LESSON: How to deliver on a complete policy reform package

THE BUCKEYE INSTITUTE
COLUMBUS, OHIO, UNITED STATES OF AMERICA
How one think tank is bringing fairness and harmony back to Ohio’s criminal justice system

*In a Rust Belt swing state where “tough on crime” has been the norm for decades, one think tank has dared to challenge preconceived notions about crime, ex-offenders and why it’s so important for a state’s economy to tap into a segment of human capital that has been squandered for far too long.*

**OPPORTUNITY & JUSTICE:**
Rethinking Ohio’s entire criminal justice system

In just four years, the Ohio-based Buckeye Institute has tackled serious criminal justice reforms that have dropped the recidivism rate in the state from 40 to 27 percent. How? For starters, by rewriting the state of Ohio’s criminal code — quite literally. Criminal justice expert and legal fellow Daniel Dew spent 2016-2017 collaborating with Ohio’s Criminal Justice Recodification Committee to review and revise 4,000 pages of state statute, creating legal language to make Ohio safer and more just, and also providing the foundation for legislative reforms that have vastly improved outcomes for ex-offenders and taxpayers alike. No other think tank in America has achieved more consequential results to protect the rights of the accused, rehabilitate offenders, and reduce the cost to taxpayers of the criminal justice system.

» The organization has achieved sentencing reform that has redirected the investment of more than $40 million in the state of Ohio’s correctional budget back into communities so rehabilitative professionals can work with men and women convicted of crimes to overcome the addiction and mental health issues that led to criminal activity.

» The hard work the Buckeye Institute and its coalition partners put in dramatically stunted the growth in Ohio’s prison population, which was estimated to reach 54,000 by 2015 but has sunk below 50,000 today.

» Because of the civil asset forfeiture reforms Buckeye fought for and passed in the Statehouse, Columbus police forfeiture revenues went from a high of $945,000 in 2014 to $95,000 in 2016.

» Because of Buckeye’s suite of reforms, Ohio’s recidivism rate has been cut from almost 40 percent to 27 percent.

**KEY TAKEAWAYS**

Buckeye’s story has incredible lessons for other think tanks looking to tackle massive policy challenges through legislative reforms. By filling the void of research and information, the organization was able to establish itself as the go-to source for lawmakers, media, and other groups working toward the same kind of “smart on crime” policy changes. Buckeye’s story offers lessons on how to:

» Use data-driven policy research to become a powerful coalition member

» Inform not only the public, but also key stakeholders on how to achieve meaningful policy reforms

» Create a harmonized suite of reforms to address a major policy issue

READ ON TO LEARN MORE.
About The Buckeye Institute

The Buckeye Institute’s headquarters sit directly opposite the Ohio Statehouse on Capitol Square in downtown Columbus, Ohio, which is fitting — despite Republican political majorities, the legislature needs a strong, principled watchdog to stand up for free-market, limited government ideals.

For the past 29 years, that’s exactly what Buckeye has provided the people of Ohio.

Buckeye is an independent think tank whose mission is to advance free-market public policy in the states.

The staff at Buckeye accomplish the organization’s mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating sound free-market policies, and promoting those solutions for implementation in Ohio and replication across the country.

Buckeye’s policy research covers good government, budget + tax, education, energy + environment, federalism, health care, jobs + entrepreneurship, labor, and legal issues.

The context: A powerful statewide shift — from ‘tough on crime’ to ‘smart on crime’

Ohio is the quintessential swing state, offering a bellwether for the rest of the nation. That’s why the work Buckeye is pursuing is so essential. Much like the rest of the nation, Ohio long pursued public policy on the criminal justice front that embraced a “tough on crime” mentality — much to the detriment of the men and women behind bars, as well as taxpayers.

As a result, the courts are backed up with an overwhelming caseload every day, and state prisons that were only intended to house 38,000 people, according to the ACLU of Ohio, incarcerate about 50,000 prisoners. Not only is this straining the system itself, but it’s also proving to add a costly burden to state and local budgets. The human toll is also great, for many years thousands of men and women have been shuffled in and out of the system with no hope of breaking the vicious cycle of incarceration. Additionally, while more offenders are being housed in prison, the crime rate has not gone down.
Reforming Ohio’s Failing “Money Bail” System

Why it Matters

Ohio’s cash bail system makes Ohio a more dangerous place to live.

