



OHIO PROSECUTING ATTORNEYS ASSOCIATION

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To: Senate Judiciary Committee

From: Vic V. Vighuicci, OPAA President and Portage County Prosecuting Attorney

Date: May 29, 2019

RE: Senate Bill 3 – Opposition Testimony

The Ohio Prosecuting Attorneys Association has in the past and continues to support legislation that expands the opportunities for drug treatment and the ability to remove the stigma of conviction. We have supported the creation and use of Intervention in Lieu of Conviction to remove criminal charges for those succeeding at treatment and prosecutors are often the first person to suggest that someone be placed in ILC. We 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. We support the recently introduced House Bill 1 which further expands the use of Intervention in Lieu of Conviction and expands Ohio's record sealing statute, already one of the most liberal in the nation, without the radical revision and reduction of our drug laws contained in Senate Bill 3.

The Ohio Prosecuting Attorneys Association cannot support the provisions of Senate Bill 3 which substantially weakens our drug enforcement laws, jeopardizes the success of our highly successful drug courts, minimizes and decriminalizes possession and trafficking in dangerous drugs, and shifts the burden of drug enforcement from the state to local counties with no corresponding funding.

This committee has heard from many people and organizations giving well-reasoned and informed opinions as to why Senate Bill 3 is unnecessary and is actually harmful to our efforts to combat drug abuse in our state. I refer the Committee to Chief Justice O'Connor's letter warning of the negative effects on our drug courts posed by Senate bill 3. To the letter in opposition from Judge David Matia of the Cuyahoga County Common Pleas Court, and former President of the Ohio Common Pleas Judges Association, who manages one of the state's busiest drug courts. Our OPAA's

Executive Director on behalf of Ohio's Prosecutors, succinctly outlined the erroneous presumptions upon which this legislation is based, and the negative effects its implementation will have upon our drug enforcement efforts in a letter to the bill sponsors and legislative leaders. The points of concern against this legislation are so many that time prohibits my reiterating them all this morning, but I urge the Committee to consider the important objections raised by your fellow elected officials – the judges, prosecutors, and our fellow law enforcement organizations such as the Buckeye State Sheriff's Association in opposing Senate Bill 3. These are the people who speak from their experience working in the trenches every day with drug addicts, traffickers, and the victims their activity creates. These are the people best situated to make individualized determinations about what is needed – and I would submit to you that they make these determinations deliberately and judiciously.

And the people of the State of Ohio also spoke decisively in opposition to many of the concepts contained in Senate Bill 3 when they voted 2 to 1 last year to defeat State Issue 1 which also proposed reducing criminal liability and personal accountability for violating our drug laws.

While there are many counterpoints to each of the changes to our drug laws made by Senate Bill 3, there are a few specific points which I would like to address. The penalties for Trafficking in drugs are substantially reduced by Senate Bill 3. For example, currently trafficking in up to 50 grams of cocaine is a first degree felony with mandatory prison time. Under Senate Bill 3 it becomes a third degree felony with possible probation. Currently, trafficking in up to 500 doses of LSD is a second degree felony with mandatory prison time. Under Senate Bill 3 it becomes a third degree felony with possible probation. Heroin, the drug which has caused our current drug crisis, is reduced in penalty from a second degree felony with mandatory prison time to a third degree felony with possible probation for selling up to 300 unit doses. And Senate Bill 3 eliminates, for most drugs, the one degree penalty enhancement for selling these drugs near our schools. This is hardly getting "tough on traffickers" which is one of Senate Bill 3's stated goals.

Some say it doesn't matter whether you call drug possession a felony or a misdemeanor. In reality it matters greatly. Addiction to drugs is a powerful thing. The incentive to break that addiction must be equally or more powerful. The possibility of a felony conviction with all of its consequences must be a possibility as part of that incentive. Every drug court judge and prosecutor will tell you the same thing. A few days in the local jail and penalties the same as underage consumption of beer will not work. Why commit to a long hard journey to recovery when you can take a slap on the wrist and get back to the drugs you crave? Judges need the discretion and flexibility to fashion the appropriate penalty to incentivize recovery, up to and including prison and the collateral consequences of felony conviction. Those consequences can be mitigated by I.L.C. and expungement if successful.

Proponents of State Issue 1 and now of Senate Bill 3 like to characterize our state prisons as being full of low level drug offenders, a revolving door for fourth and fifth degree felons. This false premise has been disproven over and over again. The true facts, based on ODRC's own statistics, reveal that the prison population stood at over 50,000 in 2011 and was at that time projected to grow by another 3000 by 2015. Today it is just over 49,000, despite the explosion of drug cases in our current drug epidemic. Of the total current prison population, only about 1,600 were incarcerated for fourth and fifth degree drug possession charges in 2018. In Fiscal Year 2007 there were 5,191 persons committed to our prison for all levels of drug possession. In Fiscal Year 2018 the number was 2,601, nearly a 50% decrease, again, in the midst of our current drug epidemic.

Finally, testimony was recently given to this Committee stating that the decriminalization of trace amounts of cocaine, L.S.D., Methamphetamine, and Heroin would have no effect on law enforcement's ability to establish probable cause to conduct searches and arrests for illegal drugs. This statement is patently and legally false. An officer viewing or a drug trained K-9 sniffing a trace amount of those drugs without additional evidence will no longer be probable cause to conduct further investigation. The defense attorneys will be the first to point out that locating a substance which is legal to possess will be no more probable cause for a search or an arrest than the officer or dog locating a bunch of bananas. And they will be correct. It is inconceivable that we would excuse possession of any amount of the deadly drug left over after the user of seller had sold or ingested the bulk of the drug.

I could go on, but as I stated previously, time constrains me and the many persuasive arguments against the adoption of Senate Bill 3 are already before you. There are positive steps that the legislature can take to expand treatment and prevent or remove the stigma of conviction without heading down the dangerous path of minimizing the seriousness of the use of these drugs. I urge you, on behalf of those who work on these cases every day, who seek to stop the flow of this poison into our communities and to provide the best outcome possible for those addicted, to oppose the adoption of Senate Bill 3.