



# Office of Budget and Management

John R. Kasich  
Governor

Timothy S. Keen  
Director

October 10, 2018

The Honorable Jon Husted  
Ohio Secretary of State  
180 E. Broad Street  
16<sup>th</sup> Floor  
Columbus, OH 43215

Dear Secretary Husted:

Pursuant to Ohio Revised Code Section 3519.04, this letter contains the Office of Budget and Management's (OBM) fiscal analysis of the proposed constitutional amendment, State Issue 1, *To Reduce Penalties for Crimes of Obtaining, Possessing, and Using Illegal Drugs*, which attempts to reduce the population in state prisons and reform drug laws. This proposed constitutional amendment will appear before voters on the general election ballot for the election to be held on November 6, 2018. Section 3519.04 specifically requires OBM to estimate the annual expenditure of public funds associated with an initiated statute or constitutional amendment.

The proposed amendment is based upon a premise that the provisions will lead to a reduction in the number of people incarcerated for drug offenses, probation violations, as well as the expansion of earned sentencing credits, which will consequently result in savings that can be appropriated for drug treatment and other purposes. The language of the amendment provides for a prescriptive calculation to identify these savings, which OBM refers to in the analysis as constitutionally calculated savings. As the analysis explains, implementation of the amendment would generate an amount of constitutionally calculated savings that would likely substantially overstate the actual savings to the Ohio Department of Rehabilitation and Correction (DRC). These conclusions were reached based on DRC's observations following prior sentencing reform efforts where systemic local behavioral changes altered prior sentencing patterns.

Furthermore, the determination of the constitutionally calculated savings is complicated by ambiguities in the language of the amendment that could lead to varied interpretations of how direct and indirect factors impact population changes. Additionally, the assigned per diem amounts in the constitutionally calculated savings may or may not account for the actual daily costs of incarceration. This lack of clarity will impact the level of constitutionally calculated savings, which in turn will impact the level of required appropriations and total cost to the state.

Additionally, the fiscal impact of State Issue 1 to local governments will be realized in the form of two cost-related shifts. First, local governments will see a cost shift as former felony offenders that are no longer eligible for incarceration as a sanction transfer from the responsibility of the state to local governments administering increased amounts of non-incarceration eligible sanctions. Second, as thousands of people who were once charged with felony drug crimes get reclassified to misdemeanor offenses the cases will shift from county common pleas courts to the

jurisdiction of local municipal courts, thus adding additional costs to municipal courts, including the administration of post adjudication sanctions.

Therefore, OBM concludes that the proposed amendment would not produce significant savings to the state and could (depending on interpretation) actually increase costs to the state by tens of millions of dollars. For local governments, the proposed amendment would add costs that likely would not be covered by potentially available appropriations under amendment.

I trust that this letter and the attached analysis fulfills the statutory requirements of Ohio Revised Code Section 3519.04. Please contact me if you have any questions about the content of either.

Sincerely,

A handwritten signature in blue ink that reads "Timothy S. Keen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Timothy S. Keen  
Director

Attachments

## OBM Analysis of 2018 State Issue 1

### I. Introduction

State Issue 1 titled “To Reduce Penalties for Crimes of Obtaining, Possessing, and Using Illegal Drugs” on the November 6, 2018, ballot would add a new Section 12 to Article XV of the Ohio Constitution designed to reshape the funding and implementation of Ohio’s drug treatment and correctional rehabilitation programming.

#### A. Ballot Board Description

The Ohio Ballot Board issued the following description of the components of State Issue 1<sup>1</sup>:

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;

Mandate that criminal offenses of obtaining, possessing, or using any drug such as fentanyl, heroin, methamphetamine, cocaine, LSD, and other controlled substances cannot be classified as a felony, but only a misdemeanor;

Prohibit jail time as a sentence for obtaining, possessing, or using such drugs until an individual’s third offense within 24 months;

Allow an individual convicted of obtaining, possessing, or using any such drug prior to the effective date of the amendment to ask a court to reduce the conviction to a misdemeanor, regardless of whether the individual has completed the sentence;

Require any available funding, based on projected savings, to be applied to state-administered rehabilitation programs and crime victim funds;

Require a graduated series of responses, such as community service, drug treatment, or jail time, for minor, non-criminal probation violations.

#### B. Public Expenditures and State Issue 1

The Office of Budget and Management (OBM) is required to determine cost impacts to state and local governments of any statewide ballot initiative at the request of the Ohio Secretary of State. Specifically, section 3519.04 of the Ohio Revised Code (R.C.) requires OBM to provide “an estimate of any annual expenditure of public funds” proposed by the amendment. An assumption underlying the funding-related provisions of State Issue 1 described in the fifth bullet point above, is that savings based on reduced days of incarceration will occur due to the implementation of several key components of the proposed constitutional amendment<sup>2</sup> which will hereinafter be referred to throughout this analysis as “constitutionally calculated savings”. Those ostensible savings are then required to be appropriated in and expended through the state budget with 70% of the calculated savings allocated for grants for substance abuse treatment programs administered through the Ohio Department of Mental Health and

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<sup>1</sup> August 22, 2018 Ballot Board Meeting

<sup>2</sup> See Division (I) of State Issue 1.

Addiction Services (MHA)<sup>3</sup> and the remaining 30% to “be disbursed for purposes consistent [with State Issue 1] for people in the justice system”, at least half of which (15% of the total) is to be disbursed through grants for victim trauma recovery services, administered by the Ohio Attorney General’s Office (AGO).<sup>4</sup> The remaining amounts (not more than 15% of the total) are required to be disbursed for purposes including “crime victim programs, adult and juvenile probation department programs, graduated responses<sup>5</sup> programs, and rehabilitation programs for people in the justice system”.<sup>6</sup>

#### C. Effective date

State Issue 1 is a citizen-initiated constitutional amendment in accordance with Article II, Section 1a of the Ohio Constitution. State Issue 1 lacks a specified effective date, therefore, if successful, Article II, Section 1b of the Ohio Constitution sets a default effective date as 30 days after voter approval. Therefore, OBM assumes that if successful, State Issue 1 will become effective in 30 days after passage, or December 6, 2018.

#### D. Required Actions for Implementation by State Entities

While State Issue 1 will be effective 30 days after approval, a number of additional actions by state entities will be necessary before the provisions of the amendment can be fully implemented. Specifically, the Ohio General Assembly will be required to make appropriations from the state treasury<sup>7</sup> in the amount of assumed state savings calculated in accordance with the amendment<sup>8</sup> and make wide-ranging changes to the Ohio Revised Code in a way to reclassify certain drug-related criminal offenses and corresponding sanctions.<sup>9</sup> In order to make these appropriations, some state entity will need perform an initial calculation to determine the constitutionally calculated savings to be finalized on or before July 1, 2019. This analysis assumes that all future calculations (including the initial calculation) will be made by the Department of Rehabilitation and Corrections (DRC) in coordination with OBM. Specifically, DRC will need to determine the number of fewer days of incarceration by projecting the state prison population “but for” implementation of State Issue 1; then, based on DRC’s projection, OBM will need to determine the amount of constitutionally calculated savings to make recommended appropriations for MHA, AGO, and other state agencies, presumably to be included in the Governor’s budget proposal.<sup>10</sup> After budget introduction, the General Assembly will review these projections and calculations to consider further changes throughout the state budget process in order to finalize agency appropriations mandated by

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<sup>3</sup> See Division (B)(2)(b) of State Issue 1.

<sup>4</sup> See Division (B)(2)(c) of State Issue 1.

<sup>5</sup> “Graduated responses” is defined in Division (J)(6) of State Issue 1.

<sup>6</sup> Division (B)(2)(c) of State Issue 1.

<sup>7</sup> General appropriation authority is found in Article II, Section 22 of the Ohio Constitution.

<sup>8</sup> See Divisions (I) and (B) of State Issue 1.

<sup>9</sup> See generally Division (D) of State Issue 1.

<sup>10</sup> See R.C. 107.03 requiring the Governor to submit a budget recommendation which has traditionally been translated into the initial “As Introduced” Main Operating Budget Legislation.

State Issue 1. Finally, the General Assembly will be required to “enact a system to adjust appropriations [at the close of the fiscal biennium] based on true-ups of the projected savings”.<sup>11</sup>

## II. Analytical Approach

Over the course of OBM performing these analyses in years past, personnel from other state agencies, local offices, and other appropriate organizations have been a critical resource, providing context and subject matter expertise in the estimation of costs. The analysis required with respect to State Issue 1 is no different. Therefore, the analytical approach used by OBM to present the information in this report and appropriately frame the conclusions herein relies on information and expertise provided by a number of state agencies<sup>12</sup> including most heavily, DRC as the state agency tasked with implementing laws related to incarceration of individuals in Ohio.

When estimating costs related to State Issue 1, the key issue identified in this analysis is the determination of “savings” under the amendment. Specifically, the question is whether the constitutionally calculated savings will approximate actual savings likely generated by the provisions of the amendment, or whether actual savings will fall short of the calculation and thus the amendment provisions will actually result in a net cost to the state and local governments implementing the amendment. The following portion of this analysis addresses this question in two main ways: first, by evaluating the constitutionally calculated savings using a model projecting potential reductions in the state prison population under State Issue 1, and by identifying potential operational impacts for state and local government entities implementing the amendment (*See Section III. Implementation Considerations and Challenges*).

### Modeling the State Prison Population Impact

Currently, DRC houses nearly 50,000 inmates at Ohio’s 28 prisons.<sup>13</sup> As indicated throughout this analysis, the main assumption of the proposal behind State Issue 1 is that implementation will lower the prison population to drive down state prison costs. In order to test the appropriateness of this assumption and the impact on reducing the total number of inmates on annual costs, OBM leveraged the expertise of DRC to model prison population changes. As more fully explained in DRC’s analysis (*See Attachment A*) this population model was not created in response to State Issue 1, but rather has been developed, refined, and relied on by the agency for years to project population changes. The model serves both to project a population baseline under current law to assist the agency in budgeting, and also to estimate the population impacts of potential law changes.

With respect to the requirements of State Issue 1, the constitutionally calculated savings requires the state to project the fewer number of days of incarceration on a biennial basis attributed to the implementation<sup>14</sup> of the provisions requiring the reclassification of certain drug offenses<sup>15</sup>, prohibiting

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<sup>11</sup> Division (I)(3) of State Issue 1.

<sup>12</sup> OBM also reached out to representatives from the Department of Youth Services, the Department of Mental Health and Addiction Services, the Attorney General’s Office, and the State Public Defender.

<sup>13</sup> See Attachment A, pg. 4.

<sup>14</sup> See Division (I) of State Issue 1.

<sup>15</sup> See Division (D) of State Issue 1.

incarceration for non-criminal probation violations (“graduated responses”)<sup>16</sup>, expanding the provision of sentencing credits for current prisoners<sup>17</sup>, and retroactively applying the amendment.<sup>18</sup> Therefore, the impacts of each of those provisions were modeled by DRC in order to project future overall impacts to the state prison population. These models accounted for current law provisions that overlap with some of the provisions of State Issue 1. For example, DRC already projects a number of prison diversions under the Targeted Community Alternatives to Prison (T-CAP) program<sup>19</sup> which would have an overlapping effect with the reclassification, retroactivity, and graduated responses provisions of State Issue 1. The results of estimating only the direct impacts of Issue 1 on inflows to prison, which are an input variable in the model of total prison occupancy (accounting for current law and State Issue 1 requirements) yielded an initial projection of about 3,800 fewer annual prison commitments attributable to the reclassification and graduated responses provisions, about 1,800 fewer commitments over a 10-year period attributed to changes in sentencing credits, and around 100 fewer prisoners under the retroactive provision.<sup>20</sup>

However, it has been DRC’s experience through past sentencing reform measures that indirect or offsetting factors must be considered in order to more accurately predict the impacts to state prison population numbers. Therefore, a full analysis of the population impacts of Issue 1 requires further consideration of implementation factors that could potentially offset this reduction. These offsetting or indirect factors are more fully discussed in the following section of this analysis addressing implementation considerations of State Issue 1.

