



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB25 Drug Crime Near Addiction Services Sponsor Senator Gavarone

Chair Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee. My name is Niki Clum, and I'm the Legislative Liaison for the Office of the Ohio Public Defender (OPD). Thank you for the opportunity to testify in opposition of Senate Bill 25 (SB25).

As this committee knows, SB25 creates an enhanced penalty when drug trafficking occurs within a 1000 feet of community addiction service provider. It has been suggested that SB25 is needed to deter trafficking near these locations. Yet, there is no evidence that longer prison sentences deter drug offenses. The fact that the War on Drugs has been such an abysmal failure is evidence that longer prison sentences do not deter crime.¹ Among other researchers, the National Institute of Justice found that "severity of punishment does little to deter crime." Further, the idea that Ohio will solve the drug crisis if we incarcerate all of the drug traffickers is not realistic. Targeting just the supply of drugs is ineffective "because of the demand and the money that can be made, other people will step in."²

Despite research and data that longer prison sentences do not deter drug activity, if we assume that a penalty enhancement may deter drug trafficking, then the standard must be that the individual "knowingly" trafficked near an addiction service provider. As this committee knows, the bill only requires that the individual acted "recklessly" as to whether they were trafficking near an addiction service provider. The stated purpose of this bill is to deter people from selling drugs to addicted individuals who are in treatment. A person must know they are trafficking near an addiction service provider for this bill

¹ 2015 Pew Research Survey found that harsher federal sentencing laws for drug offenses did not led to reductions in drug use; 2014 research by Peter Reuter at the University of Maryland and Harold Pollack at the University of Chicago found that heavy police enforcement and extended prison sentences do not effectively stop the flow of drugs and drug use; Economist at Columbia and the University of Michigan found that the threat of longer prison sentences does not reduce crime.

² Leo Beletsky, Drug Policy Expert and Northeastern University Law Professor

to be in anyway effective. An individual cannot be deterred from doing something they don't know they are doing. Even during proponent testimony Paul Dobson stated, "We have to prove, that they recklessly were in that vicinity, that they know essentially, they knew or should have known that they were in that vicinity that creates the risk of what they are doing."³ If a person "knew or should have known," that person is acting "knowingly" not "recklessly" under Ohio law.⁴ Even Prosecutor Dobson's description of what prosecutors should have to prove describes a "knowingly" standard. That is because "knowingly" is the reasonable common sense mens rea for this legislation if it is to have any chance of achieving its intended goal.

The Ohio Criminal Justice Recodification Committee recommended the elimination of sentencing enhancements likes those proposed in SB25 from the Ohio Revised Code. This is because these enhancements can result in absurd outcomes. When the bill specifies that the offense must occur within 1000 feet of the community addiction servicer provider, the bill means 1000 feet "as the crow flies." "As the crow flies" is a term that means the facility is within a 1000-foot straight line from the individual in any direction, even if there is a skyscraper or a river between the facility and the individual. An individual could stand 1001 feet away from a community addiction service provider and purposely target individuals in recovery, and that individual would not face an enhance penalty despite the fact that individual is exactly who this bill is trying to target. However, an individual could share drugs with his friend 999 feet across a river from a facility, and that individual will face an enhanced penalty. This result is illogical and will do nothing to combat Ohio's drug crisis.

³ Senate Judiciary Committee, February 2, 2021, <http://ohiochannel.org/collections/ohio-senate-judiciary-committee> at 1:07:58

⁴ R.C. 2901.22; *State v. Knapp*, 2001 WL 62519 No. 18457, (2nd Dist.)[Defendant was charged with domestic violence in violation of R.C. 2919.25, which requires a finding the defendant acted knowingly. The court found that, "Regardless of her purpose, she knew or should have known that swiping at her husband's face with her hand would probably produce injuries to his face of the kind that resulted."]; *State v. Bergsmark*, 2004 WL 2426236, No. L-03-1137 (6th Dist.)[Defendant was charged with forgery in violation of R.C. 2913.31, which requires a finding the defendant acted knowingly. The court stated, "Thus, we must determine, after reviewing the record, whether Bergsmark 'intended to defraud, or that he knew or should have known, that he was facilitating a fraud.'"]; see also, *State v. Boyle*, 2005-Ohio5493, WL 2650124 (11th Dist.).



The penalty enhancements contemplated in SB25 are also bad public policy because they disproportionately impact minority populations. In densely populated urban areas, an individual is more likely to be within 1000 feet of community addiction service provider compared to someone in a rural area where the population and buildings are more spread out. Not to mention community addiction service providers are more likely to be located in urban areas. Since minority populations also tend to be located in urban areas, minorities disproportionately suffer the consequences of these types of enhancements.⁵

SB25 also prohibits using synthetic urine or additive; using one's own urine expelled before the test during the test; or using someone else's urine to defraud a drug test. The bill also prohibits selling urine knowing or having reasonable cause to believe that it is more likely than not that any other person will attempt to use the urine to defraud a test. The offense is a misdemeanor of the second degree and a misdemeanor of the first degree for any subsequent offense. However, the offense is a felony of the third degree if it was committed to defraud the individual's alcohol, drug, or urine screening test administered as a condition of community control, putting the offense on the same level as Unlawful Sexual Conduct with a Minor, Gross Sexual Imposition, Fleeing and Eluding, and Aggravated Vehicular Homicide and Assault. It bares asking if defrauding a drug test is on par with these other offenses that involve sexual misconduct and possible death. OPD submits to you the answer is a resounding "no."

These provisions of SB25 are a solution in search of a problem. I spoke with OPD's Director of Trial Services, and OPD is unaware of cases where individuals are charged with providing their urine for the purpose of defrauding a drug test. Even the Legislative Service Commission Fiscal Note states that "the number of violations resulting in a criminal case is expected to be relatively small."

Usually, the person using the urine faces a community control or probation violation. However, the bill requires the community control or parole officer to report the offense to law enforcement instead

⁵ *Disparity by Design: How drug-free zones impact racial disparity – and fail to protect youth*, Justice Strategies, March 24, 2006, <https://www.justicestrategies.org/publications/2006/disparity-design-how-drug-free-zone-laws-impact-racial-disparity-and-fail-protect->.



of just addressing the conduct as a violation of supervision.⁶ Currently, the state can charge the individual with Obstruction of Official Business, Falsification, or Tampering with Evidence. In fact, Tampering with Evidence is a felony of the third-degree offense. Therefore, if the facts of a particular circumstance are so severe as to warrant a felony charge instead of a misdemeanor or community control violation, that is already an option for prosecutors. However, SB25 will make the offense a third-degree felony every time since community control officers are required to inform law enforcement.

SB25 is exactly the type of bill Ohio needs to avoid passing if we are serious about criminal justice reform and reducing overcrowding in our prisons. The provisions that allow for sentencing enhancements for trafficking near addiction service providers are bad public policy. The provisions regarding defrauding a drug test are unnecessary and overly punitive. Thank you for the opportunity to testify today before your committee. I am happy to answer questions at this time.

⁶ Lines 1530 – 1536

