is so confusing that he bets that most of the electorate are going to read it and if they don't understand it they won't vote for it.

Mr. Petrusky said that we are all looking at how much it is going to cost the courts. What about the rest of our safety when we will have to take our other resources off the streets such as the patrolmen who are out there protecting us because they will have to deal with repeat offenders being put back on the street. He said that he deals with this in his job as a Police Officer and said that it doesn't matter if we incarcerate them or send them to treatment, they don't go and there are warrants for their arrest. People say we need to give them a break because they missed their probation. They missed their probation because they are in some alley shooting up. He does not believe this Issue should pass. When he continually finds the same people offending, he doesn't know what the answer is to get them help, but sending them to treatment does

not work and sending them to jail does not work. All this is going to do is cost us in other ways because our crime rates are going to go up because these people are not coming off the street and this will allow hardened criminals back out on to the streets.

Mr. Kasaris said that he handed out a packet for everyone to review, a copy of which is attached to these minutes. He said that he scheduled a R&O meeting for two weeks from tonight. If there is any support to pass a resolution such as the one the OML has provided we can discuss this at this next meeting. If there is no support, we won't introduce a resolution. Mr. Langshaw said that people sound like they have their minds made up and asked if it would be easier to decide this tonight. Mr. Antoskiewicz said that for as long as he has been Council President, he has tried to make sure that a piece of legislation such as this has unanimous support and if not, he hopes that everyone would respect everyone else's opinion and not introduce legislation if there is not full support. He said that everyone has newsletters and Facebook that they can use to let their residents know their stance on this matter. Mr. Langshaw said that Mr. Antoskiewicz makes a very persuasive argument and maybe individuals can send a letter to the editor to air their views. Mr. Kasaris said that he will keep the next meeting scheduled for now and we can cancel if necessary.

### **ADJOURNMENT**

Moved by Mr. Langshaw, seconded by Mr. Marnecheck to **adjourn the October 2, 2018 Special Review and Oversight Committee meeting**. Yeas: 3. Nays: 0. **Motion carried.**

**Meeting adjourned at 7:17 p.m.**

**Daniel Kasaris**

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**From:** Dana Schroeder  
**Sent:** Friday, September 21, 2018 12:11 PM  
**To:** Dan Kasaris  
**Subject:** FW: Member Alert

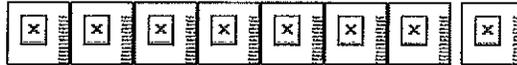
FYI

Thank you  
*Dana*

Dana A. Schroeder, CMC  
Confidential Secretary  
Council Office  
City of North Royalton  
14600 State Road  
North Royalton, OH 44133  
440-237-4260  
Fax 440-237-0470

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**From:** The Ohio Municipal League <kscarrett@omlohio.org>  
**Sent:** Friday, September 21, 2018 12:03 PM  
**To:** Dana Schroeder <dschroeder@northroyalton.org>  
**Subject:** Member Alert



**MEMBER ALERT**

**OML BOARD OFFICIALLY OPPOSES STATE ISSUE 1**

A quorum of the Ohio Municipal League's Board of Trustees has voted unanimously to officially oppose State Issue 1, the proposed constitutional amendment that would reduce penalties for the crimes of obtaining, possessing and using illegal drugs. Issue 1 will appear

on the ballot on Tuesday, November 6<sup>th</sup> for consideration by Ohio voters.

If approved, the amendment would prohibit jail time as a sentence for obtaining, possessing or using illegal drugs until an individual's third offense within 24 months; it would mandate those criminal offenses be classified only as a misdemeanor rather than a felony; and would require sentence reductions of incarcerated individuals, except individuals incarcerated for murder, rape or child molestation by up to 25% if the individual participates in rehabilitative, work or educational programming, among other provisions.

The Ohio Municipal League stands opposed to Issue 1 for several reasons. The amendment would shift the financial responsibility of prosecuting these misdemeanor offenses to the local governments, making them responsible for the costs of treatment, probation and jail. The amendment will also inhibit the prosecution of drug traffickers, in addition to reducing the sentences of violent offenders such as human traffickers, those convicted of aggravated arson, burglary or robbery, kidnapping and felonious assault - just to name a few.

