

H.B. No. 1; 132nd General Assembly
Proponent Testimony
June 13, 2017
House Criminal Justice Committee

Chairman Manning, Vice-Chair Rezabek, and distinguished members of the House Criminal Justice Committee, thank you for the opportunity to provide proponent testimony regarding House Bill 141.

My name is Nathan Shaker and I've worked as an assistant prosecuting attorney in Wayne County for nearing twelve years. In that time, the dramatic increase in drug overdoses over the last year has been the most deadly and the most impactful criminal trend that I've witnessed. In Wayne County, a county of over 110,000 people where we traditionally may have one murder per year, we are routinely experiencing multiple overdose deaths each weekend. In several cases I have heard drug dealers tout the potency of their drugs, to the point of bragging to informants that the drug they are selling is the same drug that caused "all those people to fall off (overdose)." Though this experience may appear anecdotal, in speaking with others in law enforcement it seems most, if not all, communities in Ohio are dealing with similar difficulties.

Dealing with an issue of this magnitude requires a multifactorial response. Both the demand side issues that lead to opiate addiction need to be addressed, and the supply of dangerous drugs needs to be curtailed. House Bill 141 effectively addresses major issues in prosecuting the suppliers of deadly drugs, the lack of culpability in the eyes of the law and the concurrent lack of deterrent effect for those dealing in deadly drugs.

Under the current version of R.C. 2903.04(A), Ohio law dictates that the culpable mental state of involuntary manslaughter is supplied by the underlying offense, in the case of drug trafficking, "knowingly." See *State v. Campbell*, 74 Ohio App.3d 352. Additionally, the current statute requires that the death be a proximate result – i.e. it is essential that the end result (the death of another) be foreseeable. This has led to drug dealers using the defense that they have sold the same substance to others who have not died; therefore a drug overdose was not foreseeable. This result is untenable, as those who traffic in deadly, illegal drugs must be held accountable for the damage they do and deterred from continuing their dangerous and illegal behavior. House Bill 141 achieves this.

In Wayne County, we have had difficulties sustaining convictions for involuntary manslaughter because of the aforementioned defense, despite evidence that drug traffickers are increasingly aware of, and are actually marketing their product based upon, the dangerousness of the drugs they are selling. A drug dealer, who is acquitted of involuntary manslaughter for selling the drugs that caused a fatal overdose, is often only convicted of a low-level felony trafficking offense which carries a presumption against a prison sentence. All too often, these dealers are back out on the streets selling the same lethal substances in a matter of days.

Because of the shortcomings of the current version of R.C. 2903.04(A), local law enforcement has increasingly been lobbying the US Attorney's office and federal agencies to take drug overdose cases because at the federal level there is a distribution of drugs causing death sentencing enhancement that carries a minimum of a 20 year sentence (21 USC 841(b)(1)(c)). In addition to the federal distribution of drugs causing death law, at least twenty other states have similar laws with enhanced penalties for selling drugs that cause the death of another. House Bill 141 allows law enforcement to address this issue at the local level and brings Ohio law in line with the federal law and other states.

Overall, House Bill 141 effectively addresses the current shortcomings of Ohio law as it pertains to holding drug traffickers accountable for overdose deaths by both removing the "proximate result" language and making involuntary manslaughter a strict liability offense under these limited circumstances. Furthermore, the bill allows trial court judges the discretion to determine if a particular defendant is simply a drug user selling to feed a habit or a hardened trafficker and to sentence these individuals as each situation dictates to a fine, community control, or to a term of imprisonment of up to 20 years. Based upon the foregoing, I urge the passage of House Bill 141.

Thank you for the opportunity to testify this morning. I would be happy to answer any questions that you may have.

Respectfully Submitted,

Nathan R. Shaker