### III. Implementation Considerations and Challenges

State Issue 1, as with any constitutional amendment carries with it a number of implementation considerations and potential challenges for the state and local government entities affected by the amendment. The following section addresses the main implementation considerations to frame potential indirect and offsetting factors with respect to the constitutionally calculated savings, potential litigation, organization of Ohio criminal statutes, and operational impacts of State Issue 1.

#### A. Constitutional Funding Requirements

As explained throughout this analysis, State Issue 1 presumes that reducing the incarcerated population through reclassification of felonies and sentencing reductions will achieve state savings. This presumption is inferred from the allocation and appropriation of state funds required in the amendment. The total required amount of appropriation is dependent on a calculation of the “constitutionally calculated savings”. Underlying the constitutionally calculated savings is a calculation of the sum of the “projected

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<sup>16</sup> See Division E of State Issue 1.

<sup>17</sup> See Division C of State Issue 1.

<sup>18</sup> See Division F of State Issue 1.

<sup>19</sup> See R.C. 5149.38.

<sup>20</sup> The figures cited herein reflect the estimated annualized decline in commitments into DRC facilities, per DRC’s modeling of the direct impact of Issue 1. “Commitments” are one of several variables that generate the estimated average daily population figures used in the fiscal estimates as provided in Table 1 on pg. 15 of this report. Commitments figures may be found in the “Executive Summary of Key Findings” in Attachment A, pgs. 1-4, and also pg. 7.

fewer number of days of incarceration” for individuals based on the implementation of the various provisions of the amendment<sup>21</sup> multiplied by a constitutionally assigned “per diem” amount. Three implementation challenges related to this calculation and funding allocation are that: (1) as written, the language contains ambiguities that affect the determination of the constitutionally calculated savings amount; (2) local government administration of the amendments requirements will likely result in behavior changes; and (3) the constitutionally calculated savings are not necessarily reflective of real savings for the state. The following material explains in further detail these issues with respect to the language of the amendment.

### 1. *Direct and Indirect Impacts of Language Ambiguities*

The plain language of the amendment setting out the constitutionally calculated savings states the following:

*“(I) Calculation of Savings to the State.*

*(a) The State shall project the fewer number of days of incarceration that will be served in state prisons during the biennium as a result of Divisions (C), (D), and (F) of this Section and multiply the number by a per-diem amount of forty dollars.*

*(b) The State shall project the fewer number of days of incarceration that will be served in state prisons during the biennium as a result of Division (E) of this section and multiply the number by a per-diem of thirty dollars.”*

As is apparent from the language, the components of several divisions are specifically factored into a “calculation” to project “savings” based on assigned per diems (constitutionally calculated savings). While the calculation of savings may appear unambiguous, further examination reveals that to not be the case. The state – presumably the DRC and OBM – must project the reduction in days of incarceration. In doing so, one must ask whether only direct effects of the specifically referenced divisions should be factored into this calculation, or whether indirect effects should also be taken into consideration? This question is crucial because indirect effects of these constitutional provisions projected by DRC will likely offset some of the reduction in days of incarceration.

To further explain, consider two of the specifically referenced divisions: Division (D) contains the provisions that require “non-serious, non-violent drug offenses” to be reclassified as misdemeanors rather than felonies, and Division (F) states that this reclassification also applies retroactively. Rather than purely reducing prison commitments and therefore reducing the state prison population, the research supporting this analysis indicates that there will likely be some offsetting additional prison sentences from the population that violates probation.<sup>22</sup> Additionally, as further explained later in this analysis, local courts may be more likely to commit to prison those probationers who violate their probation in a criminal manner as a response to their increased probation caseload resulting from the inability to send non-

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<sup>21</sup> Division (I)(2)(a)-(b) of State Issue 1.

<sup>22</sup> See Attachment A, Finding V. on pg. 3.

criminal probation violators to prison under Issue 1.<sup>23</sup> If these indirect impacts of Issue 1, which likely reflect real world responses of local courts, are to be included in the projected fewer days of incarceration, the result is likely to drive down the projected reduction in commitments and therefore considerably reduce any savings. Therefore, depending on whether only direct effects of reclassification are to be considered, or whether indirect effects are also projected, the constitutionally calculated savings, and therefore the required levels of appropriation, may vary by millions of dollars per year, because the estimated number of saved days of incarceration may vary by thousands of days per year between indirect and direct implementation considerations.

## *2. Behavioral Changes in Ohio Criminal Justice System*

As referenced above, throughout the preparation of this analysis, DRC consistently presented implementation challenges regarding anticipated change in prosecutorial and judicial behavior in response to the implementation of State Issue 1 in part due to the ambiguity of the language of State Issue 1, but also due to local choices in responding to increased workload. Specifically, DRC identified two separate potential changes in behavior if State Issue 1 is adopted: (1) that individuals indicted on higher level felony drug possession charges<sup>24</sup> will not have their charges reduced because State Issue 1 would not allow incarceration on the lesser charges<sup>25</sup> and therefore these individuals will be convicted of felonies and sentenced to probation at a much less frequent rate; and (2) that individuals on felony probation subsequently arrested for a later crime will have their probation revoked at an increased rate.<sup>26</sup> With respect to these behavioral change scenarios, if either is realized, it will likely mitigate a portion of the assumed prison population reduction and therefore any corresponding assumed savings under the constitutionally calculated savings.

## *3. Calculation is not Real Savings*

Even if one were to resolve the ambiguity of the calculation of reduced incarceration days, there is still the issue of the assigned per diem<sup>27</sup> required by the constitutionally calculated savings in comparison to any actual state savings. There are two per diems, one of \$40, and one of \$30 that apply to specific divisions of State Issue 1.<sup>28</sup>

It is not clear how the proponents of State Issue 1 determined the per diem amounts. They are lower than statewide average per diem costs for state prison, but higher than purely marginal costs per diem (please see below discussion of average vs. marginal costs). Based on DRC analysis, they seem to be closer to average than marginal per diem costs. This is important because in order to achieve savings that approximate average costs, the reduction in prison population would have to be large enough to close

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<sup>23</sup> This may also be an indirect effect of the “graduated responses” probation violation requirements of Division (E) of State Issue 1; see Attachment A, Finding VI. on pg. 3.

<sup>24</sup> Felonies of the first, second, and third degree.

<sup>25</sup> Formerly, they could be plead from down to felonies of the fourth and fifth degree, which under State Issue 1 would now be misdemeanors.

<sup>26</sup> See Attachment A, pgs. 11-13.

<sup>27</sup> Costs assigned reflecting a “per day” amount.

<sup>28</sup> See Division (I) of State Issue 1.

wings of prisons, entire prisons, or at least to allow significant reductions in staff. It seems very unlikely that the reductions in prison population under State Issue 1 could approach these levels, given that in FY 2018, there were only approximately 1,600 new court commitments to DRC with one or more convictions of a drug possession offense at the Felony 4 or 5 level<sup>29</sup>, but without other accompanying non-drug possession offenses.<sup>30</sup> These are presumed to be the offenses targeted for reclassification under State Issue 1. Even if all these prison commitments were prevented by State Issue 1 – which is unlikely given that some of these already will result in alternative sanctions under TCAP (see above) – this represents less than 3.5% of the existing prison population. The savings under State Issue 1 thus are likely to be limited to consumable supplies, which would only be about 1/3 of the constitutionally required \$40 per diem used in the calculation. The constitutionally calculated savings therefore are likely to substantially overstate actual savings due both to an overstatement of the “saved days” and a required per diem that overstates actual per diem savings.

Any estimated savings from lower numbers of persons incarcerated must also take into account the issue of the difference between average and marginal costs. Estimates of savings that are generated by multiplying an estimated reduction in the number of prisoners, or prisoner days, by average costs per prisoner per day are likely to substantially overstate estimated savings, unless the reduction in prisoner days is large enough to reduce fixed costs.

Prisons function to rehabilitate and secure the inmate population. The prison system has fixed costs, such as the buildings and equipment, and a base level of labor and energy. Variable costs include additional labor, with cost inconsistencies likely derived from the need for additional guards when the number of additional prisoners meets a certain threshold, and a corresponding need for supplies that prisoners require such as food, clothing, and medical supplies. Marginal cost is lower than average cost, so the addition or subtraction of a prisoner changes costs by much less than the computed average cost across all prisoners. According to information from DRC, marginal per diem costs of an additional prisoner are only about 14% to 17% of average per diem costs, because the fixed cost portion of total costs is quite high. Therefore, to achieve significant savings, reform that reduces incarceration levels would have to reduce the prison population by a large enough amount to reduce fixed costs, by reducing required staff and possibly closing entire buildings. As indicated above, a reduction this large is not anticipated through implementation of State Issue 1.

## B. Potential Litigation

In addition to the other considerations and challenges identified by this section, because State Issue 1 requires a constitutional allocation of funding for specific programs, if it were to succeed, it is important to consider potential litigation challenging the implementation of its provisions. In fact, given the constitutional funding afforded to State Issue 1, a similar parallel may be drawn to historical challenges asserting that Ohio laws unconstitutionally failed to meet the “thorough and efficient” educational

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<sup>29</sup> Under R.C. 2925.11.

<sup>30</sup> See Attachment A, Finding VI, on pg. 3 and see also pg. 5.

funding allocation requirements of the Ohio Constitution.<sup>31</sup> OBM has initially identified the potential for litigation involving two general areas: (1) Funding Decisions and (2) Individual Program Access Claims.

### *1. Funding Decisions*

As discussed above, State Issue 1 constitutionally mandates the allocation of state funding<sup>32</sup> for substance abuse, crime victim, and rehabilitative-related programs for individuals serving sentences in the Ohio justice system.<sup>33</sup> This mandate initially presents the potential for litigation in two ways: (1) challenging whether the correct total amount of constitutionally calculated savings was identified and appropriated for the grant programs, and (2) challenging the correct allocation of funding among the programs. With respect to litigation challenging the amount of cost savings and appropriation, potential litigants may assert that the state failed to properly apply the calculation included in State Issue 1 and therefore, failed to sufficiently appropriate the correct total amount of “savings to the State.” In the alternative, potential litigants may claim that the state properly applied the calculation but inappropriately “supplanted” rather than supplemented current funding obligations as intended by State Issue 1. With respect to litigation challenging the correct allocation of funding, potential litigants may assert that the state failed to properly allocate the total amount between the identified agencies for the specific purposes in State Issue 1. Additionally, a potential litigant may claim that programs appropriated by the General Assembly are inconsistent with the constitutional requirements of this amendment. It is reasonable to assume that the potential for litigation under this theory may increase as time passes because the language of State Issue 1 allows the General Assembly to “adjust the ratio of funds to be disbursed” every six years.<sup>34</sup> OBM assumes that more discretion could create the potential for dissension among funding recipients presumed to benefit from this amendment and therefore increase the risk for litigation.

