



SENATE JUDICIARY COMMITTEE – Opponent Testimony, SB 25, February 9th, 2021

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the committee, thank you for holding this hearing and for the opportunity to provide testimony.

My name is Micah Derry, and I am the State Director for Americans for Prosperity – Ohio. As one of the largest grassroots organizations in the country, Americans for Prosperity (AFP) is driving long-term solutions to some of the country's biggest problems. Our organization, and its thousands of activists across Ohio, are dedicated to breaking barriers that stand in the way of people realizing their full potential. Removing these barriers, in whatever forms they take, helps move our society toward one of mutual benefit, where people succeed by helping others improve their lives and by transforming their communities. Accordingly, I urge you to oppose and reject Senate Bill 25.

Before I point out the many glaring problems with SB 25, I do want to give some credit where credit is due. During the 133rd General Assembly, the Ohio Senate and several of its members, including some members of this committee, worked diligently and thoughtfully to pass SB 3, which would have been landmark drug sentencing reform legislation, if only the Ohio House of Representatives had shared this chamber's dedication to reforming Ohio's defective, intermittent criminal justice system. AFP – Ohio was highly supportive of those efforts, and we remain grateful to those key legislators who understand what fixing a broken system truly looks like.

A major portion of SB 25 is a retread of SB 55 from last session, which passed both chambers as a standalone bill that was ultimately vetoed by Governor DeWine, and was also at one point inserted into SB 3, and then almost immediately removed from the bill at the public behest of the coalition supporting SB 3, including AFP – Ohio. Its inclusion in SB 3 would have caused my organization to pull our support for legislation that was our top priority. I mention these recent past events to underscore precisely how bad of an idea SB 25 remains from a public policy perspective.

Policymakers should not be creating sweeping enhanced penalties, especially on people that are often struggling with addiction themselves. Ohio continues to rank among the top states for overdose deaths, and it is abundantly clear that using prison as the primary response to this epidemic has failed our communities. SB 25 doubles down on this failed approach by recklessly enhancing felony penalties. Current provisions in Ohio law already provide a wide array of tools to deal with the drug trafficking

scenarios proffered by the supporters of this legislation, whose goal is to criminalize “opportunistic” dealers who want to prey on addicts. We have seen time and time again with increasing penalties like this ([drug free school zones](#), for [example](#)), the vast majority of people affected will be poor, black, and may not even know that they are within 1,000 feet of a substance addiction service provider due to the woefully insufficient *mens rea* component (the criminal intent of the person) of the bill. The overly broad language and radius of these increased penalty areas will undoubtedly punish individuals not considered by the bill’s proponents and will result in a devastated recovery for many.

I would also like to discuss the arbitrary nature of the 1,000-foot radius around drug treatment facilities described in the bill and point out some logistical challenges to its enforcement. Fundamentally, it is absurd to think that a person could unknowingly face higher levels of felony charges for committing an act nine inches inside an invisible circle, whereas if they had unwittingly taken one step in another direction, their charges would have been a whole category of felony lower. This becomes even more absurd when one stops to consider that a person could be convicted of drug trafficking, even though the *behavior* of trafficking was never *proven*, because merely *possessing* certain quantities of drugs counts as trafficking under existing law (law which could have been greatly improved with SB 3), and if SB 25 were to become law, that person, who themselves could possibly be afflicted with addiction and *not actively selling* drugs, could be charged with an F3 because they happened to unknowingly be on the wrong side of an imaginary line – it would seem we are not creating a very rational, deliberate, or just system.

It is also worth pointing out that some places that fall into the category of “drug treatment facility” can be places like churches, schools, and other community centers that are not necessarily obvious healthcare treatment settings. In major urban centers, it is not an unreasonable statement to posit that these 1,000-foot circles could overlap in such a manner that they cover more territory than not in certain neighborhoods, meaning based on demographic information, the unfortunate trend within our criminal justice system of more minority individuals facing higher penalties for similar crimes will continue if SB 25 becomes law.

AFP – Ohio also opposes the portion of SB 25 which would create a new felony offense for defrauding an alcohol, drug, or urine screening test. Criminalizing the use of synthetic urine is the criminalization of addiction; what other medical conditions are the Ohio General Assembly interested in making illegal? There are other ways to deal with dirty urine analysis than to give someone a felony. There has been a disturbing trend from this body over the last several decades of attempting to felonize, and therefore incarcerate, our way out of newly emerging problems in Ohio. It’s clearly not working. I would urge all members of this committee, and any other legislators who see or read my testimony today, to get more creative in your approaches to combatting the problems that face our state than to just say “new felony” and think anything productive was achieved.

One cannot fault the intent behind this legislation. We all acknowledge that the drug problems in our state have not waned in recent years and in fact are spiking again as we near the 1-year anniversary of the COVID-19 shutdown. What we can fault, though, is the failure to learn from our state’s own history. The Legislative Service Commission produced a research paper in November of last year detailing the proliferation of felonies in the Ohio Revised Code. In 1974, Title 29 of the ORC contained 146 felonies, and 50 of those were drug related. At the time the research paper was completed, that number had increased to 752 felonies, 197 of which are contained within Chapter 2925. To even further underscore the addiction the legislature seems to have for being a one-trick-pony regarding felonization, the

research paper released in November is now outdated, and there are even more felony offenses in the Ohio Revised Code.

AFP – Ohio fully believes in tackling the worst problems facing our state, but we first and foremost believe in using data and evidence-based solutions, and the data available to us continues to demonstrate that we must stop using one-size-fits-all overcriminalization tactics.

Thank you again, Mr. Chairman, for the opportunity to provide testimony today. AFP – Ohio strongly opposes SB 25, and I urge the committee not to take further action on this bill. I would be happy to answer any questions that members of the committee may have.