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To: Senate Judiciary Committee

From: Kevin Werner, Policy Director

Date: March 1, 2022

Re: SB 288 Testimony relevant to transitional control, drug paraphernalia immunity from prosecution

Chairman Manning, Vice Chair McColley, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony on two aspects of SB 288, provisions pertaining to transitional control and immunity from prosecution for drug paraphernalia in situations where drug overdosing has occurred. I am Kevin Werner, policy director for the Ohio Justice & Policy Center (OJPC), a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems.

The first area I'd like to address are the transitional control provisions of SB 288. The committee had heard these portions come from two pieces of legislation from the 133rd General Assembly, Senate Bill 377 and House Bill 403. The aim of the legislation is to improve the efficiency of the transitional control programs by removing the judicial veto, and that makes sense given DRC has familiarity with a person's institutional conduct, programing and whether that person is a good candidate for transitional control.

Transitional control programs, known as halfway house programs, work better at reducing recidivism than when those programs are not in place for a returning citizen. The University of Cincinnati studied these types of program and what are best practices to reduce recidivism. The findings are impressive. When ascertaining what works to reduce recidivism, transitional control programs work. to the tune of reducing recidivism rates by half.¹ The benefits of transitional control programs cannot be overstated. Even though a participant is still considered to be incarcerated, he can begin employment, maintain addiction treatment programs, and really do the things that help a person put his life back together after incarceration.

¹ M.B. Kelly, *University of Cincinnati News*, "US research points to best practices to reduce recidivism." June 10, 2011. Available at <https://www.uc.edu/news/articles/legacy/enews/2011/07/uc-research-points-to-best-practices-to-reduce-recidivism.html>



PROPONENT TESTIMONY

SENATE BILL 288

MARCH 1, 2022

PAGE 2

The language being removed from 2967.26 (A)(2) in the proposal before you today is an improvement that will benefit Ohioans returning from incarceration and their families across the state. OJPC supports eliminating the judicial veto from transitional control.

The second aspect of SB 288 we support today is an appropriate expansion of House Bill 110 of the 131st General Assembly known as the Good Samaritan Law. The intention of the policy was to save lives of people who have overdosed. We know this is the intention because the legislature, in R.C. section 128.04, tailored the law to the overdosing event. Emergency response operators “who receive a call about an apparent drug overdose shall make reasonable efforts...to inform the caller about the immunity from prosecution...” The 911 operator must explain to the caller they will not be prosecuted to cause the caller to provide the location of the person who has overdosed. The intention is entirely to save people’s lives. The original legislation contained one flaw that SB 288 and preceding bills attempted to correct: the immunity protections did not extend to the paraphernalia or instruments used during a drug overdose.

The Ninth District Court of Appeals made clear the issue in a 2019 decision, writing:

...we note our continuing concern that the plain language of R.C. 2925.11(B)(2) – which this Court must apply as written – is counterproductive. As enforced in this case, the statute has the potential to deter individuals from immediately calling 911 when confronted with an overdose situation and to result in delayed reporting because the threat of prosecution for possession of drug paraphernalia is ever present. This deterrent effect could be deadly. Whether the result of oversight or a deliberate decision, this situation should be remedied by the legislature.²

OJPC suggests the bill can be improved with slight alterations to the current version.

Consider a presumption for treatment assessment within 30 days. OJPC believes the bill’s provision that mandate a person who receives immunity from prosecution must seek assessment for drug treatment within 30 days could be an unnecessary barrier for people recovering from drug overdose. While we

² *City of Akron v. James Bachtel*, Summit App.No. 29168. Argued 2/7/2019.



understand the intention is well-meaning the unintended consequence is counterproductive. What happens to a person who wants treatment, but cannot find a provider able to perform the initial assessment within 30 days? Or what happens to a person who cannot afford to pay for an assessment if the only available provider is not in their insurance network? What about the bystander who is not using drugs or addicted to drugs but who happens to be at the scene of an overdose who gets caught up in the mechanisms of the bill? OJPC believes this legislation can be more impactful by removing the mandate and instead creating a presumption.

Remove unneeded exclusions. As the bill is currently drafted, certain individuals are not eligible for protections under the bill. For example, people who are qualified are not on community control or post-release control. This provision will unnecessarily discourage people from calling for help when a person experiences drug overdose. We suggest this restriction should be removed from the bill.

Lift immunity cap. As the bill is currently drafted, individuals who overdose on drugs can have immunity from prosecution two times. The nature of recovery from drug addiction is full of relapse moments. By limiting immunity from prosecution to two occurrences is to fundamentally misunderstand the practical implications and application of drug abuse and recovery. The limitation of immunity is not necessary and is contrary to the intention of Good Samaritan, which is to save lives of people who are overdosing.

The Ohio Justice & Policy Center strongly supports the transitional control improvement and the Good Samaritan law fix within SB 288. We suggest some slight alterations to maximize the effectiveness of the bill, particularly around the Good Samaritan provisions. Thank you for the opportunity to provide testimony on portions of SB 288. I will try to answer any questions the committee has.

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