### *2. Individual Program Access Claims*

It is also important to recognize the potential for litigation regarding the implementation of sentencing credit requirements included in State Issue 1. State Issue 1 requires DRC to alter its current sentencing credit requirements to increase the amount of credits inmates can earn toward early release for participation in “rehabilitative, work, or educational programming”.<sup>35</sup> Due to this change, there may be an increased demand for such programming, and if an inmate or class of inmates is dissatisfied with or claims to have insufficient access to sentencing-credit-eligible programs, they may seek judicial intervention.

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<sup>31</sup> See Article VI, Section 2 of the Ohio Constitution.

<sup>32</sup> See Division (B) of State Issue 1 generally.

<sup>33</sup> Rehabilitative-related programs is a reference to the “adult and juvenile probation department programs, graduated responses programs, and rehabilitation programs for people in the justice system” referenced in Division (B) of State Issue 1.

<sup>34</sup> See Division (B)(2)(d) of State Issue 1.

<sup>35</sup> See Division (C) of State Issue 1.

### C. Re-Writing Ohio Criminal Statutes

Another implementation consideration should State Issue 1 succeed, is the need to amend much of Ohio's statutory framework involving drug crimes in Ohio. As an amendment to the Ohio Constitution, State Issue 1 would take primacy to override all current statutes related to the classification of drug possession crimes and specifically prohibit "state laws that make possessing, obtaining, or using a drug or drug paraphernalia a criminal offense" from being "classified higher than a misdemeanor".<sup>36</sup> Additionally, State Issue 1 limits allowable sanctions for the foregoing crimes not to "exceed those of a first-degree misdemeanor" with jail unavailable as a sanction until an individual exceeds two convictions of such crimes in a 24-month period.<sup>37</sup> Neither of the foregoing classification or sanction limitations represent current law or administration of drug crimes in Ohio. Therefore, all current laws addressing the applicable crimes would arguably be considered unconstitutional 30 days after passage of State Issue 1 without anything replacing them unless the General Assembly took quick action<sup>38</sup> to amend current and enact new laws. This resulting uncertainty could potentially wreak havoc on state and local enforcement and administration of drug crimes unless and until issues related to criminal statutes addressing sentencing and sanction reforms imposed by State Issue 1 are resolved.

### D. Operational Impact to State Agencies and Local Government

Through the course of this analysis, as referenced above, OBM worked with several state entities to determine the operational impact each agency and office will experience should State Issue 1 pass.

OBM has determined that DRC will experience the most operational impact with implementation of State Issue 1. For reasons previously outlined in this analysis, and the operational costs of running 28 prisons being largely fixed, DRC will not see a significant savings and faces some potential cost increases related to increased participation in earned credit programs, an increase in legal fees for challenges related to the implementation and operation of the constitutional rights and responsibilities defined in State Issue 1 as well as inmates petitioning courts for reclassification, and data collection necessary to calculate the constitutionally calculated savings. With respect to data collection, starting with the initial calculation of the constitutionally calculated savings and on a going-forward basis, DRC will need to request and receive data reflecting any misdemeanor convictions that would have previously been classified as felonies prior to the effective date of State Issue 1. DRC currently does not collect data of this nature. This statewide data collection effort alone, would seem to require an increase workload and potential cost to DRC.

With respect to other agencies, as indicated earlier, OBM also reached out to the AGO, MHA, the State Public Defender (PUB), and the Department of Youth Service (DYS). Each of these agencies will see a change in their workload due to the requirements of State Issue 1, however, that change may not initially result in a cost impact. With respect to the AGO and MHA, while the amendment requires them to

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<sup>36</sup> Division (D) of State Issue 1.

<sup>37</sup> Division (D) of State Issue 1.

<sup>38</sup> This would likely require emergency action under Article II, Section 1d of the Ohio Constitution in order to enact laws not subject to the 90-day referendum period that generally applies to all laws enacted by the General Assembly.

administer grant programs for crime victim trauma recovery and substance abuse treatment programs respectively, since both the AGO and MHA already administer robust grant programs for these purposes any operational impacts due to these new responsibilities will be minimal and may be able to be absorbed with current staffing and funding levels. PUB may experience additional cost for individuals who exercise the additional rights granted by State Issue 1, including the right to petition a court to change charges; additionally, attorneys and administrative staff of state and county public defender offices may receive increased requests for legal assistance and counsel in the short-term. Finally, DYS is not expected to have any significant operational impacts attributed to State Issue 1 due to the negligible number of individuals eligible for reclassification under State Issue 1.

As explained further in Section IV, Fiscal Summary, due to the reclassification of Felonies 4 and 5 offenses to misdemeanors, local governments will see a significant change in how they currently operate and fund the common pleas courts and municipal courts. Consequently, local public defenders and prosecutors will experience a higher case load from these newly reclassified offenses that they would be required to handle; thus, there will be an increased financial burden to these entities.

#### IV. Fiscal Summary

The following section of this analysis addresses many of the implementation challenges discussed above in an attempt to produce a fiscal impact estimate for state government as well as addressing local fiscal impacts under R.C. 3519.04.

##### A. State government impact

As indicated below, due to the ambiguities and calculation complications of applying the constitutionally calculated savings discussed above, OBM believes there are several reasonable interpretations that might be adopted to implement State Issue 1 with respect to the required state funding and appropriations. Working with modeling results from DRC, OBM has come to the conclusion that the appropriations that would be required by the savings calculation specified in the constitutional amendment would be larger than actual savings to the state budget based on estimates of total reductions in state prison population and a reasonable range of costs per prison day associated with those reductions. The material below explains the constitutionally calculated savings and contrasts them with likely actual state budgetary savings.

##### Constitutional Calculation of Savings

The amendment creates a savings calculation that state agencies would be required to use in order to determine appropriations that the legislature would be required to make in the biennial operating budget. These estimated savings are to be calculated as follows:

- (i) Multiply the estimated reduction in average daily prison population due to the proposed increase in sentence credits under the amendment and the reclassification of certain drug

- offenses as misdemeanors (including retroactive application of this provision) by 365 days and then by \$40 per day;<sup>39</sup>
- (ii) Multiply the estimated reduction in average daily prison population due to the proposal that persons on probation for a felony offense shall not be sent to prison on a probation revocation for non-criminal violations of the terms of their probation by 365 days and then by \$30 per day;<sup>40</sup>
  - (iii) Add the savings from calculations (i) and (ii).<sup>41</sup>

As noted earlier, DRC has pointed out that even this calculation is not so straightforward as it may seem, because the number of criminals who would avoid being sentenced to prison under the amendment is smaller than the total population targeted by the provisions. As an example, in FY 2018 about 1,600 persons were committed to prison as Felony 4 or Felony 5 cases for drug possession offenses (without having also been sentenced for other more serious offenses as well).<sup>42</sup> But the reduction in commitments to prison that can be attributed to the provisions of Issue 1 is smaller than that because, of that 1,600 population, about 400 would be diverted from prison to the T-CAP program under existing law. As a result, the reduction in prison commitments due to Division D of Issue 1 would be only about 1,200 per year.<sup>43</sup> This is not the only “overlap” with current law; other such overlaps also exist in other areas, such as sentencing credits for rehabilitation.

After adjusting for reduced commitments to prison that would already occur under existing law but not adjusting for behavioral responses to Issue 1, DRC combined the estimated reduced commitments attributable to Issue 1 with other modeling inputs (such as the average length of stay for various types of offenders) to derive estimated reductions in average daily prison population referenced in (i) and (ii) above. These reductions, shown in the “Estimate 1” portion of Table 1<sup>44</sup> accompanying this report, were projected to be 1,694 in FY 2020, rising to 3,323 in FY 2023. Put in context, these projected reductions are about 3.5% to 6.9% of the baseline (no constitutional amendment) projections of prison population. Multiplying these estimated reductions by 365 days and then by either \$30 or \$40 per day, depending on which divisions of the amendment are causing the reductions, yields estimated annual cost savings of \$24.7 million in FY 2020, increasing to \$48.5 million in FY 2023. These estimates are shown in Table 1 as “Estimate 1.”

If this is deemed to be the calculation of cost savings required by the constitutional amendment, which then would require the General Assembly to make additional appropriations equal to these amounts (under the “supplement but not supplant”<sup>45</sup> provision) then the fiscal impact of the amendment will be a net increase in costs to the state, because as will be explained below, actual cost savings to the state are likely to be substantially less than these calculated amounts.

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<sup>39</sup> See Division (I)(2)(a) of State Issue 1.

<sup>40</sup> See Division (I)(2)(b) of State Issue 1.

<sup>41</sup> See Division (I)(2) of State Issue 1.

<sup>42</sup> See Attachment A, pg. 5.

<sup>43</sup> See Attachment A, pg. 6.

<sup>44</sup> See pg. 15 of this report.

<sup>45</sup> See Division (B)(2)(a) of State Issue 1.

## Incorporating Behavioral Changes by the Local Courts (Indirect Effects of Issue 1)

Based on its experience with prior criminal sentencing reforms, such as those contained in Amended Substitute House Bill 86 of the 129<sup>th</sup> General Assembly<sup>46</sup>, which did not deliver anticipated reductions in prison population, DRC staff believe that the actual reductions in average daily prison population resulting from Issue 1 will be much smaller than those calculated under the first method described above<sup>47</sup>. Specifically, DRC has estimated increases in average daily prison population resulting from:

- (i) Local courts imposing prison sentences rather than probation for a subset of Felony 1, 2, and 3 offenders;
- (ii) Local courts imposing prison sentences for a subset of felony probationers who under current law would receive a non-prison sanction.

These changes in court behavior are estimated to result in average daily population increases of about 1,400 in FY 2020, rising to about 2,400 in FY 2023. These projected increases offset most of the reduction in prison population calculated under the first cost savings method. Once these indirect impacts are taken into account, the reduction in average daily prison population due to State Issue 1 is projected to be only 301 in FY 2020, rising to 906 in FY 2023 (see "Estimate 2" in Table 1). These reductions represent only 0.6% to 1.9% of the baseline projected prison population.

When one multiplies these projected average daily population increases by a per diem of \$35 per day (an average of the \$40 and \$30 per diems specified in the amendment) to calculate the potential cost increases that would offset a large share of the cost savings calculated in Estimate 1 one finds that after these offsets the cost savings are reduced to \$6.9 million in FY 2020, rising to \$17.6 million in FY 2023. These estimated cost savings are shown in Table 1 as "Estimate 2."

Because the language of the constitutional amendment can reasonably be interpreted to allow for such indirect impacts in calculating the cost savings associated with State Issue 1 if this method were adopted, the constitutionally calculated savings would be much lower as would the associated required appropriations. Therefore, these savings would be much closer to the actual budgetary savings to the state, and might be cost neutral or result in only a slight increase in total state spending. It is important to note however, that the estimate produced using this indirect method does not account for the ancillary but also potentially offsetting implementation challenges addressed above such as potential litigation and agency operational impacts.

### Actual vs. Postulated Per Diem Savings

Neither the cost savings in Estimate 1 or Estimate 2 are realistic in the sense that they use the amendment's stipulated per diem amounts of \$30 or \$40. While these amounts are lower than DRC estimates of system-wide average daily costs per prisoner, they are still well above DRC estimates of purely marginal per diem costs. These projected marginal per diem costs are only \$11.73 in FY 2020 and

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<sup>46</sup> An Ohio Sentencing Reform bill enacted in 2011.

<sup>47</sup> See Attachment A, pgs. 11-13.

\$12.69 in FY 2021. A simple extrapolation of the FY 2021 increase yields projected marginal per diem costs of \$13.65 in FY 2022 and \$14.61 in FY 2023.

