

SENATE BILL 3 TESTIMONY
BLAISE KATTER, ESQ.
FORMER STAFF ATTORNEY, RECODIFICATION COMMITTEE

Chairman Lang, Vice Chair Plummer, Ranking Member Leland and Members of the Criminal Justice Committee:

As Public Policy Chair of the Ohio Association of Criminal Defense Lawyers, I appreciate the opportunity to relay our organization's strong support for the work of Senator Eklund and Senator O'Brien in combatting the scourge of drug addiction in Ohio and finding the right balance between punishment when an addict comes into conflict with our criminal justice system and getting them access to life-saving treatment, which can restore them to productive members of society.

The bulk of my testimony today; however, will be in my capacity as the former staff attorney to the Recodification Committee in which I hope to provide you with some important historical context as you consider the legislation before you.

Theory of the Proposal

As a former staff attorney for the Recodification Committee, I worked incredibly closely with members of the committee in researching and drafting the drug chapter. The goal of the Committee, which I wholeheartedly endorse, was to understand that there are generally three categories of drug offenders – those who merely use the drug (and typically have addiction issues), those heavy users who sell the drug in small to moderate amounts to support their addiction habits, and those persons in the business of selling large quantities of drugs. Therefore, the goal of this proposal was to tailor the drug offenses to the category of behavior, to make sure that those persons suffering from addiction could get the help they needed, while unapologetically punishing those in the business of trafficking large quantities of drugs.

To achieve that goal, the Recodification Committee surveyed social science relating to addiction, worked with researchers in the drug field, and reviewed ODRC statistics and focus group data to learn about typical purchasing habits of addicts to tailor the drug thresholds to actual behavior.

The structure of this proposal shows there are two critically important thresholds in the bill – the first critical threshold is the amount needed to elevate the offense from a minor possession offense (unclassified misdemeanor) to a prison-eligible third-degree felony. This threshold was designed to differentiate between those purchasing the drug for personal use amount vs those that were purchasing the drug with the intention to sell at least some of it (again, usually to support the person's own heavy use). The intent behind the third-degree felony range, given the moderately large amount of drugs at issue, was to give the court maximum discretion in handling those third-degree felony cases, understanding that the person in that position often had the most serious form of addiction and could benefit from judicial intervention with a realistic threat of prison.

The other important threshold is the amount needed to elevate the offense to a mandatory prison offense. This threshold was designed to capture the offenders who are unquestioningly in the business of selling large amounts of drugs. At this F2 level and above, the amounts are clearly major-trafficking level and therefore support the high degree of offense and mandatory prison. At these levels, it is clear that the person is no longer merely selling to support a personal habit, but instead is majorly involved in significant trafficking.

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Comparison of Drug Threshold Amounts – Recodification to Current Proposal

A close review of the current version of Senate Bill 3 shows that the thresholds between the unclassified misdemeanor possession levels and the Recodification Committee recommendations have already been lowered to more closely align themselves with current law. To compare:

| Type of Drug | SB3 Threshold Between Possession and Felony | Recodification Recommendation between Possession and Felony |
|-----------------------------|---|---|
| Schedule I/II | Bulk | 5x Bulk |
| Cocaine | 10 g | 27 g |
| LSD | 50 UD/5g | 200 UD/20g |
| Heroin | 3g ¹ | 10g |
| Fentanyl | 5g | 5g |
| Marijuana | 1kg | 5kg |
| Hashish | 50g | 200g |
| Controlled Substance Analog | 20g | 20g |

SB3 therefore has already made the judgment that prison should be on the table for a larger class of drug offenders, by lowering the threshold at which a significant prison term is available. Practically, this has the effect of making a larger portion of the “second” class of drug offenders (those who sell a small to moderate amount to feed their addiction) eligible for prison.

As to the threshold between major trafficking at the F3 level and aggravated trafficking at the F2 level and greater, this bill mirrors the Recodification proposal. Those levels are quite appropriate, as the extreme sanction of mandatory prison should be reserved for those who are clearly exceeding a threshold where the only conclusion is that they are a major player in the business of selling drugs, making the higher penalties appropriate.

Comparison to Current Law

At the lower end of the spectrum, the threshold between the unclassified misdemeanor and the third-degree felony largely mirrors the current law threshold between F4s and F3s. In that sense, this bill is completely consistent with current law’s judgment as to the amounts that are personal use and therefore subject to the lower level felonies (F5 and F4) that are not generally prison eligible. In fact, this bill actually lowers one threshold, lowering heroin from 5g to 3g.

Due to the principles outlined above, this bill does shift some of the lower end current law F2 amounts to F3s. This change is completely appropriate to ensure that offenders who are heavy users of the drugs and selling to support their addiction are not facing significant, mandatory prison time. The social sciences and ODRC data that the Recodification Committee reviewed strongly support that these amounts are most commonly seen in

¹ In line 2255 to 2256, there is a drafting error. An amendment was taken to lower the threshold for heroin to 3 grams (which is reflected in line 3403); however, the corresponding change was not made to 2925.031(A)(2)(e), which still has the original 5 gram threshold. These two sections need reconciled, and I continue to support the 5g threshold.

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heavy users who are selling moderate amounts to a smaller circle of people to support their addiction. To be clear, prison is very much on the table for these users. However, the more extreme sanction of second-degree felony charges and mandatory prison is simply not appropriate for this class of users, and this bill strikes that balance appropriately.

Appropriate Level of Punishment

Finally, this bill strikes the appropriate level of balance between encouraging/compelling treatment and punishment. It has often been said that drug sentencing needs an appropriate “stick” to encourage treatment and behavior. Respectfully, a potential year of incarceration is more than enough “stick” to encourage compliance with treatment and court orders. I am in court nearly every day observing misdemeanor sentencing (usually with a maximum of 180 days in jail) and I am confident that the 364 days will help ensure compliance just as effectively as it currently does in courts all across the state.

In addition, actual incarceration up to a year, in many cases, is effectively a step **UP** from current law sanctions. For F5/F4 offenses, in many cases prison is not an option for sentencing, at least initially. Courts have at their disposal up to 180 days local time, and up to six months in a CBCF program. If the defendant is continually unresponsive to probation, prison may be a “last resort” option if the court is out of other alternatives. However, by the time courts get to the prison option, the defendant usually has a significant amount of jail time credit, making any potential prison sentence far under one year. Finally, there are numerous studies that detail how prison is a significant detriment to a person’s treatment and ultimate recovery. While I will leave the specific arguments to others, suffice to say that this proposal and the year local incarceration provides ample potential punishment and in many cases can be more significant than current law.

CONCLUSION

In conclusion, I respectfully urge this Committee and the House to adopt SB3 as is, as the incredible amount of work and research that went into this bill shows that it strikes the appropriate balance between punishment and rehabilitation of drug offenders. I am incredibly proud to support this bill, and I ask for your support as well.

Respectfully,



Blaise Katter, Esq.