Ohio's local governments are already struggling with combating the worsening opioid crisis on the front lines of our communities despite repeated cuts to their funding. Issue 1 is projected to save the state millions annually - however, shifting the cost of courts, probation, treatment and jail time to municipalities would create an incredible financial burden in the form of yet another massive unfunded mandate.

Issue 1 also ties the hands of local law enforcement to effectively prosecute drug traffickers, hobbling their ability to dole out the criminal penalties necessary to reduce drug use and crime in their communities. By reducing sentences for violent offenders - not just those possessing drugs - Issue 1 poses a very serious threat to public safety by putting violent criminals back on the streets.

Finally, changing Ohio's constitution creates a long-term challenge, as an entire statewide initiative and election would be necessary to make any needed changes to the amendment in years to come. Ohio should not legislate via constitutional amendment: such a serious change in sentencing law should be done in the Ohio Revised Code, where the legislature can make necessary adjustments as needed.

On behalf of Ohio's municipalities, due to the increased financial burden and serious safety concerns, the Ohio Municipal League opposes Issue 1. If your municipality is interested in passing a resolution opposing Issue 1, you can find sample language [HERE](#).

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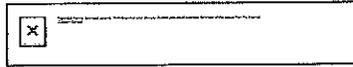
<input type="checkbox"/>	_____
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The Ohio Municipal League, 175 S. Third Street, Suite 510, Columbus, OH 43215

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**Daniel Kasaris**

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**From:** Danny Kasaris <danieljkasaris@yahoo.com>  
**Sent:** Tuesday, September 11, 2018 11:25 AM  
**To:** Dan Kasaris  
**Subject:** FW: FYI Issue 1-pleas, etc.

Sent from Yahoo Mail on Android

----- Forwarded Message -----

**From:** "Daniel Kasaris" <Daniel.Kasaris@ohioattorneygeneral.gov>  
**To:** "danieljkasaris@yahoo.com" <danieljkasaris@yahoo.com>  
**Sent:** Tue, Sep 11, 2018 at 10:20 AM  
**Subject:** FW: FYI Issue 1-pleas, etc.

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**From:** Matthew J. Donahue  
**Sent:** Tuesday, September 11, 2018 10:20 AM  
**To:** Special Prosecutions  
**Subject:** FYI Issue 1-pleas, etc.  
**Importance:** High

All,

As many of you know a constitutional ballot initiative is up in November as state issue 1 otherwise titled "Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment"

Issue one may or may not pass but, since it has retroactive application we need to be aware of several parts of it since if it passes it will effect plea deals, sentencing recommendations, victims notifications, and charging decisions:

*This is long but please read in detail.*

### ***Sentence credits section (C)***

Issue 1 gives a sentence credit to prisoners who “participate” in qualifying rehabilitation programs, to any inmate not serving a sentence of “death, life without the possibility of parole, murder, rape, or child molestation”. This is obviously a large swath of inmates. A probable drafting error is that it does not include “aggravated murder” and as we know agg. murder charge can have a sentence other than LWOP. Another probable drafting error is that “child molestation” is not defined, so child sex offense in which no child is touched i.e pandering, importuning likely get the sentencing credit. In short this covers a whole lot of violent people, (robbery, manslaughter, burglary, many Sexual batterers, you get the idea) makes not allowances for convictions of attempted, conspiracy or complicity nor mandatory sentences and will apply to anyone in the prison system now.

The sentencing credit is as follows:

ODRC (or its successor agency) must grant a half-day of sentence credit for each day the prisoner “participate[s] in appropriate rehabilitative, work, or educational programming.” The maximum sentence credit a prisoner can receive is 25% of their sentence.

ODRC may grant a maximum of 30 additional days in sentence credit “for completion of appropriate rehabilitative, work, or educational programming.”

Note that “participation” is not defined and it is an automatic reduction upon participation.

So when looking a deals, sentencing recommendations and talking to victims need to think about this, sentence can be a lot shorter.

### ***Reclassification of certain drug offenses: Section (D)***

This section deals with “state laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense.” Note that this goes beyond possession to deception to obtain dangerous drugs, theft of drugs etc. Also know that due to a drafting error in issue 1 this will likely apply to any level of offense. Which is explained below. This is the constitutional law sections, the Ohio judicial conference, OPAA and many others, official interpretation. Again this is likely due to bad drafting.

This section makes the following changes to classification and sentencing:

The offense shall not be classified higher than a misdemeanor, which may be either a general or special classification for the offense.

