



# Ohio Prosecuting Attorneys Association

Louis Tobin  
Executive Director  
Senate Bill 3  
Opponent Testimony  
December 3, 2020

Chairman Lang, Vice-Chair Plummer, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to provide opponent testimony today on Senate Bill 3, a bill that has been promoted as encouraging treatment over incarceration for addicts and getting tough on drug traffickers in exchange. These are goals that Ohio prosecutors share. They are also goals that Senate Bill 3 fails to meet.

Our Association has in the past and continues to support legislation that expands opportunities for drug treatment and the ability to remove the stigma of conviction. Prosecutors have supported the use and expansion of prosecutor diversion for those addicted to drugs. We have supported the creation and expansion of Ohio drug courts to ensure that those addicted to drugs receive the specialized attention that they need to get into recovery. Prosecutors have supported the creation and use of Intervention in Lieu of Conviction to remove criminal charges for those succeeding at treatment and are often the first in the courtroom to suggest that someone be placed in ILC. Prosecutors have supported the creation and use of legislation establishing a Certificate of Qualification for Employment which lifts collateral sanctions on those convicted of any misdemeanor or felony crime. Most recently, we have supported House Bill 1 of Intervention in Lieu of that creates a presumption in favor of Intervention in Lieu Conviction and expands Ohio's record sealing statute, already one of the most expansive record sealing laws in the nation.

Senate Bill 3 will seriously undermine these prior efforts, minimize the seriousness of drug use, and seriously undermine public safety.

## Drug Trafficking

This committee heard proponent testimony two weeks ago that Senate Bill 3 "reduces penalties for the lowest level trafficking offenses," that the bill "is still tougher on high level traffickers as compared to its neighboring state" and that "if passed Ohio will still have tougher penalties for higher level trafficking offenses as compared to its neighboring states." These statements about the drug trafficking provisions of Senate Bill 3 are patently false. What Senate Bill 3 actually does is take large portions of our F1 and F2 drug trafficking quantities, turns them into F3s, and removes even the presumption for prison for these F3 offenses. Specifically:

- 1) Under current law someone caught selling 15 – 150 grams of meth is subject to an F2 and a mandatory minimum sentence of at least 2 years and a maximum of 8 years. Under SB 3, the same person can sell up to 150 grams of meth and receive as little as probation up to a maximum of 3 years. The bill repeals the major

drug offender specification (MDO) for schedule I and schedule II drugs. Meaning that Under SB 3 someone caught selling 300 grams or more of meth, a schedule II drug, is no longer subject to the harshest punishment Ohio has for drug trafficking.

2) Under current law someone caught selling 10 – 50 grams of heroin is subject to an F2 and a mandatory minimum sentence of at least 2 years and a maximum sentence of 8 years. Under SB 3 the same person can sell up to 30 grams and receive as little as probation up to a maximum of 3 years.

3) Under current law someone caught selling 27 to 100 grams of cocaine is subject to an F1 and a mandatory minimum sentence of at least 3 years up to a maximum of 11 years. Under SB 3 the same person can sell up to 50 grams and receive as little as probation up to a maximum of 3 years. They can sell up to 100 grams and receive only the F2. It increases the quantity required to reach the MDO designation from 100 grams to 250 grams.

The same person can do all of the above a second, third, fourth, etc. time and receive the exact same punishment. Other states surrounding Ohio by comparison offer much harsher low end and high end punishments. Indiana, Kentucky, and West Virginia all have statutes that practically double a person's potential punishment for a second trafficking offense. Michigan has maximum sentences that range between 20 years and life for trafficking hard drugs. The average prison sentence for selling any amount of meth in Michigan in 2018 was 4.6 years. Three people received a sentence of 15 years. One received a sentence of 25 years. The average for selling any amount of ecstasy was 9 years. While Pennsylvania's high end sentences are more similar to Ohio's, in 2018, the average minimum state prison sentence there for selling less than 1 gram of heroin was 21.3 months. For selling less than 2 grams of cocaine it was 15.1 months. And for selling 2 to 5 grams of cocaine it was 20.3 months. Pennsylvania also has a homicide by drug delivery offense, the average minimum sentence for which was a little over 6 years. These are threats to drug dealers that just do not exist in Ohio.

