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HB-4; Cocaine
Proponent Testimony
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Senate Judiciary Committee

In *State v. Gonzales*, 2016-Ohio-8319, the Supreme Court held that the drug possession statute, which imposes higher penalties for possession of larger quantities of cocaine, is to be interpreted so that in determining the larger quantities, only the amount of pure cocaine can be counted. The weight of any filler material cannot be counted.. This interpretation will also apply to the trafficking section, since the language is the same. This is contrary to long standing practice that in determining the quantity of the drug involved the calculation included all of the mixture or compound, including filler material.

Cocaine sold at the retail level is almost never pure cocaine. At some point in the distribution process, cocaine is "cut" by adding filler material. The language "If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine" recognizes this reality. Unfortunately, the court focused on another part of the same statute that refers to possession "of cocaine."

This means that all cocaine possession and trafficking cases, even those involving very large amounts, can today be prosecuted only as fifth degree felonies unless a quantitative analysis is done to determine the amount of pure cocaine in the material. Even cases that would be first degree felonies before *Gonzales* are now fifth degree felonies without the quantitative analysis. Doing a quantitative analysis in every cocaine possession and trafficking case where the amount of material is above the fifth degree felony level will be very expensive.

We believe it has been the policy of this state to include the filler material in determining the amount involved because that is the way cocaine is marketed. We believe the amounts specified in the statute to warrant higher penalties were selected not based on the amount of pure cocaine, but based on the weight of the total mixture as sold at the retail level. This has now been upset by an interpretation that appears to result from an unfortunate drafting inconsistency.

The saving grace here is that *Gonzales* is a statutory interpretation case that can readily be remedied by the legislature. We support HB-4 that proposes to make the amendments necessary to return the law to what it was before the *Gonzales* decision, thereby restoring what we believe to be the correct policy of determining weight by the total weight of the mixture or compound as commonly marketed. We also support the amendment to make conforming changes with respect to other drugs.