The use of estimated marginal costs is likely to give a more realistic estimate of the base level of actual cost savings resulting from State Issue 1 because the overall estimated reductions in prison population due to State Issue 1 are quite small relative to the total population. In percentage terms, after accounting for behavioral changes by local courts that lead to offsetting increases in the prison population, the percentage reductions in population resulting from State Issue 1 are only about 0.5% in FY 2020-2022, rising to 1.9% in FY 2023. These reductions may not be large enough to allow DRC to make the changes that would reduce fixed costs, such as closing a prison, a wing of a prison, reducing staff, etc. Without a reduction in fixed costs, savings are likely to be limited to reductions in consumable supplies, such as food, clothing, medications, and so on. Cost savings calculated under this assumption are quite small, ranging from \$1.1 million to a maximum of \$4.8 million in FY 2023. These savings are shown as "Estimate 3" in Table 1. Further, there is a question about whether prisons or units should or would be closed given the density of the current prison population across the 28 state prisons.

Cost savings could be larger than the base estimates if the projected 900-person reduction in prison population is enough to warrant the closing of a facility. As an example, the closing in 2018 of Southeastern Correctional Complex's Hocking Unit is estimated to save the state several million dollars per year. The facility housed 430 prisoners at an average cost of \$65 per diem. This cost was considered to be quite high relative to similar prison facilities. Multiplying 430 prisoners by 365 days by \$65 per day yields a gross savings of about \$10 million per year. Actual net savings will be smaller than that because the prisoners in the Hocking Unit were transferred to other facilities, where they will continue to cost some amount per year until their eventual release.

If cost savings are greater than the base level associated with purely marginal costs associated with consumable supplies due to facility closure, the cost savings could approximate the estimated savings associated with the calculation method that incorporates indirect, behavioral impacts on the prison population shown in "Estimate 2." However, even allowing for some savings associated with facility closure, overall state budgetary savings are very unlikely to approach the calculated savings required by the constitutional amendment under the first method, which allows no behavioral impacts. Therefore, depending on the method of calculation, it is likely that the overall impact of the amendment will range from no significant savings to the state up to a cost of tens of millions of dollars per year, as the required appropriations will exceed actual budgetary prison savings.

## B. Local Government Impact

As with state government, the local governments and court systems will also experience an increase in costs. In sum, local governments are likely to experience two cost-related shifts. First, the local governments will see a shift from the state costs to local costs with respect to former felony offenders that are no longer eligible for incarceration as a sanction. This will require the locals to absorb additional costs that were previously borne by the state as local governments will now be responsible for monitoring and administering increased amounts of non-incarceration eligible sanctions. It is also reasonable to

assume that the additional offenders addressed at the local level will cause an increase in workload and therefore local governments will see an increase in cost. Second, there will be a shift within local jurisdictions; as there will be potentially thousands of people who were once charged with a felony drug crime and previously would have been subject to the jurisdiction of county courts of common pleas, who under State Issue 1 will now be charged with a misdemeanor, subject to local municipal court jurisdiction. This shift will certainly add cost to operating the municipal courts and the administration of post adjudication sanctions.

As previously discussed in this analysis, State Issue 1 is very prescriptive in how the constitutionally calculated savings may be spent; 70% must be spent through the department of MHA for substance abuse treatment programs and of the remaining 30%, at least 15% must be spent on grants administered by the AGO for victim trauma recovery services. It is possible that local governments may be able to avail themselves of some portion of the MHA and AGO grants. Additionally, they may be eligible to receive some of the remaining, non-state entity allocated 15% of the constitutionally calculated savings. Note, it is unclear whether "operational costs" for local governments are an allowable constitutional expense for eligibility for such programs within the requirements of State Issue 1. In any event, an assumption that they are eligible and will receive such funding is too speculative to adopt at this time as it is dependent on the aforementioned agency discretion in administering grant programs as well as specific appropriation by the General Assembly in a manner that would subsidize local costs. Therefore, given the cost shifting from state to local and within local government jurisdictions under State issue 1, it is unlikely that local governments will be in a position to rely on offsetting the additional operational cost burdens imposed by these shifts through potential eligibility for a portion of the required grant programs.

TABLE 1

Summary of Alternative Estimates of Issue 1 Cost Savings Impact

Note: This table reflects only potential estimated impacts associated with DRC incarcerations. It does not include costs that Issue 1 could impose on other state entities and on local governments.

Estimate 1: Cost savings calculated using constitutionally prescribed per diems and without using any indirect effects (offsets) in the incarceration assumptions	FY 2020	FY 2021	FY 2022	FY 2023
<i>Group One:</i>				
Estimated reduction in average daily prison population: Divisions (C) and (D) of amendment <sup>(a), (b)</sup>	(537)	(790)	(959)	(1,716)
Group One Direct Effects Savings Calculation: Above amount multiplied by \$40 per diem and by 365 days	-\$7,840,200	-\$11,534,000	-\$14,001,400	-\$25,053,600
<i>Group Two:</i>				
Estimated reduction in average daily prison population: Division (E) of amendment <sup>(c)</sup>	(1,157)	(1,908)	(1,730)	(1,607)
Group Two Direct Effects Savings Calculation: Above amount multiplied by \$30 per diem and by 365 days	-\$16,892,200	-\$27,856,800	-\$25,258,000	-\$23,462,200
Sum of groups one and two: Total Cost Savings, Estimate 1	-\$24,732,400	-\$39,390,800	-\$39,259,400	-\$48,515,800
<i>Additional detail related to average daily prison population figures used in Estimate 1:</i>				
Divisions C, D, and E reduction in average daily prison population	(1,694)	(2,698)	(2,689)	(3,323)
Average daily prison population after implementation of Divisions C, D, & E	47,028	45,525	45,278	44,800
Percentage reduction in average daily prison population from baseline	-3.5%	-5.6%	-5.6%	-6.9%

Estimate 2: Cost savings calculated using constitutionally prescribed per diems and incorporating indirect effects (offsets) into the incarceration assumptions	FY 2020	FY 2021	FY 2022	FY 2023
Starting point: Estimate 1, provided above	-\$24,732,400	-\$39,390,800	-\$39,259,400	-\$48,515,800
<i>Assumed offset effects:</i>				
Local courts impose prison sentences rather than probation for a subset of Felony 1,2,3 offenders; and local courts impose prison sentences for a subset of felony probationers who under current law receive local sanctions: average daily prison population increase	1,393	2,451	2,468	2,417
Cost increases from offsets: above daily prison population increase, multiplied by \$35 per day and by 365 day	\$17,795,575	\$31,311,525	\$31,528,700	\$30,877,175
Total cost savings after offsets, Estimate 2 (estimate 1 savings, less cost increases caused by offsets)	-\$6,936,825	-\$8,079,275	-\$7,730,700	-\$17,638,625
<i>Additional detail related to average daily prison population figures used in Estimate 2:</i>				
Average daily prison population, incorporating offsets	(301)	(247)	(221)	(906)
Average daily prison population after implementation of Divisions C, D, & E and incorporating offsets	48,421	47,976	47,746	47,217
Percentage reduction in average daily prison population from baseline	-0.6%	-0.5%	-0.5%	-1.9%

Estimate 3: Cost savings using marginal costs rather than constitutionally prescribed per diems and incorporating indirect effects (offsets) into the incarceration assumptions	FY 2020	FY 2021	FY 2022	FY 2023
Starting point: Estimate 2 average daily prison population reduction, after offsets	(301)	(247)	(221)	(906)
DRC Estimated Marginal Costs <sup>(d)</sup>	\$11.73	\$12.69	\$13.65	\$14.61
Total Cost Savings, Estimate 3: Using average daily prison population assumptions that incorporate indirect effects (per estimate 2 above), multiplied by marginal per diem costs <sup>(e)</sup> and by 365 days	-\$1,288,716	-\$1,144,067	-\$1,101,077	-\$4,831,381

(a) Division (C) refers to the prescribed new sentence credits, equal to one-half day per each day in eligible programming, up to 25% of the individual's stated sentence.  
 (b) Division (D) refers to the reclassification of certain drug-related offenses to a misdemeanor with sanctions not to exceed probation (unless there are more than two such convictions within 24 months).  
 (c) Division (E) refers to the graduated responses for non-criminal violations of probation.  
 (d) FY 2022 and 2023 reflect projections made by OBM using the DRC FY 2020 and 2021 forecasts.  
 (e) Actual cost savings would be greater to the extent that fixed costs were to be reduced.  
 (f) No projected inflation adjustments applied to per diem amounts in FY 2022 and 2023.  
 (g) Impacts for Division (F) dealing with retroactive application were excluded based on the minimal change as indicated by DRC.

**MEMORANDUM**

TO: Timothy S. Keen,  
Director of the Office of Budget and Management (OBM)

FROM: Stuart C. Hudson   
Interim Director of the Ohio Department of Rehabilitation & Correction

DATE: October 4, 2018

RE: Analysis of Impact of Statewide Issue 1

Director Keen:

Several months ago, your agency asked the Ohio Department of Rehabilitation & Correction (DRC) for assistance in reviewing and analyzing the impact of Statewide Issue 1, which appears on the ballot in November's general election. After diligent work by DRC staff and substantive discussions between our agencies over that period, attached is a comprehensive analysis of Issue 1. We hope you find this information helpful to OBM's review of Issue 1.

**Ohio Department of Rehabilitation and Correction**  
**Analysis of the Impact of Statewide Issue 1, Proposed Constitutional Amendment,**  
**on Prison Population**

The Ohio Secretary of State has certified a statewide ballot issue for the November 6, 2018 General Election called Issue 1. Titled “*To Reduce Penalties for Crimes of Obtaining, Possessing, and Using Illegal Drugs,*” Issue 1 was successfully proposed by initiative petition, and proposes to add a new Section 12 to Article XV of the Constitution of the State of Ohio.

Under Ohio Revised Code (R.C.) Section 3519.04, the Ohio Secretary of State has requested that the Ohio Office of Budget and Management (OBM) prepare an estimate of the annual expenditure of public funds proposed by Issue 1. As part of preparing its estimate, OBM has requested that the Ohio Department of Rehabilitation and Correction (DRC) use its best available data and prepare an estimate of the population impact of passage of Issue 1.

**EXECUTIVE SUMMARY OF KEY FINDINGS:**

**Overall Impact: The passage of State Issue 1 would reduce Ohio’s prison population by approximately 900 by FY 2023 compared to current projections.<sup>1</sup>**

**Direct Impact of Issue 1 on Commitments to Ohio Department of Rehabilitation and Correction**

- I. **Finding:** Issue 1 would reclassify felony 4 and 5 drug possession offenses to misdemeanors and thus result in approximately 1,200 fewer new court commitments to DRC annually.

**Explanation:** *See Step 5 in Analysis section below.*

In FY 2018, DRC received 18,626 commitments from court. About 15% (2,738) had one or more drug possession convictions as the most serious, current offense. An even smaller number, 1,616, were convicted of possession at the level of a felony 4 or 5 and had no other accompanying non-possession convictions. Projected prison diversions in FY 2019 under the Targeted Community Alternatives to Prison (TCAP) statute overlap partly with the same population that would be reclassified under Issue 1, reducing it further to approximately 1,200.

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<sup>1</sup> This analysis assumes no other changes in current Ohio criminal sentencing laws.

- II. **Finding:** Issue 1 would prohibit revocations to prison for non-criminal violations of felony probation and thus result in approximately **2,700 additional reductions** in new court commitments to DRC annually.

