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TO: House Criminal Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: October 10, 2019
RE: Senate Bill 55 – Opponent Testimony

To Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for this opportunity to present opponent testimony on Senate Bill 55.

The ACLU of Ohio understands the desire of SB 55's proponents to protect those receiving drug treatment if or when they are targeted by drug traffickers. However, SB 55 goes far beyond this goal and will make matters worse, not better.

First, please keep in mind drug traffickers are already punished with felony sentences in Ohio. SB 55 would increase the penalty by one degree if the offense takes place within 1,000 feet – or 3+ football fields – of a treatment center.

However, SB 55 does not require the defendant to know they are within 1,000 feet of a treatment center or that the person they sell to is actually undergoing treatment at that location(s) in question. Instead, SB 55 simply increases prison sentences because of a particular location, whether or not that location has any bearing or impact on the seller or buyer's actions.

In larger urban areas, where more treatment exists, SB 55 will create large swaths in those cities where anyone caught selling drugs will face increased punishment. All the prosecutor needs to do is break out a tape measurer. No inquiry into motives or knowledge is required.

Proponents of SB 55 continually remind this committee this sentencing enhancement is no different from, and is modeled after, current enhancements for the same offense when they occur near schools or in the vicinity of juveniles. That is true. What is not being asked is whether those existing enhancements are good public policy. The ACLU of Ohio believes they are not and Ohio would not benefit from repeating this increased punishment as it does not reduce the problem it is meant to address.

The predictable end result from passage of SB 55 will be more people in Ohio prisons. After all, that is what SB 55 is designed to accomplish. By doing so, SB 55 repeats 40+ years of a failed War On Drugs approach – the discredited idea that drug problems are something we can arrest, convict, and incarcerate our way out of.

The timing of SB 55 is also particularly ironic because of the existence of House Bill 1 and Senate Bill 3. These bills are touted as recognition Ohio should try a different, more appropriate, and more productive approach to drug crimes that actually helps people and partially relieves our perpetually overcrowded prison system.

Unfortunately, as we have seen repeated times in the past, HB 1 and SB 3, as currently written, are likely to have little impact on overall prison numbers. In part, this is because whatever relief the passage of HB 1 and SB 3 will provide will be undermined by SB 55 (as well as SB 1, last session's fentanyl bill, and SB 201, last session's indefinite sentencing bill, among others).

This is the ongoing, years-long status of reform efforts in Ohio - the General Assembly very occasionally passes a bill to modestly reduce the number of people going to prisons and jails but is continually passing bills to lock lots more Ohioans up.

If Ohio is ever going to meaningfully reduce our prison population two things must happen – 1) we need many more bills like HB 1 & SB 3, and we need them to provide maximum positive impact and 2) we need to stop creating new crimes, enhancing sentences, and finding new reasons to throw people behind bars, as is the case with SB 55. If we do not do both, the best case scenario is our prison population numbers will remain stagnant. Much more likely, our prison numbers will continue to climb.

SB 55 will never stop the selling of drugs near treatment centers. But it definitely will increase the prison population and neutralize positive efforts like HB 1 and SB 3.

If we know an approach is a failure it should be abandoned. Instead, SB 55 doubles down and rolls out a red carpet for more of the same. We ask this committee to reject SB 55 and turns its attention to proven, effective solutions for drug problems for the benefit of all of Ohio.