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SB 1: Opposition Testimony, Ohio House Criminal Justice Committee

Fentanyl is different

Diluting Fentanyl					
(Never less than 1000-to-1)					
This chart shows the danger of fentanyl when added to a typical dose of heroin or cocaine.					
Overdose risk is for a 160-pound person without opioid tolerance and when fentanyl is the only active drug in the mixture.					
		HEROIN: Typical dose of 100,000 micrograms		COCAINE: Typical dose of 250,000 micrograms	
Amount of fentanyl user ingests (micrograms)	Overdose Risk	How much diluent	Amount of fentanyl	Amount of diluent	Amount of fentanyl
25	Not-fatal	99.98%	0.02%	99.99%	0.01%
50	Modest risk	99.95%	0.05%	99.98%	0.02%
100	Moderate risk	99.90%	0.10%	99.96%	0.04%
150	Significant risk	99.85%	0.15%	99.94%	0.06%
250	High risk	99.75%	0.25%	99.90%	0.10%
400	Extreme risk	99.60%	0.40%	99.84%	0.16%
700	Death likely	99.30%	0.70%	99.72%	0.28%
1000	Death near certain	99.00%	1.00%	99.60%	0.40%
2000	Death	98.00%	2.00%	99.20%	0.80%

Source: HarmReductionOhio.org

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the Criminal Justice Committee.

My name is Dennis Cauchon. I am president of Harm Reduction Ohio, a one-year-old organization supporting drug policy reform.

For those not familiar with the term, “harm reduction” drug policy promotes pragmatic, incremental policies limiting the negative consequences of drug use in ways consistent with science, public health, compassion and human rights.

SB 1’s goal is harm reduction, even if it hasn’t been articulated that way.

As legislators, you want to reduce harm -- the heart-breaking number of fentanyl overdoses that killed Ohioans at a rate of eight funerals a day in 2017. Your sincere goal is to save lives. SB 1’s use of mandatory minimums and sentencing enhancements is just a mechanism toward this goal.

Will SB 1’s mechanism achieve its goal? Will SB 1 save lives?

No, SB 1 will *not* save lives; it will cost lives, despite your good intentions.

Why will this happen?

SB 1 will *not* save lives because it mistakenly treats fentanyl like “strong heroin.” Fentanyl is not like “strong heroin,” especially when dropped into a weight-based sentencing system. Fentanyl and its analogues, such as carfentanil, are an entirely different kind of drug.

SB 1's fundamental error is basing sentence length on the weight of the entire "mixture and compound" rather than the weight of the drug itself. This "bulk amount" approach assumes that fentanyl is like heroin, cocaine and most prohibited drugs when it comes to its weight, physical nature and function in the drug market. This assumption is wrong. Fentanyl is different. Injecting harsh fentanyl penalties into a traditional "mixture and compound" weight-based sentencing scheme will have unintended, deadly and unjust consequences in the real world.

How fentanyl is different. Fentanyl and heroin are different kinds of opiates. Heroin is an organic "gram drug" – that is, heroin is used and exchanged around the weight of a gram, as are cocaine, meth and most other drugs.

Fentanyl is a synthetic microgram drug. A microgram is not a 1/100th of a gram or 1/1000th of gram. It's 1/1,000,000th of a gram.

Fentanyl and heroin are a *million* metric miles apart when it comes to weight-based sentencing. That's equal to the difference between my 180-pound body and the 180-*million*-pound weight of the entire (occupied) Ohio Statehouse. Making health decisions about me based on the bulk weight of the Statehouse, including the weight of every person in it, makes no sense and would have harmful, unintended consequences.

For sentencing purposes, fentanyl should be treated like the other popular synthetic microgram drug: LSD. Both drugs trigger effects at 50 micrograms. Ohio law sentences LSD based on the number of doses involved. The Ohio legislature should follow its own precedent and treat

microgram drugs consistent with each other and their unique physical properties, notably their infinitesimal weight.

Why weight matters. “Mixture and compound” sentencing uses weight as a proxy for a drug’s harm and, therefore, sentence lengths. But the bulk-weight approach falls apart when applied to a drug that has no bulk.

Getting the weight calculation right is critically important for SB 1. If you get it wrong, you will damage the fairness of the justice system and public health.