**Explanation:** *See Step 6 in Analysis section below.*

Of the 18,626 commitments DRC received in FY 2018, 3,577 were admitted for non-criminal violations of the conditions of felony probation. Accounting for the overlap between this population and the Issue 1 reclassified and TCAP diversion populations reduces the 3,577 group down to **2,700**.

#### Direct Impact of Issue 1 on Population of Ohio Department of Rehabilitation and Correction

- III. **Finding:** Considered alone, the expansion of sentence credits would result in a prison bed savings of approximately **1,800** over the course of 10 years after implementation.

**Explanation:** *See Step 8 in Analysis section below.*

Issue 1 would shorten incarceration lengths for a subpopulation of inmates who qualify to earn an expanded number of sentence credits for involvement in approved rehabilitative work or programming. Under the proposed language, credits would be awarded on the basis of one half day per day of participation (up to 25% of the stated term), replacing the current bifurcated system by which eligible inmates may earn just one or five days per month (up to 8% of the stated term), regardless of the actual number of days in an active program status. Based on observed participation rates in current earned credit programs, and then adjusting for the higher accrual rates and broader eligibility criteria under Issue 1, the additional cumulative reduction in the population is projected to be approximately **1,800** within 10 years.

- IV. **Finding:** Retroactive Application of Issue 1 would result in a one-time reclassification and early release of approximately 100 currently incarcerated inmates on or after implementation.

**Explanation:** *See Step 9 in Analysis section below.*

As of July 2018, there were 662 felony 4 and 5 drug possession inmates currently incarcerated with no other accompanying non-possession convictions. After accounting for projected attrition over time among overlapping TCAP-eligible offenders and then excluding the expected number of inmates with prior incarcerations, the remaining balance with sufficient time remaining on their sentence for judicial review is minimal, estimated to be 111 at the time of implementation.

## Implementation Impact of Issue 1 on Commitments to DRC

- V. **Finding:** Issue 1 would **increase** by approximately **1,700** annually the number of felony 1, 2 and 3 offenders committed to DRC who are presently placed on probation.

**Explanation:** *See Step 10 in Analysis section below.*

This is not a proposed provision of Issue 1, but rather a likely byproduct of its implementation by local courts, informed by empirical analysis and reasonable but conservative assumptions. It is estimated that Ohio courts impose probation sentences on approximately 25,000 convicted felons annually. About 10%, or 2,500, of this group is comprised of felony 1, 2, and 3 convicted offenders who currently receive probation sentences, for whom by law there is either no sentencing guidance or a prison sentence is presumed. If issue 1 passes, it is reasonably assumed that courts will be inclined to impose prison sentences—rather than impose probation—for about **1,700** of the most serious offenders in this group of 2,500 (i.e., convictions for violent, drug trafficking, or sex-related offenses) in response to the Issue 1-mandated prohibition against sentencing offenders to prison for non-criminal violations of probation.

- VI. **Finding:** Issue 1 would **increase** further by approximately **1,600** annually the number of probationers committed to DRC who are convicted of, or engage in, new misdemeanor or felony behavior but who are presently given local sanctions.

**Explanation:** *See Steps 11 and 12 in Analysis section below.*

This finding is also not a proposed provision of Issue 1, but rather a likely byproduct of its implementation by local courts, informed by empirical analysis and reasonable but conservative assumptions. It is estimated that approximately half of all new placements onto felony probation in Ohio are re-arrested within three years. Of that number, 70% are arrested for new misdemeanor or felony crimes. It is conservatively assumed that courts will revoke or impose new prison sentences on 20-40% of the arrested population who commit new criminal offenses in response to the Issue 1-mandated prohibition against sentencing offenders to prison for non-criminal violations of probation.

## Overall Impact on Prison Population Count and DRC Operations

- VII. **Finding:** If passed, the implementation impact of Issue 1 would be to **reduce** the state prison population initially by only about **300** during FY 2020, growing to only about **900**, on average, during FY 2023.

**Explanation:** *See Section II. C. of the Analysis section below.*

Although the proposed expansion of sentence credits would accelerate release for a subpopulation of eligible inmates, the offsetting local implementation effects of Issue 1 would render its overall population impact minimal. (*See Step 8 in Analysis section below*). The detailed forecast models consider the totality of all aspects of Issue 1 in tandem<sup>2</sup>, net of existing parameters that shape DRC's population trajectory.

- VIII. **Finding:** The **overall impact** projection of only 300 fewer offenders in FY 2020 and 900 during FY 2023 **does not provide any meaningful operational savings to DRC**, as the agency currently houses nearly 50,000 offenders in many densely populated facilities.

**Explanation:** *See Section II. C. of the Analysis section below*

DRC currently houses nearly 50,000 offenders in 28 prisons. The limited overall bed reduction (300 to 900, at best) may decrease density modestly, but response to such reduction must be measured. One option to this modest reduction may be to deactivate a specialized unit, camp or prison, which could result in increased density and exacerbate current population management challenges. Further, any potential cost savings from the limited overall population impact of Issue 1 must also take into consideration the effect on DRC's marginal costs for housing offenders.

## Potential Impact of State Issue 1 on Community Corrections (See Appendix A, attached)

- IX. **Finding:** If passed, the reclassification provision of Issue 1 would result in an estimated reduction in annual admissions into state-funded Community Based Correctional Facilities and Halfway Houses of approximately 1,600 and 700, respectively, though its overall impact is expected to be neutral.

**Explanation:** *See Appendix A, attached.*

It is reasonably expected that any reductions in placements to halfway houses and community based correctional facilities will be offset by increased placements of non-criminal probation violators.

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<sup>2</sup> Division (F) of Issue 1 was not included in the forecast model as explained further below on p. 14 at fn6.

## **ANALYSIS:**

This analysis begins with a detailed, step-by-step explanation of the data used to forecast the population impact across different categories of offenders of Divisions (C), (D), (E) and (F) of Issue 1, and the expected local implementation response.

Next, part II of this section explains how forecast models were developed to simulate the combined Issue 1-related effects of the expected changes in commitments on prison population levels over time. The summary results from that forecasting of population for the Fiscal Years 2020, 2021, 2022 and 2023 are depicted in the line graphs appearing below as Figures 1, 2 and 3.

### **I. Data Sources and Methods for Calculations Used for Population Impact Forecast:**

#### **Reclassification of Certain Drug Possession Offenses -- Division (D) of Issue 1**

The impact of reclassification of Felony 4 (F4) and Felony 5 (F5) drug possession offenses, as set forth in Division (D) of Issue 1, was considered first, in Steps 1 through 4. The figures considered in Steps 1 through 4 are based on research downloads of Departmental Offender Tracking System (DOTS) commitment data for CY 2017 and FY 2018, and DRC Intake Study sample data from May-June 2017.

1. Number of Felony 4 and Felony 5 “pure” possession commitments in FY 2018 that constitute the population of offenders presumed to be targeted for reclassification under Division (D):

**(-1,616)**

In FY 2018, there were **1,616** new court commitments to DRC with one or more convictions of a R.C. 2925.11 (drug possession) offense at the Felony 4 or 5 level, but without other accompanying non-R.C. 2925.11 offenses. Those conviction offenses may have included more than one count.

2. The portion of Step 1. non-overlapping with projected Targeted Community Alternatives to Prison (TCAP) (see R.C. 2929.34) diversions in FY 2019:

**(-1,199)**

Based on FY 2018 commitment data, 417 of the 1,616 group of Felony 4 and 5 possession commitments are Felony 5 TCAP-eligible and from a county mandated by statute to participate starting in FY 2019, but had not voluntarily participated during FY 2018. The Issue 1 population was thus adjusted downward by 417 to account for the projected, eventual overlap of those two groups. (1,616 less 417 = **1,199**).

3. Estimated number of additional commitments due to convictions of non-R.C. 2925.11 (drug possession) offenses or higher level R.C. 2925.11 (drug possession) offenses in the indictment:

**180**

An analysis of 2017 Intake Study sample data showed that approximately 15% of Felony 4 or Felony 5 drug possession commitments are indicted for more serious offenses, including both non-possession and higher levels of R.C. 2925.11 (drug possession) behavior. It is assumed that under Issue 1, those cases would be convicted on those more serious charges and be committed to prison.

(15% of 1,199 = **180**)

4. Estimated number of TCAP-eligible offenders committed due to criminal history exclusions but subject to reclassification under Division (D)

**(-155)**

Based on comparisons of Calendar Year (CY) 2017 and FY 2018 commitment data, admission rates from the TCAP voluntary counties were estimated for Felony 5 offenders with criminal history exclusions (see R.C. 2929.34) but otherwise eligible for TCAP diversion. Applying these rates to the estimated expanded FY 2019 TCAP population yields a figure of 303. It was separately determined that 51% of that expanded population is committed for drug possession, and so it is assumed in this analysis that 155 would be subject to the reclassification provision of Issue1. (51% of 303 = **-155**)

5. Summary of Estimated Impact of Division (D) on Annual Commitments to DRC  
(Total of Steps 2, 3 and 4)

1,199  
+ 180  
- 155  
**(-1,174)**

### **Changes to Responses for Non-Criminal Probation Violations --Division (E) of Issue 1**

Next, the impact of the prohibition against imposing prison sentences for non-criminal probation violations, as set forth in Division (E) of Issue 1, was considered. The figure in this step is based on a research download of DOTS commitment data for FY 2018.

6. Number of non-criminal probation violator commitments in FY 2018 not subject to Issue 1 reclassification or diversion under TCAP

**(-2,659)**

The net balance of probation violators committed to prison in FY 2018 for non-criminal violations is **2,659** after accounting for overlap with the reclassification population under Division D of Issue 1 and the TCAP eligible population.

7. Overall Summary of Estimated Impact of Divisions (D) and (E) on Annual Commitments to DRC:  
(Total of Steps 5 and 6)

(-1,174)

(-2,659)

**(-3,833)**

### **Sentence Credits --Division (C) of Issue 1**

8. Estimated Gross Bed Reduction due to Sentence Credits:

**(-1,821)**

The impact of offenders earning sentence credits, as set forth in Division (C) of Issue 1, was considered next, but using a different methodology than the calculations for Divisions (D) and (E). Whereas the previous steps considered the impact on annual commitment to DRC, this step focuses on population savings associated with offenders who are released sooner because they earn new sentence credits. The **1,821** figure is an estimated gross bed reduction over a ten-year period.

Under current law, R.C. 2967.193, eligible individuals serving sentences with DRC may earn 1 or 5 days of credit per month against their sentence for productive participation in constructive programs developed by DRC with specific standards for performance. Those programs include educational, vocational, rehabilitative, and substance abuse programming. (The increased 5-day earned credit applies only to offenses committed after September 30, 2011). There are a multitude of offenses which make an offender ineligible for earned credit, e.g., mandatory prison terms, life or death sentences for aggravated

murder or murder, and life without parole sentences. The number of days earned, under the 1- or 5-day monthly credit, may not exceed 8% of the total sentence.

In addition, and separately, offenders may earn credits of the lesser of: 90 days or 10% of their sentence, for successful completion of one of the following programs: high school diploma or equivalent, therapeutic drug community program, all phases of DRC's intensive outpatient drug treatment program; career-technical vocational school program, a college certification program, or the criteria for a certificate of achievement and employability. This extra earned credit is not available for offenders serving a mandatory prison term or serving a term for a violent or sexually-oriented offense.

In contrast, if Issue 1 is passed, then credit accrual would be significantly expanded, awarded at a rate of one-half day per day of program enrollment or eligible work participation up to 25% of the stated term. Eligibility to earn credit at this rate would also be extended to a wider class of offenders who are presently excluded from earning 5-day monthly or bonus credit opportunities under current law.