Under the current system, accused murderers, child rapists, and armed robbers are arrested and released into our communities because they have access to money, while citizens accused of jaywalking, violating dress-codes, or failing to pay traffic tickets sit in jail for days, weeks, or even months because they have little or no access to cash.

Ohio’s cash bail system is an arbitrary approach that is inherently prejudiced against poorer defendants and does little to protect communities from truly dangerous defendants.

Ohio’s cash bail system is inefficient, expensive, and unfair. It has proven to be no guarantee to thwarting repeat offenders.

83% of Ohioans support ending Ohio’s cash bail only system.

Fixing the System

1. Leverage Proven Tools

Amend Ohio law to provide judges with proven tools to make better-informed pretrial detention and release decisions.

2. Keep Communities Safe

Give judges greater flexibility and resources to hold defendants accountable and to deny pretrial release when the accused poses significant risks to the community.

3. Better Results for Less Money

Save taxpayer dollars by creating a system where more defendants are safely released before trial, more defendants appear for trial, and less crime is committed by those awaiting trial.

Determining Factors for Cash Bail

Judge-assessed risk factors

1. What is the defendant’s criminal history?
2. What has the defendant been charged with?
3. Has the defendant missed prior court dates?

Alternative Solutions to Cash Bail

- Electronic Monitoring
- Mandatory Counseling
- Routine Check-Ins

Learn more at: buckeyeinstitute.org

The Buckeye Institute

Ohio, like every U.S. state, was hit hard by the Great Recession, which caused the job market to constrict. This has made it even more difficult for ex-offenders to find work, making it more likely they will eventually end up back behind bars. Additionally, Ohio is ground zero for the nation’s opioid epidemic, which has ravaged Ohio River towns such as Portsmouth while at the same time creating a crisis in suburbs from Cleveland to Cincinnati and Columbus.

But things are changing, and fast. Thanks to a diverse coalition led by The Buckeye Institute, free-marketers, progressives, centrists, conservatives, and independents are all coming to the table, and bringing stakeholders with them. Nowadays, it’s a well-accepted truth that the state has a lot of work to do to provide a more just system. Gov. John Kasich is part of those conversations, as are state lawmakers and Gary Mohr, who has overseen the state’s prison system since 2011.

“We can’t prison ourselves out of this problem ... The problem in the legislature is they worry someone is going to call them soft on crime ... Here’s the problem ... one quarter of the people going into those prisons every year are going to serve less than a year ... We need additional reforms.”

Ohio Gov. John Kasich
Columbus Dispatch (Dec. 8, 2016)

Getting to work: A campaign to change laws and minds

Buckeye’s criminal justice reform campaign began in earnest back in 2014, and over the past several years has led to the organization becoming the only free-market voice in the debate. Not only that, but years of research, legislative analysis, and coalition building has allowed Buckeye to understand what issues matter — and how to effect policy change that really counts.

Because Buckeye was entering a crowded field with a lot of existing players — mostly from the progressive side of the political spectrum — the team knew it needed to be strategic in making alliances to be able to have any impact. To that end, members of the organization began communicating with members of the loosely aligned coalition of groups working on criminal justice reform in Ohio. Buckeye’s leadership within this coalition was cemented in 2014, when it was Buckeye who kept all stakeholders at the table to negotiate mens rea reform, which requires the government to prove that the defendant had the requisite mental state for each element of the crime allegedly committed. Without Buckeye’s determination, this reform would have collapsed — instead, it made its way through the legislature just in time.

Two years later, Buckeye created a reform package that effectively ended civil asset forfeiture in Ohio by requiring a criminal conviction before the government can seize private property valued at less than $15,000 (which constitutes a majority of the property seized through civil forfeiture).

