Thank you, Mr. Chairman, and members of the committee, for the opportunity to present Senate Bill 10. Senate Bill 10 contains numerous provisions designed to reduce dangerous overcrowding at Ohio’s correctional facilities and ease the tremendous strain of incarceration on the state’s budget and Ohio taxpayers. It is rare to find legislation endorsed by the ACLU, the Buckeye Institute, the Ohio Chamber of Commerce and its 8 major regional affiliates, Governors Strickland and Kasich, no less than 4 current and former directors of DRC, and every major newspaper in the state. But that is the case with Senate Bill 10. Senate Bill 10 starts with all the provisions of Senate Bill 22, my legislation from last session, in the form in which it passed out of this Committee. By December 2010, we had accumulated a broad and impressive array of supporters for that bill (list attached). To these provisions are added the legislative implementation of all of the recommendations of the CSG Justice Reinvestment in Ohio project, about which more later.

While the legislation is quite comprehensive, let me summarize some of its major provisions.

First, Senate Bill 10 increases the threshold for felony theft from $500 to $1,000. This threshold has not been raised since 1996, when it was increased from $300 to $500 as part of Senate Bill 2 from the 121st General Assembly. The increase is in line with inflation since 1996. This change will allow more low-level offenders to be placed in community correction programs, freeing hundreds of beds in the state’s prisons for truly violent, dangerous criminals.

Second, Senate Bill 10 increases from one to five days the time that an inmate can have subtracted from his sentence for each month of completion of education courses, job training initiatives, treatment for substance abuse, and other DRC-approved programs. Studies have shown that participation in earned credit programs reduce the likelihood of recidivism, thus enhancing public safety. Earned credit provides a strong incentive for inmates to enroll in these valuable programs. The credit is capped at 8% of the total sentence.

It is important to stress that this earned credit provision is not merely “good time.” Rather, the credit is earned only if the inmate successfully completes specific coursework and training in DRC approved programs for each month that the credit is claimed. Under Senate Bill 10, no sexually oriented offenders will be eligible to receive earned credit. Also, most all F-1 and F-2 offenders are not eligible for the earned credit; the program is targeted to F-3, F-4, and F-5 offenders. Despite misleading statements to the contrary, earned credit is not inconsistent with the determinate sentencing regime laid down by the 1996 SB 2 legislation. Earned credit was
part of that very legislation, and the expanded earned credit under this bill will apply only to those first sentenced after its effective date.

Third, Senate Bill 10 gives the Adult Parole Authority (APA) more options in determining penalties for parolees who fail to report to their parole officers. Under current law, in certain circumstances, a parolee who absconds from supervision can be charged with a felony escape offense ranging from a F-1 to a F-5, depending upon the severity of the underlying offense. This often results in returning the parolee to prison. The language in Senate Bill 10 will allow the APA to utilize various sanctions pursuant to ORC 2967.15 for these offenders. The APA will still have the authority to return parolees to prison. By giving the APA more flexibility in these situations, we can keep offenders out of prison and ultimately reduce Ohio’s prison population. The SB 10 language reflects the compromise language on this provision that DRC, the Prosecuting Attorneys Association, and I worked out after SB 22 left this Committee in 2009.

Senate Bill 10 creates new sentencing alternatives for people who fail to pay child support. In fiscal year 2008, 781 people were incarcerated solely for failure to pay child support. Senate Bill 10 would divert these offenders away from prison and into structured programs that focus on securing employment, building good behavioral skills and responsible parenting, and most importantly, paying child support. These structured programs have been piloted with great success, originally in 8 Ohio counties, now 13 counties. They have increased child support collections while saving on incarceration costs, so SB 10 mandates their use statewide. The court will retain the authority to sentence the offender to prison if the offender fails to respond to the programs.