The primary data source for this sentence credit analysis is a DOTS-based extract of releases from incarceration status in CY 2017, joined with key variables from a download of earned credit data awarded at any point during the current incarceration.

The analysis relied on several important assumptions:

- A rehabilitative participation day is defined as active enrollment/attendance or participation in an eligible work or programmatic activity that occurs during any portion of a calendar day.
- Sentence credits are awarded on the basis of one half day per day of such participation, as defined in the language of the proposed amendment.
- Eligible activities are consistent with current statutory law and are limited to: Ohio Penal Industries job involvement, apprenticeships, advanced job training (AJT), career tech placement, GED/ABE (General Education Degree; Adult Basic Education) enrollment, and recovery services treatment programs [Therapeutic Communities, Brief Intervention programs, Treatment Readiness/IOP (intensive outpatient program) treatment, Treatment Transfer program status, and Recovery Maintenance]. (See R.C. 2967.193(A)(2) which describes eligibility for earning 90-day credit). Enrollment in "Thinking for a Change" was also included as an eligible activity because it is DRC's most prominent cognitive behavioral program.

The methodology described below was based on working estimates of the expected maximum amount of sentence credits available per month as follows (by specific program area):

Ohio Penal Industries job status:

4 workdays/week = 9 maximum sentence credits/month

(4 \* 4.3 = 17.2 credits; half day rate=8.6)

Apprenticeship training: 3 days/week (on average) = 6.5

Therapeutic Communities: 7 days/week = 15

Treatment Readiness/IOP: 4.5 days/week = 10

Brief Intervention: 4.5 days/week = 10

Recovery Maintenance: 3 days/week = 6.5

GED/ABE: 5 days/week = 11

AJT/Career tech training: 5 days/week = 11  
Thinking for a Change program: 2 days/week = 4.5

The analysis proceeded by examining inmates exiting with at least one month of earned credit in the broad eligible areas of "Education," "Ohio Penal Industries", or treatment "Program" and then determining the distribution of 1-day and 5-day/month accrual status based on observed rates in the data. The mean number of months an offender spent in an earned credit status for each area was also determined.

To determine an initial set of impact estimates by program area, the mean number of months active within each area was multiplied by the additional days that would have accrued under the amendment, were credit to be awarded on the basis of one-half day per day of active involvement. This step was performed separately for 1-day and 5-day subgroups within each area, whereby the number in each of those statuses was multiplied by the additional days to be earned.

For example, in Calendar Year (CY) 2017, there were 499 prison releases with at least one month of earned credit in the Ohio Penal Industries area. 334 of the 499 group (67%) earned at the 1-day per month rate, 165 of the group (33%) earned at the 5-day rate. The mean duration of active status for this group was 11.6 months. Since the award rate under the proposed amendment for Ohio Penal Industries work would be 9 credit days, the additional award level is 8 days per month for the 1-day inmates and 4 days for the 5-day group. The calculation is as follows:  $8 * 11.6$  (days then converted to fractions of a year)  $* 334 = 85$ , plus  $4 * 11.6$  (converted)  $* 165 = 21$ ;  $85 + 21 = 106$  bed reduction.

These steps were repeated for all eligible program/activity areas. After adjusting for overlapping program participation, the analysis yielded an estimated gross bed reduction of **1,821**. In order to convert the estimate into model inputs, the analysis was disaggregated by gender and felony level to determine component impacts across those subgroups. The magnitude in the expected increase in monthly credit accrual associated with each subgroup was then applied against observed credit rates under existing law in order to model the effects of the expansion, adjusting for the net loss in bonus credits.<sup>3</sup> The forecast models described further below account for the modest overlap between the diversionary impact of Division (D) and expansion of sentence credits proposed in Division (C). They also allow for an examination of the timing of these impacts, revealing that much of the impact of Division (C) would not be realized until the end of FY 2023.

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<sup>3</sup> Current law provides for a 90-day credit for program completion; issue 1 would provide a 30-day credit for program completion.

## **Retroactive Application -- Division (F) of Issue 1**

9. Estimated releases of offenders under Division (F):

**(-111)**

Next, the impact of those offenders currently incarcerated on Felony 4 and Felony 5 drug possession convictions who are eligible for applying for resentencing to misdemeanors and release was considered.

There are 662 “pure” Felony 4 and Felony 5 drug possession inmates currently incarcerated in Ohio prisons as of July 2018. This population was used as a basis to estimate the number of inmates that would most likely be subject to the retroactivity provisions of Division (F). The population consists of two main subpopulations:

- 1) a group of 244 inmates with conviction offenses that are not TCAP eligible, and
- 2) a group of 418 inmates convicted of Felony 5 TCAP-eligible offenses committed from:
  - A) participating/mandated TCAP counties (176); and
  - B) counties not voluntarily participating in TCAP (242).

Considering the second main subpopulation of 418, those inmates all have remaining time to serve of less than one year as of July 2018. Thus, the subgroup of 176 is expected to exit during FY 2019 (by June 30, 2019) and not be replaced, pursuant to existing TCAP provisions. However, it is estimated that the non-TCAP county population of 242 would remain constant throughout FY 2019, assuming stable commitment levels from those counties. Thus, the group of 418 is reducible to an estimated maximum of 242 by July 2019<sup>4</sup>. Since there would be no further admissions to prison among this population under the reclassification provisions of Division (D), the subgroup of 242 would all gradually exit throughout FY 2020, based on their observed remaining time to serve, or via the petition process in Division (F). It is further estimated that 55 out of the 242 would be released through petition in advance of their expiration of stated term based on the expected percentages incarcerated on their first DRC commitment/number<sup>5</sup> and having at least 90-365 days remaining to serve.

Considering the first main subpopulation of 244, approximately 78% have remaining time to serve of less than one year as of July 2018. Assuming stable commitment levels during FY 2019, this group is estimated to number at a maximum of 244 by July 2019. The group would then gradually exit, without replacement, over the course of approximately 30 months. As noted, 78% would exit within one year if not otherwise released via the petition process. The remaining portion would exit between 1 to 2.5 years (i.e., 22% of 244, or 54, if not otherwise released earlier through petition). Similar to the subgroup of 242 described above, 56 out of the 244 are likely to be released through petition post implementation in advance of their expiration of stated term based on the expected percentages incarcerated on their first number and having at least 90 days remaining to serve. (56 + 55 = 111).

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<sup>4</sup> The 242 figure could very well be lower by July 2019, depending on the pace at which petitions to the courts are processed and considered post implementation of Issue 1.

<sup>5</sup> Presumptively, first-time commitments to DRC will not be found by the court, upon petition for reclassification, to be a risk to public safety if their drug possession offense is re-classified from felony to misdemeanor offense.

**The Considered Estimated Population Impact of Issue 1 Should Extend Beyond Divisions (C), (D), (E) and (F) to Include Other Factors Such as Changes in Local Implementation**

Previous criminal justice reform efforts in Ohio have often had unintended consequences, at times undermining the spirit of those reforms, producing inflationary effects on the state prison population, or failing to achieve avoided costs for various reasons. For example, after an initial one-year drop in intake after the passage of Senate Bill (SB) 2 in 1997, prison commitments increased 57% between 1998 and 2006, despite an expansion in community corrections beds during that time. More recently House Bill (HB) 86 reforms have been underutilized by the courts. For example, only 1.4% of nearly 100,000 prison commitments during FY 2013-FY 2017 have been designated as Risk Reduction eligible by common pleas courts. And in CY 2017, there were just a few –12-- inmates released through the HB 86- enabled 80% judicial release mechanism. In addition, the rate of Felony 4 and 5 non-criminal probation violator commitments increased proportionally by 19% in FY 2012, the first year after passage of HB 86, while failure to appear/recognition violation commitments have nearly doubled since passage of HB 86 (71 in FY 2012 vs. 133 in FY 2018).

Given this historical experience, the estimated population impact of Issue 1 should consider factors beyond the effects of Divisions (C), (D), (E) and (F) such as the expected response of local courts and jurisdictions. DRC assumes that, in response to the implementation of the restrictions and provisions of Issue 1, local courts and jurisdictions will be more inclined to sentence more offenders to prison. These local implementation effects and assumptions are described below.

As an initial matter, the figures corresponding to the analysis described in Steps 10 to 12 below are based on research downloads of Community Corrections Information Systems (CCIS) data pertaining to Adult Parole Authority (APA)-supervised probation placements in FY 2013-FY 2017, and a special extract of probation counts reported through a Bureau of Justice Statistics (BJS) survey in 2011 by local jurisdictions throughout Ohio.

10. Estimated annual increase in Felony 1, 2 and 3 commitments to prison formerly placed on felony probation

**1,696**

In FY 2017 there were 5,083 new felony probation placements under APA supervision. The average figure in FY 2013-FY 2017 is 5,229. If APA placements represent approximately 20% of the statewide total (based on an analysis of a subset of SMART Ohio grant county case-level data from 2016-2017), then total statewide placements in FY 2017 are estimated to have been 25,415. This estimate is consistent with snapshot felony probation counts and annual entries from Ohio jurisdictions in 2011 reported in a one-time BJS file extract provided to DRC in 2012. Detailed analyses of crime and felony data on APA probationers indicates that 10% are at the Felony 1, 2 or 3 levels, which yields a statewide estimate of 2,542. (10% of 25,415 total statewide placements = 2,542.)

Based on a separate analysis of the composition among underlying conviction offenses among probation violator commitments to DRC in FY 2018, it is assumed that a certain percentage (two-thirds or 66.7%) of the 2,542 Felony 1, 2 or 3 population (convicted of violent offenses, sex offenses under R.C. 2907, registration violations under R.C. 2950, and drug trafficking) who are currently sentenced to probation will instead be sentenced to prison.

This assumption is based on the reasonable likelihood that local jurisdictions will look for ways to manage the increased probation caseload resulting from the inability to send non-criminal probation violators to prison. Courts are more likely to sentence those higher-level felons to prison—rather than probation—because there is a presumption in the law that prison is the appropriate sanction. Issue 1 would not allow courts to revoke probation and sentence an offender to prison should they violate the terms of probation in a non-criminal manner. Therefore, courts are unlikely to exercise discretion and sentence this subpopulation to probation.

In sum, the estimated annual increase in Felony 1, 2 and 3 commitments to prison formerly placed on felony probation will be **1,696**. (Two-thirds (66.7%) of 2,542 = **1,696**).

11. Estimated additional misdemeanor violators on felony probation committed to prison

**496**

To estimate the size of the statewide population of probationers who become misdemeanor or felony violators (and thus subject to revocation to prison) DRC started with the annual placement population of 25,415. This number was reduced by 5,000, which is the sum of 1,696 (the estimate derived from Step. 10) and 3,304 (13% of 25,415). (13% is the estimated annual number of felony 4 or 5 drug possession offenders receiving felony probation who would now be reclassified as misdemeanants under Issue 1). This yields a modified base population of probationers of 20,415 (25,415 – 5,000).

In a separate analysis, APA arrest data (which includes all forms of criminal behavior) was combined with five years of probation placements to determine 3-year violation and crime rates. That analysis suggests that 48.6% of the cases have an arrest outcome within three years. An additional undetermined percentage have violation activity unrelated to an arrest event. Extrapolating the 48.6% rate to the modified statewide population estimate of 20,415, the total annual violator population involved in either a law enforcement or parole officer arrest is estimated to be 9,922, assuming average supervision periods of 2-3 years.

