

House Homeland Security Committee
Opponent Testimony - Ohio House Bill 230
Written & Oral Testimony
Spencer J Cahoon
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Thank you Chair Ghanbari, Vice Chair Plumber, Ranking Member Thomas, and members of the House Homeland Security Committee for the opportunity to submit opponent testimony on Ohio House Bill 230.

My name is Spencer Cahoon. I'm an Ohio resident and 15-year criminal defense attorney. Prior to my legal career, I worked as a social worker with Moundbuilders Guidance Center and Lutheran Social Services addressing mental health crisis and houselessness. My testimony today only addresses the drug offense changes in HB 230.

Because research has taught us that increased punishment does not deter crime, HB 230 will not reduce crime or improve public safety, and will cost in excess of \$1 billion in incarceration costs every 5 years.

Harsher Punishment

Research for over a decade has shown that harsher punishments in the form of increased prison time does not lower offense rates.¹ Even probation and corrections research has found that there is a “marginal deterrent effect for legal sanctions.”² While it may seem to be common sense that a harsher punishment would disincentivize people from a behavior, evidence has shown that greater prison time increase risk of recidivism upon release; literally exacerbating the problem it seeks to address undermining public safety.

Why increased punishment doesn't work merits some explanation, since many would think it common sense that more punishment reduces likelihood of a behavior. This disconnect is for a variety of reasons and

¹ Five Things About Deterrence, National Institute of Justice, U.S. Dept. of Justice, 2016. www.ojp.gov/pdffiles1/nij/247350.pdf; Wright, Valerie, Ph.D., Deterrence in Criminal Justice, Evaluating Certainty vs. Severity of Punishment, The Sentencing Project, 2010. http://www.antonioacasella.eu/nume/Wright_2010.pdf

² An Examination of Deterrence Theory: Where Do We Stand?, Kelli D Tomplinon, Federal Probation, Vol. 80, No. 3, 2016. http://www.uscourts.gov/sites/default/files/80_3_4_0.pdf

causes include addiction, mental health issues, and uncertainty of punishment.

Addiction changes the brain. It creates intense cravings and creates illness (in the form of withdraw symptoms) when the person has not had the drug for a period of time. This can be difficult for people to relate with who have never experienced drug addiction personally. Here are a few comparisons:

Food & Sleep - We all know that we should eat healthy food and get sufficient rest to be healthy and functional. Nonetheless, we have all had experience with overeating or drinking, eating unhealthy food (even seeking it out), and not allowing ourselves the time to sleep that we need. We have had these experiences in spite of our knowledge that behaving otherwise would be beneficial for our health and wellbeing. How many people do you know struggling to lose weight? If we passed a law criminalizing people with over a certain body mass index (BMI), do you believe those people would all simply be able to change? Those are the struggles we all see and experience without the full force of drug addiction pushing us forward in the behavior.

Illness – We've all had the experience of being sick on the couch and just wanting the sickness to go away. In those times most of use, even the most drug hesitant, have taken our prescription or over-the-counter medications to address our illness while miserably waiting for them to kick in to relieve our symptoms or cure our sickness. With drug addiction, withdrawal symptoms create those same experiences of illness, but they cannot be fixed with Tylenol or Ibuprofen. They can, however, be fixed with more of the drug the person is addicted to.

Mental health is another critical component affecting decision making. Depression can eliminate a person's will to act leading them to isolate from loved one and joyful activities, disrupt work and the ability to act, and in some cases lead to suicidal thought or suicide itself. Do we think that someone who doesn't care about their own life will be impacted by increased sentencing? Would you expect, alternatively, that they might be willing to take any action to escape their pain and get momentary relief. It's not limited to depression, of course. Anxiety, psychotic, and dissociative disorders can all be crippling and frightening. Mental health medications, for those who can afford psychiatric care, regularly lose effectiveness over

time and can take months of trial and error to replace. Self-medication with illegal drugs is common in those periods. Research show that mental illness is much more common amongst incarcerated people; with as many as roughly ½ of men suffering from untreated personality disorders that impact their functioning and 1 in 7 people suffering from severe psychotic or depressive illness.³

No Mens Rea – Punishing people who don't know what they are doing

If harsher punishment is meant to act as a disincentive to the behavior of trafficking illegal drugs, it cannot meet that function when the people involved have no knowledge that Fentanyl is contained within the drug compound in their possession. As such, even if the person were making fully logical, rational decisions unaffected by personal addiction or mental health issues, they would not change their behavior because they have no knowledge of the problem.

Contrary to popular television portrayals, many people engaged in the distribution of drugs are themselves addicted to drugs. This can come in the form of selling small amounts of drugs to afford to continue their addiction and avoid the severe and painful effects of withdraw. Additionally, this can take the form of various sales to other friends suffering from addiction who reach out to their addicted friends, driven by their addiction, and trying to avoid the immediate pain of withdraw symptoms. The change in this bill will not impact people engaging in trafficking in these common situations.

Cost - Benefit

An additional 5 years of mandatory prison time will cost over \$185,000 per person, per case based on the August 2023 DRC data.⁴ As drug trafficking is the second most common reason that people are sentenced to prison the over cost will be significant – In excess of \$200 million dollars (*Per Year*) based on the commitment data reflected in the current fiscal notes for this bill combined with the incarceration cost of an extra 5 years per

³ Serious Mental Disorder in 23,000 Prisoners; a systematic review of 62 surveys, Fazel, S & Danesh J., The Lancet, Vol. 359, February 16, 2002. <https://www.semanticscholar.org/paper/Serious-mental-disorder-in-23%E2%80%88000-prisoners%3A-a-of-Fazel-Danesh/a81bb73c1ccee8f0ada35378acc55eec823d3c5>

⁴ ODRC Monthly Fact Sheet August 2023. <https://drc.ohio.gov/about/resource/reports/monthly-fact-sheets/monthly-fact-sheet-august-2023>

person. Put another way, this would likely be a cost in excess of \$1 billion dollars every 5 years for incarceration costs alone.

If this were likely to have a significant positive impact on crime or public safety, then perhaps \$1 billion dollars every 5 years might still be reasonable. However, all the research suggests this increased penalty will neither deter crime or recidivism.⁵

Conclusion

In conclusion, HB 230 attempts to address a serious, ongoing problem in our community. However, the incarceration focused approach will neither reduce crime nor improve public safety, and will be staggeringly expensive, in perpetuity, given the lack of impact. I would ask you to vote no on HB 230.

⁵ See Fn 1 & 2; Deterrence in the Twenty-First Century, Daniel S. Naglin, *Crime and Justice in America 1975-2025*, Vol. 42, No. 1, August 2013. <https://www.jstor.org/stable/10.1086/670398>