SB 10 also resurrects a host of other criminal justice reforms that were part of SB 22:

- Term limits for the parole board
- Equalization of crack and powder cocaine penalties
- Elimination of drug mandatory sentences for many marijuana and hashish offenders
- Authorization to seek federal Medicaid approval to medically parole the system’s oldest and most infirm inmates to a secure, separate, Medicaid-eligible skilled nursing facility instead of providing costlier care at hospitals
- Permitting judges to impose intervention in lieu of conviction sentences on second time felony offenders
- Permitting judges to grant judicial release, after service of 85% of the prison time, to prisoners with sentences longer than 10 years, subject to certain exceptions
- Facilitating the prosecution of Medicaid fraud to allow aggregating the value of false billings to reach felony levels (requested by Attorney General.)
- Allowing Ohio counties to house prisoners in contiguous counties in adjoining states
• Allowing counties to set up community alternative treatment centers to which they may send any offender sentenced to a term of 30 days or less in the county jail.

All these measures contribute to the comprehensive mosaic that will produce savings and increased treatment, while serving other beneficial goals such as addressing concerns about racial disparities and concerns that the parole board is unduly strict in its decisions about parole for prisoners sentenced prior to Senate Bill 2.

Thus far, I have described the main provisions of SB 22, as amended through the committee process last session and with additional refinements I had planned on offering on the floor, most of which were either technical or intended to mollify the prosecutors. But SB 10 also contains, in the sub bill before you today, all the recommendations of the Council of State Governments Justice Reinvestment in Ohio project, a yearlong effort which was undertaken at the joint request of the Governor, Senate President, and House Speaker and which I co-chaired with former Representative Moran.

Because CSG will testify later today, I will leave the details to them. Their recommendations fall into three main areas. First, we propose additional sentencing reforms including:

• Increasing the length of term for those convicted of F-1 offenses by one year.

• Decreasing the length of term for newly convicted F-3 offenders, from 5 years to 3 years, but give the judges options they do not now have to impose sentences in months and not in years.

• Subjecting all first-time non-violent F-4 and F-5 offenders to mandatory probation and treatment, in lieu of a prison term, unless they violate probation.

• Creating a “risk reduction sentence” under which newly convicted lower risk prisoners may be released upon completion of 75% of their sentence if at the time of sentencing the judge agrees to do so provided that the prisoner meets all the conditions while he is in prison.

Second, we are recommending the use of a single validated risk assessment instrument at every stage of the proceedings from pretrial bail through postconviction appeals. Armed with this instrument, which DRC has developed based on the pioneering work of nationally acclaimed University of Cincinnati Professor Ed LaTessa, the state will use fiscal carrots and sticks to make better use of state dollars spent on CBCF’s and prison diversion programs. CSG found that in many counties, CBCF beds are being filled by folks who ought to instead be on probation and who are otherwise lower risk folks who do not get much benefit from CBCF placement anyway. By requiring a risk based system for CBCF placement, in which the state will only pay for those at higher risk or who would otherwise be in prison, we free up CBCF beds and can reuse prison diversion dollars to beef up more intensive probation services.
Third, CSG found that Ohio’s probation system is rather too fragmented and suffers from a lack of minimum statewide standards. It suffers from an excess of duplication across the 187 probation departments serving Ohio’s 88 counties, and a lack of incentives to improve supervision and decrease revocations of probation resulting in more imprisonment. Justice O’Connor told us about one case in which a probationer was under orders to wear a GPS ankle bracelet on one leg from the municipal probation authorities and on the other one from the Common Pleas probation authorities. CSG will explain how the bill rectifies these problems, through such means as requiring that each county adopt a uniform system of graduated sanctions and through requiring each county to develop, with their courts, protocols to eliminate cases in which probationers are supervised by multiple different probation departments.

Senate Bill 10 is about being smart on crime. While it is important for the Legislature to continue to pass strong laws to help keep our communities safe, this effort must be balanced with policies that work to responsibly reduce Ohio’s prison population and its financial impact on taxpayers across the state. In total, the provisions of Senate Bill 10 are estimated by DRC and CSG to save DRC $78 million in operating costs by 2015 and to avoid over $500 million in construction and operating costs that DRC would incur by 2015 if we did not pass this bill. A chart from the CSG final report is attached.