A limited but random sample of 20 probation cases starting APA supervision was analyzed next to determine the nature of the first arrest within 3 years. That analysis suggested that the distribution of arrests is as follows: non-criminal violations (30%); misdemeanor behavior (25%), violent and non-violent felony behavior (45%). Based on the estimated arrested population of 9,922 statewide, 2,481 (i.e., 25% of 9,922) are estimated to be for misdemeanor level crimes.

Next, the analysis assumes that 20% of that population (2,481) would be revoked and sentenced to prison under Issue 1. (20% of 2,481 = **496**).

This assumption is based on the reasonable likelihood that courts will commit to prison those probationers who violate in a criminal manner as a response to local jurisdictions having to manage their increased probation caseload resulting from the inability to send non-criminal probation violators to prison.

#### 12. Estimated additional felony violators on felony probation committed to prison

**1,085**

The analysis looked next at the violent and non-violent felony behavior portion of the 9,922 subset of statewide placements. 45% of 9,922 yields a group of 4,465 such arrests. It is estimated that 1,752 offenders of this group will already be committed to prison (based on 2017 DRC Intake Study data). 4,464 less 1,752 yields 2,713.

It is assumed next that 40% of the remaining portion of felony violators (2,713) would be revoked under Issue 1, which yields a group of **1,085**. (40% of 2,713 = **1,085**).

This assumption is also based on the reasonable likelihood that courts will commit to prison those probationers who violate in a criminal manner as a response to local jurisdictions having to manage their increased probation caseload resulting from the inability to send non-criminal probation violators to prison.

## II. Impact Modeling and Population Forecasts

### Introduction

DRC has been using microsimulation forecasting methods since the 1980s to produce prison population projections for budgetary and operational planning purposes. These methods rely on constructing aggregate demographic and offense-based groupings using inmate-level administrative data. Population levels over time are modeled using a computer application that replicates the variety of pathways these groups may follow from the point of intake to final release and then, potentially, re-incarceration. Groups are defined for both prison inflows (i.e., commitments and violator admissions) and the existing incarcerated population (i.e., the “stock” population) and are modeled using vectors of time until release, by month, based on admission and expected release dates. The basic output from the simulation is a month by month population count up to ten years from the selected starting point. These models also rely on estimations of annual prison intake levels which are then used as model inputs, along with percentage distributions of the various inmate groupings and the average length of stay associated with each pathway. In effect, forecast models *project* population levels over time based on *predictions* of intake (or predicted changes in intake) and known characteristics of the inmate population, including changes in how long inmates spend in prison. ODRC currently uses a microsimulation application known as Prophet 98, originally developed by researchers affiliated with the National Council on Crime and Delinquency (NCCD). The model has been used by ODRC researchers for over 20 years and is revised regularly to produce routine operational population forecasts and test various legislative impact scenarios.

### Model Inputs

The line graphs depicted below in Figures 1-3 are graphical summaries of output from three forecast models that describe the impact on prison population through FY 2023 of changes in sentence credits and the flow of prison commitments under Issue 1, as described above. All forecasts are compared against DRC’s current baseline population forecast under current law in order to measure the net impact of Issue 1. DRC’s population is currently projected to be 48,930 on July 1, 2019, as shown in all three figures. As a starting point, the impact models all use existing estimates of annual levels of new court commitments from the baseline forecast to develop the modified input estimates which are described below. The baseline model assumes reductions in new court commitments of 5% and 8% in CY 2018 and CY 2019, respectively, due to TCAP and Justice Reinvestment Initiative Grant (JRIG) support. Although the impact models retain the core length of stay parameters used in the baseline model (i.e., sentence terms and release probabilities), they have all been modified to incorporate the impact of the proposed expansion of sentence credits that are defined in Division (C) and described above.<sup>6</sup> The sentence credit provisions would serve to accelerate release dates among an eligible subset of the inmate population. The forecast models take this into account, along with predicted changes in annual commitment flows.

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<sup>6</sup> The forecast models presented in Figures 1 to 3 below do not incorporate the impact of Retroactive Application discussed in Step 9 due to uncertainty surrounding the pace and timing of the petition process post implementation; nonetheless, the estimated impact is sufficiently minimal such that any meaningful changes in the resulting forecasts, if incorporated, are unlikely.

## **Forecast Results – (See the graphs in Figure 1, 2 and 3 below)**

### **A. Combined Impact of Sentencing Credits and Drug Possession Reclassification (Divisions C & D) on Stock Population Levels, FY 2020-2023 (Figure 1 below)**

Figure 1 presents a graphical display of projected population levels through FY 2023 after simulating the impact of the sentencing credit and drug possession reclassification provisions of Issue 1. On the input side, this model assumes additional, annual reductions in prison commitments of 1,174 after extrapolating from the size of the FY 2018 reclassified, “pure” Felony 4 or 5 drug possession prison inflow that is not otherwise expected to be diverted under TCAP, as outlined and explained above in Steps 1 through 5. The model further assumes that the reduction in Issue 1 commitments will be fully realized during FY 2020, after which prison admissions will stabilize. No other statutory changes or changes in underlying crime or sentencing patterns are assumed.

The results from the simulation show a gradually widening prison bed savings that accrues from the projected impact of Divisions C and D alone. The impact shows an initial average reduction in population of 537 in FY 2020, growing to 1,716 by FY 2023. The population impact expands in later years due to the delayed effect of sentence credits on longer term inmates.

### **B. Combined Impact of Sentencing Credits, Reclassification, and Probation Revocation Restrictions (Divisions C, D & E) on Stock Population Levels, FY 2020-2023 (Figure 2)**

Figure 2 presents a graphical display of projected population levels through FY 2023 after simulating the impact of sentencing credit, reclassification, *and* probation revocation restriction provisions of Issue 1. On the input side, this model assumes the annual reductions in prison commitments of 1,174 described for the first impact model, but adds in the additional diversionary effect of Division (E), which prohibits non-overlapping probation “non-criminal” violators from being committed to prison (see Step 6 above, figure of 2,659), absent new criminal convictions. The model also assumes that the combined reduction in Issue 1 commitments will be fully realized during FY 2020, after which prison admissions will stabilize. No other statutory changes or changes in underlying crime or sentencing patterns are assumed.

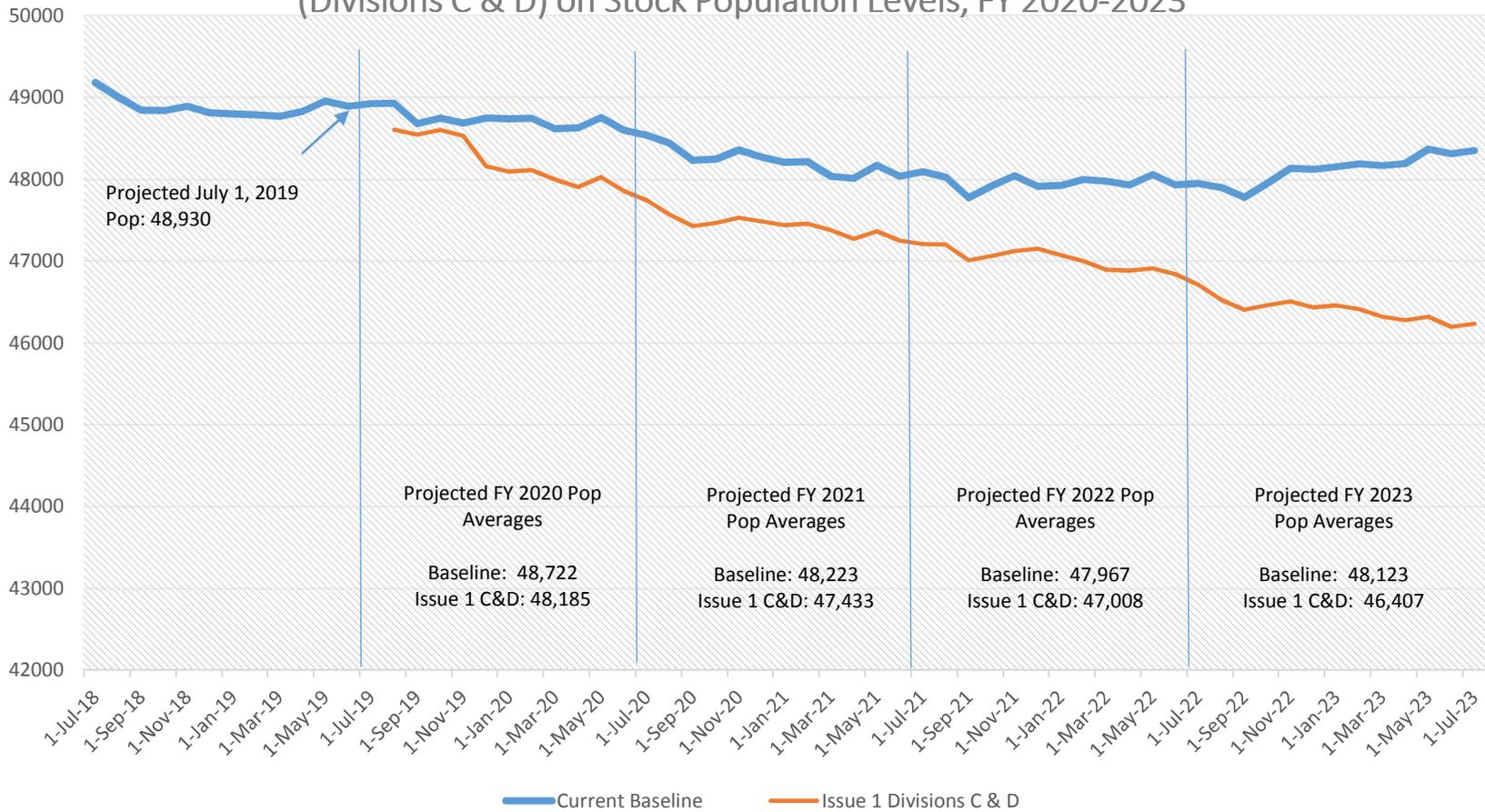
The results from this simulation, which are depicted in the bottom line, show a deeper initial drop in projected population levels in FY 2020, followed by the same gradually expanding gap described for Figure 1. More specifically, the impact shows an initial average reduction in population of 1,694 in FY 2020, growing to 3,323 by FY 2023. The population impact is initially stronger due to the immediate effects of the magnitude of the probation revocation restrictions on prison commitment levels.

### **C. State Issue 1 Overall Stock Population Forecast: Impact of Divisions C, D & E combined with Local Implementation Effects, FY 2020-2023 (Figure 3)**

The impact models described in Figures 1 and 2 assume no other changes in court dispositions or local management of felony probation violators, and thus they use inputs that are limited to the commitment reductions summarized in Step. 7. The overall impact model (Figure 3), however, is based on a fundamentally different set of assumptions governing prison intake patterns, factoring in anticipated offsetting *increases* in commitments that stem from the actual implementation of Issue 1. Those increases are described in Steps. 10-12, and incorporating them into the predicted flow of future admissions results in a much smaller net annual reduction. Further, these increases also alter the overall length of stay profile for future commitment populations to the extent that they involve an increased flow of higher-level felons with longer terms on average.

