



TO: Senate Judiciary Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: March 28, 2017
RE: House Bill 4

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 House Bill 4.

The ACLU of Ohio understands the rationale behind the continued movement of HB 4. Despite the Ohio Supreme Court's recent reversal of its original December 2016 ruling in *State v. Gonzales*, legislators want to make their intent regarding cocaine sentencing perfectly clear and have that intent reflected in the Ohio Revised Code.

The reason for the ACLU of Ohio's opposition to HB 4 is because the bill's overall goal is a perfect illustration of the flawed and counterproductive policies that have, for many years, fueled a failed "War On Drugs" and packed a state prison system far beyond its capacities.

At issue is whether people should be convicted, sentenced, and imprisoned solely for the amount of illegal drugs they possess or traffic. Or, should the entire amount of additional non-drug fillers, additives, mixtures, etc., when combined with illegal drugs, be treated as if those substances are every bit as harmful and dangerous as the drugs themselves.

In other words, if an Ohioan possesses a bag of 3 grams of cocaine and 9 grams of baking soda, should they be on the hook for the 3 grams of actual cocaine, or the entire 12 grams?

Ohio legislators have answered this question before via our state's drug laws, opting to throw more people in prison for longer periods of time for substances that are not drugs, and otherwise not illegal to possess, were they not mixed with actual drugs.

But, with House Bill 4 (as well as Senate Bill 42 and Senate Bill 1), the Ohio General Assembly has a prime opportunity to reverse course, ease the burden on our packed prisons, and improve our criminal justice system.

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During past hearings on those three bills, questions have been asked about the capability of BCII to conduct purity (quantitative) testing on substances to determine, for example, how much cocaine is in the bag versus how much baking powder. As a result of those questions and some inquiries, we now know it would take about \$728,000 to properly equip BCII for purity testing and an additional \$375,000 per year for training, additional salaries, and related costs.

Meanwhile, it costs an estimated \$30,000 per year, to keep a person in prison in a system now annually consuming \$1.7 billion of taxpayer dollars.

I mention this all because it is increasingly common for legislators, elected officials, judges, law enforcement, criminal defense attorneys, advocates, and Ohioans across the state to ask how we can reduce our prison population and counter the ineffective excesses of our decades old, and still ongoing, lock-them-up mentality.

Purity testing of drugs, and punishment for only the harmful drugs contained in a mixture, is how to make a meaningful impact – right now - on our prison population and expenses.

That would mean abandoning the heart of House Bill 4 and rejecting the similar frameworks offered in SB 42 and SB 1. It would require an entirely inexpensive upgrade to BCII's capabilities, which could be accomplished via the current budget bill. A cost to the state that would be quickly recouped with fewer people entering prison and for less time.

HB 4 is a fork in the road for Ohio. We can continue with what we know is ineffective, counterproductive, and ultimately harmful to this state and its people. Or, we can forge a new path. One that brings some common sense to how we deal with Ohio's drug problems. A path that does not purposely imprison even more people at even greater cost to lives, families, and scarce resources.

Certainly, rejecting House Bill 4 will not solve all these problems. But approving it will only increase them. Members of the Senate Judiciary Committee, please try something new and reject what has proven for decades not to work.