This issue is simply too important for the future of our state to wait until the budget takes effect this summer. We must act promptly to accelerate the savings that can be realized from the provisions of Senate Bill 10 and its House companion bill that also enjoys bipartisan co-sponsorship under Speaker Pro Tempore Blessing and Minority Whip Tracy Heard. I cannot emphasize strongly enough that SB 10 is a package, not a Chinese menu from which to selectively cherry pick ideas. In fall, 2010 our CSG steering committee, including Justice Stratton, many department directors, and a bipartisan group of legislators agreed that we must enact the entire package. If we do not, DRC will be left with two much more serious choices that will endanger public safety: it would either have to cut funding for the very programs whose continued existence is key to successfully rehabilitating the offenders, or it would have to make staffing reductions and mass prisoner release decisions that would be extremely deleterious to public safety.

For these reasons, I urge your favorable consideration of the bill. At this time I would be happy to entertain questions from the committee. Thank you, Mr. Chairman.
SB 22 Supporters

Ohio Judicial Conference
OCCA
Fatherhood Commission
DRC
Governor
AG
Secretary of State
Ohio Criminal Sentencing Commission
ODADAS
ODMH
Drug Policy Alliance of Ohio
Montgomery County Commissioners
Ohio Justice and Policy Institute
OEA
Ohio Alliance of Criminal Defense Lawyers
Talbert House
CorJus – Community Based Corrections Facilities
Ohio Justice Alliance for Community Corrections
Alcohol, Drug Addiction and Mental Health Services (ADAMHS) Board of Cuyahoga County
Alvis House
ACLU
The Amos Project
Center for Families and Children
Children’s Defense Fund of Ohio
Healthy Fathering Collaborative of Greater Cleveland
Juvenile Justice Coalition (Ohio)
Lighthouse Youth Services, Inc.
National Association of Social Workers – Ohio Chapter
National youth Advocate Program, Inc.
Northern Ohio Recovery Association
Office of the Ohio Public Defender
Ohio Association of Child Caring Agencies (OACCA)
Ohio Poverty Law Center
Ohio Practitioners’ Network for Fathers and Families
Recovery Resources
The Sentencing Project
Voices for Ohio’s Children
WinWin, Inc.
Catholic Charities Services Parmadale/Catholic Charities Health and Human Services
Diocese of Cleveland
Ohio Chamber of Commerce
Greater Cleveland Partnership
Greater Akron Chamber
Regional Chamber of Youngstown & Warren
Columbus Chamber
Toledo Regional Chamber of Commerce
Cincinnati USA Regional Chamber
Canton Regional Chamber of Commerce
Dayton Area Chamber of Commerce
Projected Impact of Proposed Justice Reinvestment Framework and Senate Bill 22, FY 2012-2015\(^6\)

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ODRC Operational Capacity (38,349 beds)

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\(^6\) The graphs and tables below review the projected impact of the policy framework described in this report on the state’s current prison population projection if the policies are enacted by July 1, 2011. The base prison population projection assumes no change to current trends in prison admissions or to the criminal code. Cost savings and proposed level of reinvestment are based on projected savings as calculated by the Ohio Department of Rehabilitation and Correction.
Summary of Major Provisions
Senate Bill 10 and House Bill 86 as introduced
February 15, 2011

Earned Credit
- Increases from 1 to 5 days per month.
- All sex offenders excluded from any earned credit eligibility.
- Language added to exclude most Felony 1 and 2 offenders from eligibility for expanded credits.
- Includes provision requiring GPS monitoring for the first 14 days following release for offenders who earn over 60 days of credits while incarcerated.
- Caps overall earned credit at 8 percent.
- Provisions of bill will be prospective (will not apply to those currently incarcerated).

