



Office of the Ohio Public Defender

Timothy Young, State Public Defender

**Testimony in Opposition of SB1
Fentanyl Drug Laws
Sponsor Senator LaRose**

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee. My name is Niki Clum, and I'm the Legislative Liaison for the Office of the Ohio Public Defender. Thank you for the opportunity to testify in opposition of SB1.

The Ohio Public Defender agrees that fentanyl is a very dangerous drug that has caused the death far too many Ohioans. The goal of SB1 is to increase penalties for offenses where fentanyl is involved in hopes of deterring the proliferation of fentanyl on the streets of Ohio. However, a huge problem with actually obtaining this goal is that the bill that does not require the individual to know they were in possession of fentanyl. Individuals can be sentenced to these enhanced penalties for fentanyl even if the individual did not know fentanyl was mixed with another drug – like heroin or cocaine. How can enhanced penalties deter people from committing an offense they did not know they were committing? The simple answer is they cannot.

It is common that fentanyl is added to heroin or cocaine by someone who had possession of it, but this information is not known to others who might use or sell the heroin or cocaine. In order to actually deter the use and consumption of fentanyl, SB1 must require that individuals who receive enhanced penalties know they were in possession of fentanyl. If individuals do not know, they cannot be deterred.

During his sponsor testimony, Senator LaRose testified that drug traffickers are the target of this legislation -- not addicts, and the goal is longer incarceration for traffickers not addicts. What is too often forgotten is that addicts and traffickers are frequently the same person. Books like Dream Land and other

Hollywood depictions put an image in our heads of non-user individuals who sell opiates simply for profit, callous to the harm they cause their buyers. While sometimes that does occur, more often than not drug traffickers are addicts who are trying to support their own habit. This bill will increase the number of addicts that are forced into Ohio's overcrowded prisons. As history as shown, and the ACLU has pointed out to this committee many times, we cannot incarcerate our way out of the opiate crisis.

OPD also wants to recommend that this committee pay special attention to the testimony of Harm Reduction Ohio. Their testimony explains why the current structure in SB1 is not the best method based on nature of fentanyl. Compellingly, Mr. Cauchon points out the SB1 will actual incentivize individuals to not dilute their fentanyl so they possess smaller amounts and face less severe penalties. Incentivizing individuals to not dilute their fentanyl is a dangerous approach that will result in the unnecessary and tragic death of more Ohioans.

Another concern OPD has with SB1 is that it bars the reduction of any prison term imposed under the bill through the process of judicial release, earned credits, the 80% release mechanism, or any other provision. Drug offenders are the people who can benefit the most from these programs. They are individuals who should be incentivized to get their GEDs and attend programing, especially substance abuse programing. It is these programs that will stop individuals from falling back into their addiction after incarceration. By taking away the incentive to participate with these programs that will help individuals fight their addiction after incarceration, we are doing nothing to deter the further spread of fentanyl in Ohio.

Thank you for the opportunity to speak today before your committee. I am happy to answer questions at this time.

