

The Ohio Association of Criminal Defense Lawyers

Proponent Testimony to Senate Bill 3, Submitted by Blaise Katter, Public Policy Chair

May 22, 2019

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas and all Members of the Senate Judiciary Committee:

On behalf of the Ohio Association of Criminal Defense Lawyers (OACDL), I appreciate the opportunity to testify in support of Senate Bill 3.

First off, I want to applaud and commend the sponsors and each member of this committee for their desire to take on this task and bring back some fundamental fairness to our drug laws and sentences.

From my perspective, I wanted to emphasize a few points of this bill that demonstrate how thoughtfully balanced the proposal is.

1. Thoroughly Vetted through Recodification Committee

Senators, first I wanted to emphasize how thoroughly vetted this proposal was through the Recodification Committee, including through a special subcommittee with some of the best criminal law minds in the state. This framework had the input of prosecutors, judges, legislators, and cabinet members. This proposal was designed to be balanced, equitable, and fair, by allowing the prosecutors and judges all the tools they needed to handle the drug problem, especially as it relates to those in the business of selling drugs. Remember, this proposal gives a **major enforcement tool to prosecutors – the ability to prove serious drug trafficking cases merely by proving possession.**

Please do not forget that the structure of this bill (creating the separate offenses of aggravated trafficking, etc.) is designed to both ensure that we have the tools to significantly punish those in the business of selling drugs, while not over punishing the mere low-level users.

2. The Bill Provides (More Than) Sufficient Leverage/Punishments for Low-Level Offenders

Focusing on the provisions of this bill that would seek to move the low-level possession amounts to misdemeanors, the proposed changes are thoughtful, appropriate, and fair for the people of Ohio.

To put it bluntly, Senators, this bill provides for up to a **year** incarceration for these newly-classified offenses. That is a significant penalty for the mere use of an illegal substance, without any other aggravating factors. From our perches as lawyers, legislators, or judges, it is so easy to

sometimes overlook the exact nature of an incarceration punishment. This bill literally authorizes locking up a person in a cage for up to a year simply because of their use of a substance. That is more than enough “stick” to incentivize compliance and an appropriate potential sentence.

Responding to some of the criticism of the bill, it is fundamentally unfair and not the role of this august body to **OVER-punish** these drug use crimes for the sole purpose of coercing some recalcitrant into a treatment plan they are not ready to embrace. The collateral consequences associated with a felony are unduly harsh and can mark a person for life, making them a “second class” citizen while the felony remains on the record. Simply put, the crime of low-level drug possession does not, in any way, justify these draconian punishments. Period.

I am deeply saddened and outraged some would acknowledge the unduly harsh nature of these sanctions, then turn around and advocate for them for the sole purpose of threatening criminal defendants with life-altering threats of punishment. That is not justice, Senators, that is strong-armed coercion that has no place in our criminal justice system.

This bill seeks to return sanity and appropriate sanctions to crimes that are sorely in need of reform.

In addition, this bill does return and enhance local control for these offenses, allowing the local community considerable discretion and leeway as to the appropriate punishment for these offenders, should they fail to take advantage of the treatment process. We are not excusing crime, and this bill does not demean the nature of these drug use charges. Rather, this bill acknowledges one simple reality – the punishment should fit the crime, and low level drug possessors simply do not present the level of threats to public safety, or the level of criminal culpability, to justify a harsh felony sanction, with the threat of prison and a lifetime of collateral consequences.

3. Concerns/Potential Areas for Improvement

There are a couple of areas of the bill where OACDL would welcome the opportunity to work with the sponsors and the committee to make this legislation even better.

First Time Offenders

We commend the sponsors for the proposal to provide a pathway to dismissal for eligible first-time offenders by allowing the Court to hold the cases in abeyance while the offender completes a drug treatment program. In fact, we would like to ensure that *all* eligible first-time offenders, regardless of their jurisdiction, Court or the judge presiding, be afforded the chance to earn a dismissal if the offender is willing to seize this opportunity. After all similarly-situated defendants have been given that chance, we fully support the Court having full discretion to supervise the program and to take appropriate action under this section if the defendant does not comply.

Vicinity of School/Juvenile

In addition, while we join the committee in wanting to protect schools and juveniles from drugs, we are concerned that the enhancements based on drug trafficking in the vicinity of a

school/juvenile are vastly overbroad and work against the commendable intent of this legislation. We respectfully request that a mens rea be included to ensure that the offender who may face enhanced penalties for trafficking near a school or juvenile (which could be anywhere in some communities) must have shown intent or knowledge in doing so. We have submitted proposed language to the sponsors of the bill and would be happy to work with you in crafting this provision.

In closing, let me once again thank the sponsors of the bill for putting forth this thoughtful and thorough proposal. We look forward to working with you, fellow members of the committee and all interested parties as the bill progresses through the legislative process.