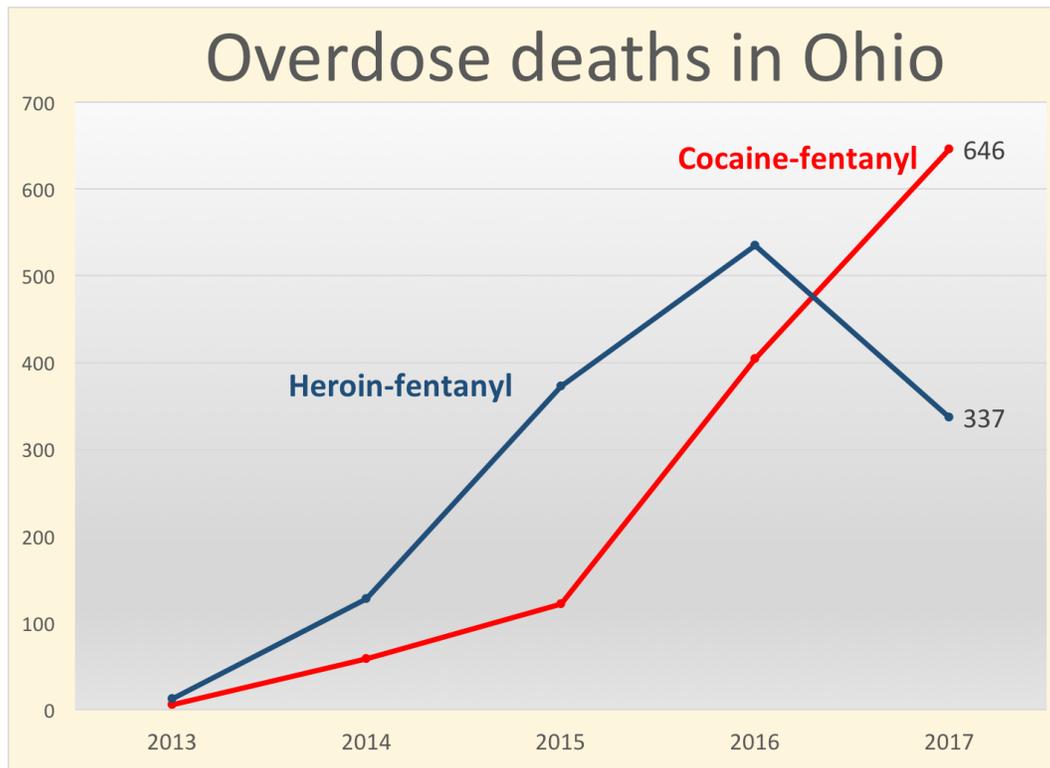
Fentanyl is not killing people because it’s inherently more dangerous than other opiates. In fact, it’s safer medically than heroin or morphine, which is why it’s the No. 1 drug used in hospitals for anesthesia. If you’ve had a colonoscopy, an epidural during childbirth or any kind of surgery, you’ve almost certainly “used” fentanyl. Anesthesiologists like the drug because it’s short-acting and predictable.

So why is fentanyl killing thousands of Ohioans and tens of thousands of Americans every year?

The reason is that the drug is being insufficiently diluted in the illicit marketplace. Drug dealers also do not fully grasp that fentanyl is different, that it’s not just “strong heroin.” It is a synthetic opioid that requires dilution far beyond what is being done today.

Fentanyl was introduced into the opiate supply as a cutting agent – an adulterant, to use the DEA classification – following the crackdown on prescription drugs. It has grown to be a universal

adulterant used in every illegal drug, except marijuana and mushrooms. Cocaine-fentanyl mixes are now the No. 1 cause of overdose death in Ohio, far exceeding heroin-fentanyl. Meth-fentanyl overdoses are soaring as well. Fentanyl and its analogues are in fake pills, Ecstasy and LSD.



By throwing fentanyl into an elevated, weight-based heroin sentencing scheme you're also throwing all these other drugs into that system because prosecutors can pick any drug, even if found in trace amounts, to use at sentencing. One unintended consequence will be racial. More African-Americans will go to prison because you're converting cocaine offenses to opiate offenses. We're already seeing the change in the racial composition of overdose deaths because of who fentanyl-laced cocaine, especially fentanyl-laced crack cocaine, is killing.

Fentanyl needs more filler, not less. Drug dealers – to their own financial detriment -- are getting fentanyl doses wrong. They are cutting fentanyl to 1% to 4% of a mixture's content. To

them, this seems like an enormous dilution, many magnitudes greater than what's done with heroin or cocaine.¹

In reality, this is nowhere near enough! Fentanyl should *never, ever* be cut to less than one part fentanyl to 1,000 parts filler. (See the chart at the end of my written testimony for proper dilution levels.) The real goal should be one part fentanyl to 5,000 or 10,000 parts filler.

