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Senate Finance Committee
House Bill 49 Testimony
Zac Corbin, Brown County Prosecuting Attorney
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Good morning, Chairman Oelslager, Vice Chair Manning, Ranking Member Skindell, and members of the Senate Finance Committee. I thank you for the opportunity to address you today. My name is Zac Corbin, I am the elected prosecuting attorney for Brown County, Ohio. Brown County is a rural county of about 45,000 residents; located approximately one hour east of Cincinnati.

As you are very well aware, our state is facing the worst public health crisis in our lifetime with the opioid epidemic. My county continues to lead the state in unintentional drug overdose deaths, per capita. As the elected prosecuting attorney, I am repeatedly asked the same question: "What are we going to do about this drug problem?" The two issues I would like to bring to your attention today are: (1) The impact I believe HB 49 will have on sentencing heroin traffickers; and (2) A disparity in Ohio's current law with respect to heroin traffickers.

Your current biennial budget bill, HB 49, is comprised of 4,675 pages. I am here to address only two or three of those pages. Beginning at page 938, the bill states that "no person sentenced to serve a prison term of twelve months or less shall serve that term at an institution under the control of the Department of Rehabilitation and Corrections." That will primarily affect felonies of the fifth degree, as those offenses are punishable under Ohio law by a maximum prison sentence of twelve months.

The most significant problem with this is that under Ohio Revised Code 2925.03(C)(6)(a), Trafficking in Heroin, for one gram and less of heroin, is a felony of the fifth degree. I can tell you that in my rural county, most all of our heroin transactions involve less than one gram. In fact, heroin traffickers are conscious of the law and intentionally will not carry or sell more than one gram at a time. Generally, our local heroin traffickers will sell one-tenth (0.1) of a gram for a price of approximately \$20.00. That means that one gram of heroin equates to ten individual doses. That is enough to kill ten people. Yet, selling that quantity is a felony of the fifth degree.

If HB 49 becomes law, in its current version, Ohio's common pleas judges will be prohibited from sending these heroin traffickers to prison. It will not matter how many previous convictions for trafficking in drugs they may have. It will not matter how many times they may violate probation. They simply will either sit in a local jail, or more likely, they will be back on the street.

Back in 2011, HB 86 made it nearly impossible to send those convicted of felonies of the fourth and fifth degree to prison. Judges already default to community control or probation for most of these offenders. We have adjusted our prosecution of these individuals and our sentencing recommendations to try to use treatment as a first option. The problem is, many of these offenders come back before the court time and time again. Whether it is for probation violation or new charges, these offenders often return. Many times, judges will try treatment again. But to completely take the option of prison off the table will severely handicap judges, negate the purposes of sentencing, and create a less safe environment both in local jails and on the streets.

While I remain ardently opposed to this provision of HB 49, I come here today to offer one possibility that would make it somewhat more palatable. Ohio law currently punishes trafficking in heroin and possession of heroin identically. Trafficking in less than one gram of heroin is a felony of the fifth degree, as is possession of less than one gram of heroin. All the way up the scale, trafficking and possession mirror each other when it comes to heroin. This seems illogical. R.C. 2925.03(C)(1) punishes trafficking in other schedule I and II controlled substances, such as oxycodone and hydrocodone, as a felony of the fourth degree. That means if someone sells just one oxycodone pill, they have committed a felony of the fourth degree. Yet, if they sell up to ten doses of heroin, that offense is only a felony of the fifth degree. I would propose amending the law on trafficking in heroin commensurate with other schedule I and II controlled substances. Make the starting point for trafficking in heroin a felony of the fourth degree. This will differentiate the traffickers from the users, and it will also take trafficking in heroin out of the class of offenses affected by this biennial budget bill.

I appreciate the time and opportunity to speak with you today, and I welcome any questions you may have on these issues.