Since then, Buckeye has continued to focus on legislative changes that will refocus Ohio’s criminal justice system on rehabilitation instead of simply locking up offenders and throwing away the key.
They’ve done this through shepherding reforms that make it easier for nonviolent ex-offenders to find work. And because of Buckeye’s efforts, Ohio is now spending corrections dollars on programs that restore harmony to the system, not just incarcerating offenders. Because of Buckeye Institute research and work generating public awareness, state policymakers codified legislation to divert nonviolent, nonsexual offenders sentenced to less than one year to be rehabilitated through treatment programs, probation, jail, and other local programs. Ohio’s Department of Rehabilitation and Correction is now granting money back to the counties — resulting in savings by reducing the costly expense of housing low-level offenders in prison. As a result, Ohio’s prison admissions are now at their lowest levels in 27 years, and taxpayers are seeing huge savings because the state has no need to build additional prison facilities.

Additionally, in June 2018, Ohio state lawmakers passed Senate Bill 66, which expands eligibility and opportunity for record sealing to give nonviolent offenders a chance at a fresh start, increases opportunities for treatment rather than punishment, and makes rehabilitation a top priority so ex-offenders do not continue to cycle in and out of prison because of struggles with addiction.

Buckeye continues to build on its policy successes. Today, Buckeye is leading the fight to reform Ohio’s broken cash bail system, working with policymakers on additional reforms that would move Ohio away from an arbitrary cash bail system and give judges more flexibility and more information to detain dangerous defendants before trial.

Due to Buckeye’s respected reputation, it often receives requests from both Republicans and Democrats behind the scenes for help and advice on criminal justice reform efforts, and — at the personal request of legislators — Buckeye has testified on major reform efforts and proposals and convinced skeptical legislators on both sides of the aisle of the merits of its reform ideas. Buckeye continues to help draft and broker deals on almost all significant language for criminal justice bills in Ohio.
Obstacles & Factors For Success

**HOW BUCKEYE DID IT: Bringing a free-market voice to a progressive criminal-justice coalition**

“To paraphrase a line from Hamilton, we were in the room where it happened. We were included in meetings that not even the prosecutors or law enforcement were invited to. We sat with the drafters to help craft the policy. When it looked like civil asset forfeiture was going to stall, we had the phone calls with the people who could push it across the finish line.”

*Daniel Dew*

*legal fellow at the Buckeye Institute*

It was no secret that criminal justice policy issues were highly controversial across Ohio. Progressive rhetoric that focused solely on social justice rang flat with rural areas and conservative communities, and nobody had been able to make the fiscal case for why reform was needed until Buckeye entered the conversation. Ohio needed someone to bridge the divide between conservative and progressive, making the case for why reform would benefit the entire state.

Being in the room was never a guarantee — far from it. The criminal justice coalition in Ohio consists primarily of left-leaning groups that disagree with Buckeye on most other policy issues. In fact, Buckeye is the only free-market member among the other groups working together to fight for criminal justice reforms in Ohio. But it was important to bring that perspective to the table. Without Buckeye’s compelling arguments and focus on research instead of rhetoric alone, it’s unlikely that the coalition would’ve been able to persuade a broad enough group of Ohioans to make dreams of policy reform a reality.

**Why it matters:** It’s important not to be close-minded about seemingly unorthodox partnerships when it comes to fighting for what’s right. Often, the broader the coalition the higher the likelihood that a policy solution takes root. Buckeye’s lesson: Focus on what unites us, not what divides us.
HOW BUCKEYE DID IT: On lightning rod
criminal justice reform issues, winning
by consistently taking the high road

Buckeye saw short-term and long-term success
over the life of its criminal justice campaign
because of the group’s relationship model and
expertise. “We know we don’t have to convince
everyone,” said Daniel Dew, legal fellow at the
Buckeye Institute. “We have to convince the
right people in the right positions to make the
policy happen.” But not everyone will agree or
support Buckeye’s prescribed reforms, and when
that happens the team is certain to make that
disagreement with those individuals known —
without ever making it personal. Not only does
running a policy-focused, respectful campaign
allow Buckeye to always remain credible, but it
also helps the organization maintain its perception
in the community as genuine experts and honest
brokers.