The sentence may not exceed that of a first-degree misdemeanor.

For an individual’s first or second conviction within a twenty-four month period, the sanctions shall not exceed probation.

If an individual has more than two convictions within a twenty-four month period, then sanctions may include jail time or probation in lieu of jail time.

*So date rape drug no jail, fentanyl no jail, meth & cocaine no jail. Oh and its retroactive as outlined below.*

***“Graduated responses for non-criminal violations of probation”: Section (E)***

Generally, this section obligates common pleas (General Division and Juv) courts to adopt guidelines for imposing alternative sanctions (“graduated responses”) for probation violations that do not include a criminal conviction (“non-criminal violations of probation”). Issue 1 defines these terms as follows:

“Graduated responses” refers to “an accountability-based graduated series of sanctions and incentives designed to protect communities, hold people accountable, and prevent repeat offenses by providing appropriate responses for unlawful actions and by inducing and reinforcing law-abiding behavior.” Examples include “drug treatment, community service, fines, electronic monitoring, detention other than in a county or municipal jail, detention in a county or municipal jail, but only upon the court making a finding and setting forth a particularized factual basis that the individual presents a risk to themselves or the public, and earned rewards, such as reduced sentences for compliant conduct as the trial court deems appropriate.”

A “non-criminal violation” (of probation) does not include “[a]n action that results in a criminal conviction.” It may include actions like “a drug use relapse, missing a curfew, *missing or being late for a probation meeting*, changing an address without permission, *failing to timely pay a fine, or failing to perform required community service.*”

“Probation” includes community control sanctions. This section requires:

Each trial court with jurisdiction to revoke an adult’s or juvenile’s probation for a non-criminal violation to prepare guidelines for graduated responses that may be imposed for such violations. The guidelines must be submitted to ODRC (or its successor agency) for approval. The guidelines must be prepared and submitted within 90 days of the effective date of the proposed amendment.

***No individual who is on probation for a felony offense, on or after the effective date of the proposed amendment, may be sent to prison on a probation revocation for non-criminal violations of their probation.***

Instead, non-criminal violations shall be dealt with in accordance with the guidelines for graduated responses as required by this provision.

This provision is not limited to drug-related offenses.

This provision (and the proposed amendment as a whole) does not apply to, change, or affect laws or sentencing for the incarceration of individuals convicted of murder, rape, or child molestation. What this means for us is that of someone is on felony community control absent a new criminal conviction they cannot be sent to prison, so fail to pay restitution cant got to prison only jail, blow off the PO can’t go to prison only jail, etc. and remember jail can only be invoked after the “graduated” response. **So basically any doubt don’t risk probation.**

***Retroactive application: Section (F)***

This provision generally allows individuals who were convicted of drug offenses affected by issue 1 to petition the court to change the charge (and for resentencing and/or release).

The court must make a finding with “a particularized factual basis” that the individual should not be resentenced and/or released because they present “a risk to the public.”

This section also applies to “[a]ny individual who, prior to the effective date of this [proposed amendment], was convicted under Ohio law of an offense of possessing, obtaining, or using a drug or drug paraphernalia, or was adjudicated a delinquent based on such an offense[.]”

So we can have a lot of hearings and motion work, and if you had a plea deal or trial on any of the possession, sentence are likely to get wiped out.

***Provisions do not apply to convictions for the sale, distribution, or trafficking of drugs: Prop. Am., § (G)***

This section claims to limit the applicability of Sections (D) and (F). It states that those sections of the amendment do not apply to:

Convictions for the sale, distribution, or trafficking of drugs; or

Convictions for any drug offense that, based on volume or weight, and as of January 1, 2018, was classified as a first, second, or third-degree felony offense.

The flaw in this section refers to “convictions” for these crimes. This section essentially has no meaning with respect to possession offenses because Section (D) reclassifies these crimes as misdemeanors. In short, because Section (D) reclassifies these crimes as misdemeanors, prosecutors cannot charge possession offenses as felonies, offenders therefore cannot be convicted of these offenses as felonies, and Section (G) cannot be invoked. This is the official interpretation by the offices constitutional law section. The Ohio judicial conference also believes this to be true as well as OPAA and a host of others.

Matt

Matthew J. Donahue  
Section Chief



Special Prosecutions Section  
Office of Ohio Attorney General Mike DeWine  
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Fax number: 866-910-2107  
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