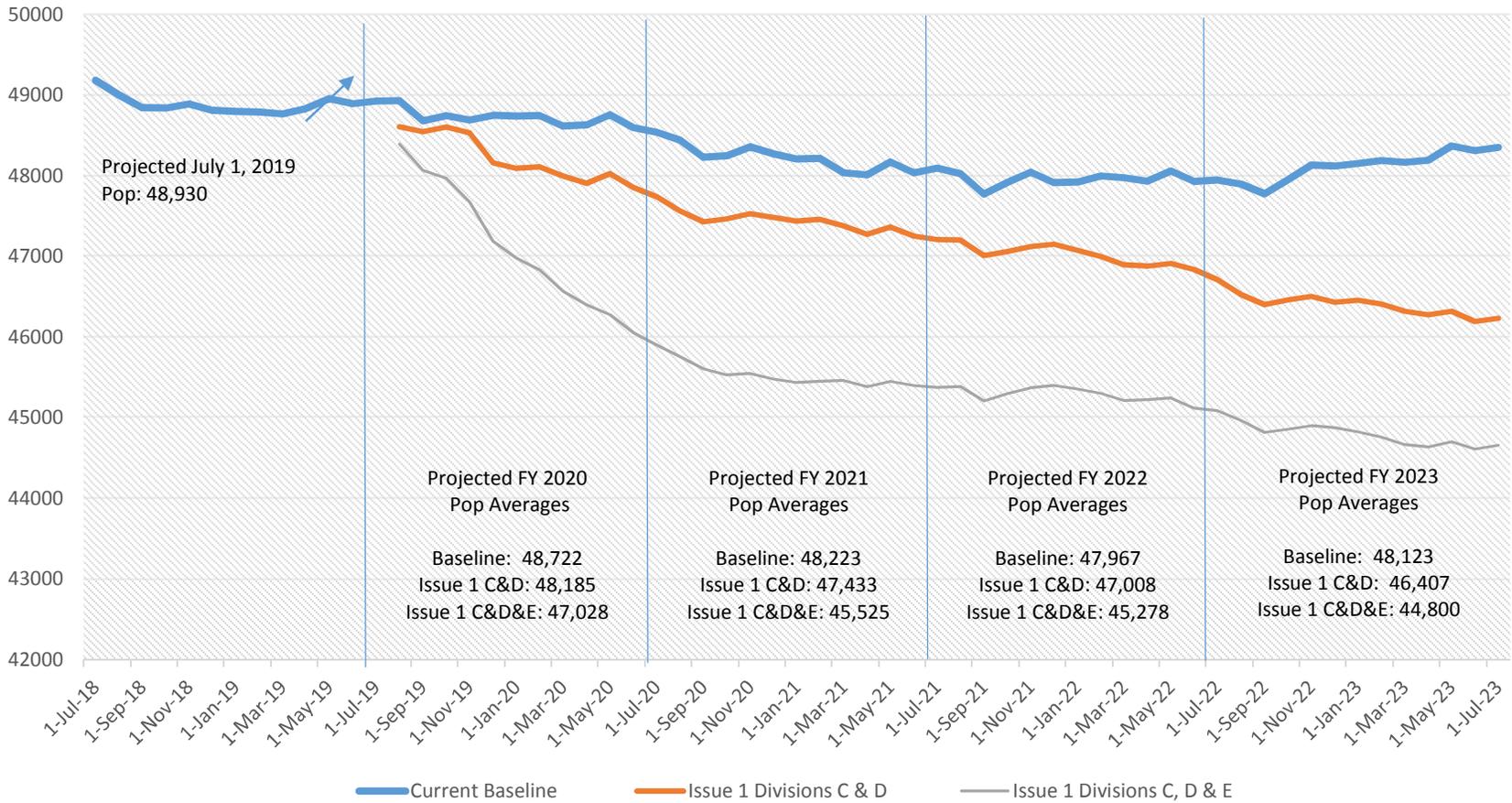
The results from this simulation are shown in the bottom line of Figure 3. The forecast reveals a very minimal impact projection through the first half of FY 2022, followed by a moderately expanding gap in FY 2023. The bed savings after taking into account local implementation effects are just 301 on average in FY 2020, growing gradually to 906 by FY 2023. In effect, the altered composition of commitments under these assumptions works to suppress and delay the larger population reduction that would otherwise accrue from expanded sentencing credits. The total impact projection of an average 906 fewer inmates by FY 2023, however, does not provide any meaningful operational savings to DRC, as the agency currently houses almost 50,000 offenders, with population density creating population management challenges.

**Figure 1**  
**Combined Impact of Sentencing Credits and Drug Possession Reclassification**  
**(Divisions C & D) on Stock Population Levels, FY 2020-2023\***



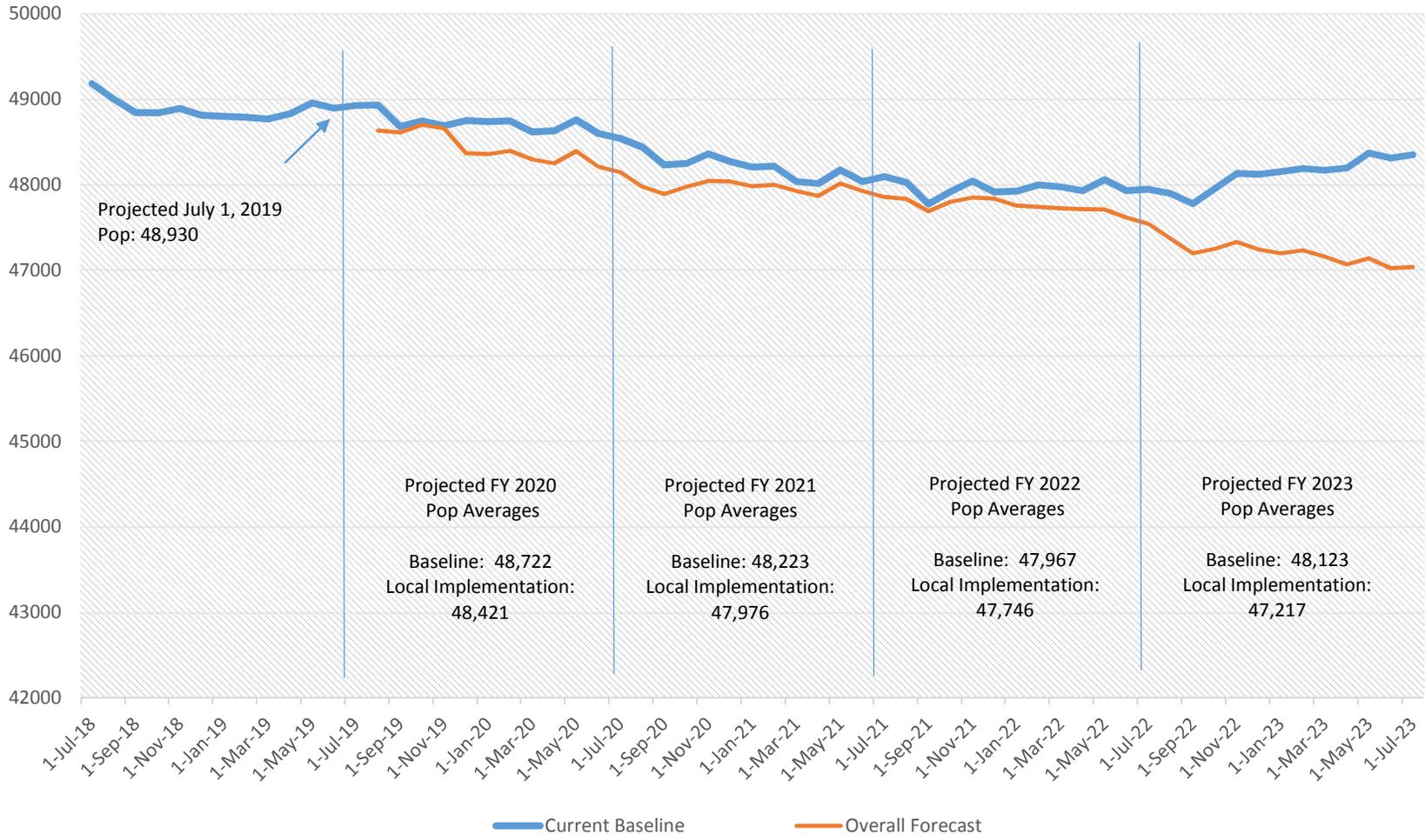
\*The lines present a graphical display of projected monthly population counts. The impact is derived from comparing the current baseline forecast (top line) to the Issue 1 Division C&D forecast.. Impact forecast does not consider local implementation effects.

**Figure 2**  
**Combined Impact of Sentencing Credits, Reclassification, and Probation Revocation Restrictions (Divisions C, D & E) on Stock Population Levels, FY 2020-2023\***



\*The lines present a graphical display of projected monthly population counts. The impacts are derived from comparing the current baseline forecast (top line) to the Issue 1 Division C&D and Divisions C, D & E forecasts. Impact forecasts do not consider local implementation effects.

**Figure 3**  
**State Issue 1 Overall Stock Population Forecast: Impact of Divisions C, D & E**  
**combined with Local Implementation Effects, FY 2020-2023\***



\*The lines present a graphical display of projected monthly population counts. The impact is derived from comparing the current baseline forecast (top line) to the overall forecast.

## **APPENDIX A**

### **Analysis of the Potential Impact of State Issue 1 on Community Corrections**

The purpose of this analysis is to reasonably estimate how many CBCF and HWH placements statewide annually would be affected by the proposed reclassification language in Division (D) of State Issue 1.

#### **Data sources:**

The analysis relies on funded program admission data entered by community providers into the statewide Community Corrections Information System web portal (“CCIS-web”), supplemented by court journal-based charge information obtained from a random sub-sample of those placements.

#### **Findings:**

Based on an electronic, case-level download of that database, the analysis revealed the following:

In CY 2017, there were 7,673 CBCF placements statewide, of which 2,506 had F4/F5 drug-related charges. Of that number, 2,396 were placed directly as a condition of community control, referred as a sanction for “probation violations” of community control, or pursuant to a TIL (Treatment in Lieu) intervention.

A county-based stratified, random sample of approximately 200 of the 2,396 cases was drawn to determine offense details. The offense coding of that sample showed that 68.5% could be considered “pure” F4/F5 drug possession/drug paraphernalia referrals. Generalizing to the population, this would suggest that 1,641 cases (68.5% of 2,396) would be diverted annually from possible CBCF placement by common pleas courts due to reclassification under passage of State Issue 1.

It is reasonable to assume that since 45% of all CBCF placements occur pursuant to violation behavior, and that the language in Division (E) does not prohibit such a placement as part of a graduated response, there would be increased demand for available CBCF beds under the language prohibiting non-criminal violator commitments to prison. Therefore, any reduction in placements would likely be replaced by non-criminal probation violation placements.

In CY 2017, there were 9,777 HWH placements statewide, of which 2,384 had F4/F5 drug-related charges. Of that number, 996 were placed directly as a condition of community control, referred as a sanction for “probation violations” of community control, or pursuant to a TIL (Treatment in Lieu) intervention.

If we assume that similar rates of “pure” F4/F5 possession/paraphernalia prevail among the HWH drug-related population, then 682 (68.5% of 996) would be diverted annually from possible HWH placement by common pleas courts due to reclassification under passage of State Issue 1.

Overall, HWHs are used less often than CBCFs as a sanction for probation violations, as just 16% of overall placements in 2017 were made for that reason.

However, placements to HWHs and CBCFs by municipal courts for this population could continue to occur, pursuant to ORC 2929.26 if “the political subdivision that would have responsibility for paying the costs of confining the offender in a jail has entered into a contract with the halfway house or community-based correctional facility for use of the facility for misdemeanor offenders.”