Increase in theft threshold
- Increases from $500 to $1,000 (previously $750 introduced version) the minimum threshold to determine increased penalties (generally from a misdemeanor to a felony) for theft-related offenses and certain non-theft-related offenses.
- Increases other threshold amounts by 50% that determine other increased penalties for theft and non-theft related offenses.

Non Payment of Support
- Gives preference to sentencing non support offenders to alternative community sanctions.
- Substitute bill provides courts discretion to sentence offenders to prison when: (1) it is consistent with purposes and principles of sentencing, or (2) if offender was previously convicted of felony non support after the effective date of the amendment, and when either the offender was sentenced to a prior prison term, or was sentenced to prior community sanctions and failed to meet the conditions.

Absconding Supervision
- Authorizes the Adult Parole Authority to utilize existing sanctioning authority including potential return to prison for offenders who fail to comply with their terms of supervision.
- Creates a new penalty for the offense of “escape” involving conduct by a person under supervised release, with a reduction in penalty from current law. The language ties the penalty to the underlying crime for which the offender was originally sentenced. For offenders with an underlying offense of aggravated murder, murder, life sentence, orFelony 1 or 2 offense, the penalty for escape from supervision would be a felony 4. For offenders with other less serious underlying charges, the penalty for escape from supervision would be a felony 5.
DRC Petition for 85% Release
- Allows Director of DRC to petition sentencing court for judicial release of inmate who has a stated prison term longer than one year who has served at least 85% of their sentence.
- Petition can be filed with the court up to 90 days prior to an inmate’s 85% date.
- Language in substitute bill requires DRC to supervise felony 1 and 2 offenders who are released on GPS monitoring for the remainder of their sentence.
- Permanently excludes from eligibility offenders serving time for offenses involving guns or other deadly weapons, and Repeat Violent Offenders (RVO).

Equalization of Crack and Powder Penalties
- Eliminates the distinction between criminal penalties for drug offenses involving crack and powder cocaine.
- Utilizes a blended sentencing approach. Raises powder penalties to the level of crack for felony 1, major drug offender possession and trafficking. Raises powder penalties for F1-F4 possession offenses, and lowers crack penalties for F1-F5 possession. Raises powder for F1-F3 trafficking offenses, and lowers crack penalties for F1-F5 crack trafficking offenses.
- Results in an annual prison bed savings of 267.

Treatment in Lieu of Conviction
- Expands eligibility to persons charged with specified theft and other offenses. Makes low level drug traffickers and felony 4 drug possession offenses eligible for TIL.
- Authorizes TIL for offender whose mental illness or dev. disability contributed to their offense.
- Allows repeat offenders who have not committed a prior felony offense of violence to be considered for Treatment in Lieu.

Mandatory Drug Provisions
- Creates new categories and potentially shorter mandatory terms for trafficking in marihuana and hashish, and possession of hashish and marihuana.
- Based on proposal by David Diroll, Executive Director, Ohio Criminal Sentencing Commission.

Council of State Governments Justice Reinvestment in Ohio

Other Provisions
- Adds provisions from Senate Bill 92, limiting Parole Board members to a total of two, six year terms, staggering terms of existing Parole Board members, and exempting chair and victim’s member from term limits.
- Allows for the placement in a skilled nursing facility of an inmate who is in imminent danger of death, or medically incapacitated, and outlines operator experience and security requirements.
- Adds provisions from Senate Bill 33 codifying DRC reentry planning process.
- Adds Director of Veteran’s Services to State Agency Reentry Coalition.
- Changes membership of Parole Board required for full board hearing to majority instead of 7.
- Revises procedures for notification of victim’s and other Office of Victim Services changes.
- Remove judges from membership of a correction’s commission
- Establishes community alternative sentencing centers.
- Defines DRC reentry centers and modifies payment rules for residential facilities.
- Modifies membership of county local corrections planning boards.