Why it matters: Once your credibility is shot, it’s
hard to win. As policy-focused organizations,
it’s important to remain true to your principles
— don’t sling mud, just run good, sound policy
campaigns.

HOW BUCKEYE OVERCAME IT:
A split on the issues between the governor and
the legislature

How do you handle a vast political divide? Educate.
In Ohio, while the state’s moderate Republican Gov.
John Kasich supported Buckeye’s criminal justice
reform efforts, the governor was at odds with a
more traditionally tough on crime legislature and
attorney general. This made the political climate
interesting, to say the least.

“We had an uphill battle with very powerful groups
like the prosecutors and law enforcement,” Dew
said. “We were accused of everything from being
soft on crime to being an instrument of drug
cartels.”

Despite these challenges, the general public in
Ohio favors criminal justice reforms when the
issues are explained properly. And that was the
key — showing lawmakers that their constituents
support a fairer, more just system that spends
money on programs that break the vicious cycle of
incarceration and actually make communities safer.

Why it matters: Moving the people is more
important than moving the machine — though
a little support from those operating within
positions of power never hurts. If you can activate
the public and get them to apply pressure to their
representatives, it becomes easier to achieve
meaningful policy reform.

HOW BUCKEYE OVERCAME IT:
Split public opinion on the topic
of criminal justice reform

Ohioans are split on criminal justice issues. Many
don’t have any empathy for those who break
the law, though on some issues there’s more of
a consensus. For example, polling on civil asset
forfeiture showed more than 80 percent of Ohioans
supported reform.

Tackling criminal justice reform in the heartland
is more than a policy fight, it’s a battle to rebrand
ex-offenders and the nature of criminal justice
more broadly. One of the best examples of how
Buckeye is working to rebrand criminal justice
reform relates to a policy Buckeye is still fighting
for — bail reform. The truth about the bail system
in Ohio, like too many states, is that it causes many
poor people who broke minor laws to languish in
jail because they can’t afford to buy their freedom
before trial. Though that moral argument should
seem to resonate, many people are unwilling to
be moved by it. So Buckeye’s team wrote a report
showing that not only are poor people hurt by
current bail practices, but really dangerous people
who go on to do terrible things are released
because of the reliance on cash in our system. That
flipped the message from one of social justice to
one of public safety, which resonated with “tough
on crime” folks.

Why it matters: Contrary to what many media
outlets would have you believe, people are
persuadable. It’s a bad idea to just stop talking
to a segment of the population because you’re
convinced they won’t be with you from the start.
POUNDS TO PONDER

1. A key part of The Buckeye Institute’s success was their ability to identify new groups also engaged in criminal justice reform with which to build a coalition. How can other think tanks, advocacy groups, or non-profit organizations be more strategic about partnering with atypical organizations to achieve their goals?

2. Too often coalitions drift apart and reforms fall through the cracks if there is no real leadership to keep things going. How can think tanks, advocacy groups, or other non-profit organizations engaged with coalitions show leadership to keep these groups going?

3. Thanks to the efforts of groups like The Buckeye Institute to testify and educate on the negative effects of a “tough on crime” attitude, legislators on both sides of the aisle are passing meaningful reforms at the state and federal level. How can other think tanks, advocacy groups, or other non-profit organization push their advocacy efforts forward to audiences who many not be as receptive to their ideas?

4. In order for legislative change to be a viable option, The Buckeye Institute first needed to change public opinion to being more receptive to criminal justice reform. What can think tanks, advocacy groups, or other non-profits do to reach the public with their ideas in a way that resonates with them?

Learn More:

- Reason: Ohio Just Made It a Little Harder to Accidentally Commit a Crime
- Daily Signal: How Michigan and Ohio Made It Harder to Accidentally Break the Law
- Dispatch: Civil Forfeiture Bill Ready for Passage Despite Opposition by Police, Prosecutors
- WHIO: WHIO Reports: A close look at bail reform
- Forbes: Ohio Now Requires Criminal Convictions For Many Civil Forfeiture Cases

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