



TO: Senate Judiciary Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: February 28, 2017
RE: Senate Bill 1

To Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas, and members of the Senate Judiciary Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present opponent testimony on Senate Bill 1.

Like all Ohioans, including proponents of this bill, the ACLU of Ohio is greatly concerned about the serious problems of drug addiction and overdoses throughout our state and elsewhere. SB 1 addresses fentanyl (i.e. "fentanyl-related compound"), a synthetic opiate with legitimate medical purposes that is increasingly mixed with other drugs because of its potency.

However, the ACLU of Ohio has serious doubts SB 1 will meaningfully effect the overall problem of fentanyl use, abuse, possession, and trafficking because of its exclusive focus on punishment and conviction. Senate Bill 1 will certainly increase sentences when compared to current law. SB 1 will unquestionably lead to more people – both the low-level addicts and large-scale traffickers - in our state prisons for longer times, presenting further struggles for a system severely overcrowded for decades.

Indeed, while Senate Bill 1 is being portrayed as mostly focusing on big dealers of fentanyl, those who merely possess fentanyl will be treated much more severely under this bill. Under current law, possession of any amount of fentanyl under 20 grams is a 5th degree felony. However, under this bill, possession of:

- Less than 1 gram = 5th degree felony
- 1 gram-less than 5 grams = 4th degree felony
- 5 grams-less than 10 grams = 3rd degree felony
- 10 grams-less than 20 grams = 2nd degree felony (mandatory term)

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In other words, under SB 1, the only amount that remains an F5 is less than 1 gram. Anything over 1 gram is treated much harsher with the upper limit of what is now an F5 – just under 20 grams - becoming an F2, with a mandatory prison term.

This problem is further exacerbated by SB 1's treatment of any substance containing any amount of fentanyl as fentanyl under drug possession and trafficking laws. That is because SB 1's changes include not only "fentanyl-related compounds" but also "any compound, mixture, preparation, or substance" containing fentanyl. So, any other drug containing any amount of fentanyl will be subject to these various new penalties. This is an important variable to consider when addressing this particular drug because fentanyl is added to many other substances besides heroin, including cocaine, marijuana, MDMA, and others.

So, what may have been a lower-level marijuana case is now much more serious because, somewhere along the supply chain, someone decided to lace the marijuana with fentanyl. Of course, dealers and users may not even know that occurred but will be subject to these serious new fentanyl penalties all the same, because some amount, no matter how small, was added without their knowledge.

In addition, the ACLU of Ohio also believes it is prudent to wait and see what recommendations will come from the Ohio Criminal Justice Recodification Committee, the committee created by the legislature and made up of legislators, judges, law enforcement, criminal defense attorneys, and advocates. In the coming months, this committee is expected to forward numerous suggestions regarding Ohio's drug laws to the Ohio General Assembly for your consideration. It is exactly what was intended and anticipated with the creation of the Recodification Committee by Ohio legislators.

In conclusion, the ACLU of Ohio urges this committee to reject the failed and counterproductive approaches of the past and develop a new framework and strategy to meaningfully address these serious problems affecting Ohioans everywhere.