

**OFFICE OF THE PROSECUTING ATTORNEY DANIEL R. LUTZ
WAYNE COUNTY, OHIO**

www.countyprosecutor.com

**Civil Division
Juvenile Division**
115 W. Liberty Street
Wooster, OH 44691
(330) 262-3030
Fax: (330) 287-5412



**Felony Division
Misdemeanor Division**
215 N. Grant Street
Wooster, OH 44691
(330) 287-5633
Fax: (330) 287-5696

**SB-1; Drug Offenses
Proponent Testimony
October 10, 2017
House Criminal Justice Committee**

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebreeze, distinguished members of the House Criminal Justice Committee, thank you for the opportunity to provide proponent testimony on Senate Bill 1. On April 14, 2015, I sent a letter to Senator LaRose requesting his assistance to address certain shortcomings in the state's drug abuse laws. In that correspondence, I proposed amending certain sections of the Ohio Revised Code in order to address the growing problem with drugs, specifically contraband fentanyl, methamphetamine, and prescription drugs. This is the third time that I have had to opportunity to testify on behalf of this legislation and I thank you for your consideration.

Two of the three requested changes came from specific cases in 2015 that arose in Wayne County. The first case involved an investigation whereby a substantial amount of powdered contraband fentanyl was discovered by law enforcement. Due to the weight of the drugs seized in that case, indictments were obtained on several first degree felony counts with major drug offender specifications. However, in attempting to obtain the expert testimony necessary to establish at trial that the amount of fentanyl seized supported convictions on the first degree felonies, we discovered that the current bulk amount definition for fentanyl in Ohio Revised Code §2925.01, would not suffice. The current definition only anticipates fentanyl being found in a medicinal or pharmaceutical "final dosage form," as opposed to the contraband powdered form which is being found with alarming frequency on the street. Consequently, although trafficking and use of contraband fentanyl has resulted in numerous overdose deaths in Ohio, we were compelled to allow these individuals, who were clearly traffickers, to plead to relatively low-level felonies.

Since my proponent testimony in April of 2016 urging the passage of Senate Bill 237, and again in February of last year urging the Senate's passage of Senate Bill 1, law enforcement is not only continuously seizing increasing amounts of fentanyl and seeing a resulting uptick in fentanyl-related overdose deaths, but now they are also regularly seizing carfentanil and other fentanyl compounds as well. Why is this significant? Because while heroin can be up to three times more potent than morphine, and fentanyl up to 30 times more potent than heroin, carfentanil is 100 times more potent than fentanyl, or 10,000 times more potent than morphine. And as a result of the increasing availability of fentanyl and carfentanil, we are actually seeing less heroin on the streets.

I'm told this is because heroin is a plant-based opioid, whereas fentanyl and carfentanil are synthetic opioids. Therefore, fentanyl and carfentanil are less expensive to manufacturer and, due to their much greater potency than heroin, gram for gram they produce much greater profits than heroin, and are actually in greater demand by users who want "the good stuff." In fact, fentanyl and carfentanil can actually be mail ordered from China.

The proliferation of fentanyl and carfentanil not only creates a risk to users, but also to law enforcement officers. In fact, the risk that fentanyl and carfentanil pose to officers is so significant that a law enforcement advisory was disseminated by the Attorney General throughout Ohio recommending that all law enforcement officers desist from field testing any powders suspected to be fentanyl or carfentanil. This is because several officers have overdosed simply from touching or inadvertently inhaling fentanyl and carfentanil. However, without the field testing of these substances, significant impediments arise to arresting and charging individuals found in possession of suspected fentanyl and carfentanil. Essentially, if there is not at least a field test to preliminarily identify the substance, there typically is not probable cause to arrest, let alone charge a suspect. So now we have to wait weeks, if not months, for an official lab analysis to arrest and bring charges, and in the meantime, traffickers continue to ply their deadly trade without consequence.

Passage of Senate Bill 1 will address this problem to some degree by amending the bulk amount definition for fentanyl and all fentanyl analogs, including carfentanil, by at least bringing these substances on par with the current bulk amount definition for heroin in regard to offenses involving 20 grams or less. In other words, all Senate Bill 1 does is to make the bulk amount definition of fentanyl and fentanyl-related compounds, and the potential available penalties, the same as they currently exist for heroin for low-level trafficking and possession offenses (i.e., felony 5 to felony 3 offenses). However, passage of Senate Bill 1 will also allow more aggressive prosecution of those possessing and trafficking in these deadly substances in amounts greater than 20 grams. For example, the aforementioned Wayne County case that brought this gap in the law to our attention involved a seizure of 30 grams of fentanyl from a drug trafficker from Detroit. Under current law, we could only charge a third degree felony, which is less than the current penalty for trafficking in the equivalent amount of heroin. That dichotomy made no sense for trafficking in a much more dangerous drug. The law as proposed in this bill would have allowed that drug trafficker to be charged and sentenced on a first degree felony with a potential mandatory prison penalty of 3 to 11 years.

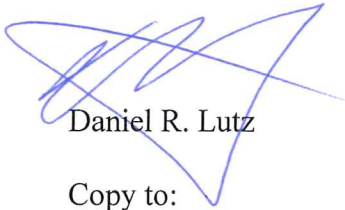
The second case we encountered in Wayne County in 2015, which specifically led to another requested amendment now being proposed in Senate Bill 1, involved a juvenile in possession of lisdexamfetamine, a Schedule II controlled substance on the federal schedule. The juvenile did not have a prescription for the drug, and while this drug is on the federal schedule as a Schedule II controlled substance, it is not on the Ohio schedule of controlled substances found in Ohio Revised Code Section §3719.41. Passage of Senate Bill 1 will address this deficiency by simply adding this drug to the state schedule.

Lastly, there have been many instances in Wayne County involving the manufacture of methamphetamine where my office would have sought indictments for permitting drug abuse in violation of Ohio Revised Code §2925.13, against those individuals who knowingly allowed their property (home, apartment or motor vehicle) to be used for that purpose. For instance, the

typical case we encounter is where a tenant knowingly permits his or her apartment to be used for the manufacture of methamphetamine in exchange for drugs, but there is insufficient evidence of their direct involvement in the manufacture of methamphetamine or the assembly of the chemicals to make the methamphetamine. Since the statutes prohibiting the manufacture of drugs and the assembly of chemicals to manufacture drugs are currently not listed as predicate offenses to permitting drug abuse, passage of Senate Bill 1 would fix what I believe was simply an oversight in the law. As the manufacture of methamphetamine and the assembly of methamphetamine chemicals involve great risk to the general public, permitting this activity should be punishable to the same extent as other serious drug-related offenses that are now predicate offenses to a violation of permitting drug abuse.

Thank you for the opportunity to testify this morning. I would be happy to answer any questions that you may have.

Respectfully,



Daniel R. Lutz

Copy to:

Senator Frank LaRose via Christopher Oliveti

Lou Tobin, Executive Director of the OPAA