

OHIO SENATE
CRIMINAL JUSTICE COMMITTEE
APRIL 22, 2015

SENATE BILL 97

INTERESTED PARTY TESTIMONY

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The Ohio Assn. of Criminal Defense Lawyers (“OACDL”) is an organization of 800-plus members of the private bar and public defenders who comprise the criminal defense bar in this state, and who share a passion for justice in the operation of the criminal justice system. Among the constitutional guarantees which are vital for a just operations of that system are equal protection of law, and the presumption of innocence inherent in contemporary notions of due process for those charged with criminal offenses.

In December of last year, our organization testified as an interested party in testimony before this Committee on SB 121 of the 130th General Assembly, the predecessor of SB 97. Our testimony was specifically in support of an amendment that would have worked a modest change in the structure of the eight year “look-back” period in which to determine if a current suspect can be charged as a “violent career criminal.” The amendment would have deleted the extensions of that eight-year period bill based upon the time in custody spent by suspects who had been arrested and charged but who were never convicted of the offense for which they were arrested.

After the introduction of SB 97 in this General Assembly, we have sought the same amendment from the members of this Committee, and we are pleased to know that an amendment is addressed to this concern, and we ask for the Committee’s support for the following reasons.

We are by this time very familiar with the concept of “look-back” provisions. There are look-back provisions in Ohio’s OVI laws. There are look-back provisions in our laws regarding Repeat Violent Offenders. There are look-back provisions for Domestic Violence. There are also numerous criminal offenses for which the punishment for the offense is enhanced if the offender has previously been convicted of the same offense.

However, none of these previously enacted look-back provisions focus on the mere past arrests of current offender. In other words, mere past arrests have never under the Ohio criminal code been designated under the statute as the basis for penal consequences in the sentencing of a current offender. Because of our respect for the presumption of innocence and equal protection of law, we believe this is sound criminal justice policy and which should be followed by SB 97.

I. Equal protection of law:

No member of this Committee would sponsor or support this bill if it expressly stated that indigent criminal suspects had a longer look-back period than non-indigent offenders. Yet, SB 97 accomplishes the same evil by providing that suspects who are arrested and held in jail in lieu of bail while their charges are pending in court are at the same time extending their penal exposure under the look-back period that criminal suspects who are able to post bail are not.

A disturbing question is why should one criminal defendant who is unable to post bail suffer the penal consequence of extending his future exposure under the eight year look-back provision, in comparison to a co-defendant on the same charges who is fortunate enough to be able to post bail and thereby be released from pretrial confinement whose look-back exposure is not extended at all? Even though both defendants may be acquitted of their charges, the fact remains that one of them suffered a future penal consequence not related to their guilt, but simply related to the inability to post bail while the charges were pending, and the other was not.

It gets worse: if the non-indigent criminal defendant who was able to post bail is convicted, and the non-indigent defendant who was unable to post bail is acquitted, it is nevertheless the acquitted defendant who suffers for the extension of the look-back period, while the convicted defendant does not. Does this appear to anyone as sound criminal justice policy?

It is submitted that the inability to post bail fails as a rationale basis for the disparate treatment of otherwise similarly situated defendants.

II. Presumption of innocence/due process:

Imposing penal consequences such as extending the window of exposure under the look-back period based upon mere arrests is inconsistent with the presumption of innocence which the people of Ohio are entitled to under the Ohio and federal constitutions unless or until their guilt is determined in a court of law. The fact that a suspect is arrested and held in lieu of bail should not subject him or her to any penal consequences under the Ohio criminal code. However, under the provisions of this bill, there is a certain risk of subjecting them to greater punishment in the future even though the past charges were dismissed or even where they were acquitted of the charge.

Subjecting offenders to greater penal consequences based upon past allegations that were unsubstantiated in a court of law is corrosive to the very basic notion that Ohioans are presumed to be innocent of those allegations. As a corollary, the state should not be able to impose any penal consequence where the criminal defendant was acquitted of the charges, yet under this bill would nevertheless extend the look-back period for the amount of time that the state held the criminal defendant in jail prior to being acquitted of the charge.

We applaud the long hard work of the committee in the many amended provisions that have been accomplished since this bill was first introduced in the last General Assembly. But those accomplishments do not lessen the genuine remaining need to revise this provision of the bill which is repugnant to vital constitutional guarantees that provide the bedrock of sound criminal justice policy.