In hospitals, anesthesiologists don't mix their own fentanyl. The drug comes pre-diluted from the pharmaceutical factory at a ratio of 1:20,000 – always the same dilution ratio, no matter what dose is given. And these doctors want to knock you out!

As a matter of life and death, legislation should *never, ever* discourage or punish the addition of diluents to fentanyl. *We want this drug diluted.* And we want it diluted high in the supply chain, if possible, where technical expertise is greatest. Microgram opiates should be mixed with other drugs while in liquids, using a piece of equipment called a rotary evaporator.² Heroin and cocaine do not require these precautions and can be mixed adequately in powder form.

¹ On the street, heroin and cocaine are typically cut to perhaps 33% purity -- or one part drug, two parts filler. By contrast, fentanyl products are cut to 0.7% to 4.1% purity, according to the DEA lab results. That's one part fentanyl to 25 or 100 parts filler.

² Fentanyl and its cutting agents should be diluted in a liquid so solids dissolve and are evenly dispersed when re-evaporated back into a marketable powder. The drug dealer's traditional technique for cutting heroin and cocaine – mixing powders together, maybe in a blender -- leaves invisible, potentially fatal “hot spots” even in heavily diluted powder.

Fentanyl imperfectly diluted on the street to 1/1,000th is 10 times less likely to kill than fentanyl imperfectly diluted to 1/100th or less. Ohio’s pragmatic message should be, “don’t go near fentanyl at all – it’s the atomic bomb of opiates -- but if you do, dilute, dilute, dilute. And when you’re done, dilute some more.”

SB 1 punishes dilution. It sets prison sentences based essentially entirely on the volume of life-saving diluents mixed with fentanyl to make it safer. To do so, in my opinion, would show a reckless disregard for the health of Ohioans. Street fentanyl needs more bulk, not less.

How do you think illegal drug markets will respond to SB 1 punishing dilution? Rational dealers -- especially well-informed, big-time suppliers with lots of risk -- will avoid bulking the drug up. They’ll keep fentanyl concentrated and dangerous. SB 1 creates perverse incentives and disincentives that are the opposite of what’s needed to save lives.

How to fix SB1. You can fix SB 1 without undermining your desire to create harsher fentanyl sentences. SB 1 already has “unit doses” in its language, as the LSC chart shows.

Amount of drug involved	Degree of offense	Applicable sentencing rule
< 10 unit doses, or < one gram	Generally, F5, but if committed in vicinity of a school or juvenile, F4.	If F5, presumption against prison term. If F4, no presumption for or against prison term.
≥ 10 unit doses but < 50 unit doses, or ≥ 1 gram but < than 5 grams	Generally, F4, but if committed in vicinity of a school or juvenile, F3.	If F4, presumption against prison term. If F3, presumption for prison term.
≥ 50 unit doses but < 100 unit doses, or ≥ 5 grams but < than 10 grams	Generally, F3, but if committed in vicinity of a school or juvenile, F2.	If F3 or F2, presumption for prison term.
≥ 100 unit doses but < 200 unit doses, or ≥ 10 grams but < than 20 grams	Generally, F2, but if committed in vicinity of a school or juvenile, F1.	If F2, mandatory prison term from F2 range of terms. If F1, mandatory prison term from F1 range of terms.
≥ 200 unit doses but < 500 unit doses, or ≥ 20 grams but < than 50 grams	F1	Mandatory prison term from F1 range of terms.

This what you care about – fentanyl doses – not the baby laxative filler that’s needed in large amounts to prevent death.

The existing bill sets a fentanyl dose is 1/10th of a gram – or 100,000 micrograms. That is false. That number is the size of a typical *diluted heroin dose*. This legislative fiction illustrates how the bill mistakenly treats fentanyl as “strong heroin.” In reality, a strong fentanyl dose is about 50 or 250 micrograms for a user without opioid tolerance and 250 to 500 micrograms for a user with tolerance.

The legislature can decide for itself how severely to punish fentanyl, but it must do so based on fentanyl’s actual weight or the number of doses involved. Ohio’s existing drug law ties sentences to the weight of the average daily dose of a drug, as established in a medical reference source. This is a reasonable place to start.

To get SB 1 right, focus on fentanyl, not baby laxative. Lives are depending on it.

Thank you. I’m happy to answer questions on quantitative testing or other issues.