Setting aside any debate about misdemeanor drug possession, Ohio already has arguable the weakest drug trafficking law in the region. It would be made worse by Senate Bill 3. If the goal of the bill is to help addicts who are caught with what are called personal possession amounts how are they helped by reducing the punishment for some caught with 150 grams of meth, 30 grams of heroin, or 50 grams of cocaine?

### Drug Possession

Ensuring that a person who has an addiction problem has an opportunity to get into and successfully complete treatment without a record of conviction is a laudable goal. So is ensuring that if someone does wind up with a conviction they have the opportunity to have that record sealed. Here are the opportunities that already exist for these things to happen: immunity from arrest or prosecution two times under the good Samaritan law as long the person agrees to seek treatment, diversion from prosecution if a person agrees to seek treatment, intervention in lieu of conviction multiple times if a person agrees to seek treatment, even if ILC fails a person may receive multiple additional opportunities to seek treatment after being placed on probation and can then eventually have the records of up to five felonies sealed.

On top of all of these opportunities Senate Bill 3 would now add the possibility of holding charges in abeyance and a presumption for treatment. It would do so without investing one additional dollar in

treatment programs in Ohio. And it would do so while simultaneously taking tools away from the people who are being tasked with solving the problem. When the public defender testified a couple of weeks ago he encouraged you to ask the opponents to provide you with a study showing that the threat of a felony conviction and prison sentence was meaningful for the purpose of compliance with treatment, implying that it was not. A couple of years ago, the American Journal of Criminal Justice published an article on “The Relative Influence of Legal Pressure on Outcomes in a Rehabilitation Aftercare Drug Court” that found that:

*[M]isdemeanants appear more likely to fail their program because they failed to abstain from drug use. The fact that the higher failure rate among misdemeanants is so strongly and specifically linked to substance-related relapses suggests that their failure is related to more than a simple preference for a shorter time in custody over a longer time under drug court surveillance. One plausible explanation is that, indeed, non-felons opted to drop from the Reentry Court in exchange for the combination of (a) a limited jail term, and (b) a sooner return to using their substance of choice. A corollary to this explanation is that, by comparison, felony-level participants were more externally motivated to graduate because of the certainty of prison terms as punishment for failure.*

Simply put, there are better ways to accomplish the well-intended goals of Senate Bill 3 that are not as risky to addicts, to their families, or to our communities. We should start by providing harsher punishments for dealers and traffickers – the people providing this poison to Ohio communities. The same goals of promoting treatment and eliminating stigma can be accomplished by requiring that F4 and F5 drug possession charges be filed under seal and kept under seal unless a person fails at treatment. Such an approach would have the added benefit of keeping any sort of record of drug possession, regardless of whether it is a misdemeanor or felony, out of the public view while maintaining a high level of legal pressure.

There are other flaws with the bill that I am not going to go into detail on out of respect for the Committee’s time and because they are minor in comparison to the dangerousness of the bill does with our drug quantities. We appreciate the hard work that went into this bill in the Senate and the good intentions of the sponsors and advocates. We certainly appreciate the heartfelt stories of proponents who have come before this committee to describe how drug possession impacted their life. In the Senate there was testimony from former addicts and family members of addicts who said that the threat of a felony did work for them and that they were standing there today because of it. The threat of a felony undoubtedly does not work for everyone just like calling it a misdemeanor will undoubtedly not work for everyone. There just is no one-size-fits-all solution to a complex problem like drug addiction. But what is dangerous is to take tools away from the people on the ground who are trained to assess things on a case by case basis and decide the best course of action.

There are better and safer ways to make sure that the right people get into treatment, that they have the right incentives to succeed, and that they have the right opportunities to lead a productive life once they do. We supported and continue to support House Bill 1 for this reason. We urge the defeat of Senate Bill 3.