



TO: House Criminal Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: January 30, 2018
RE: Am. Sub. Senate Bill 1

To Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze, and members of the House Criminal Justice Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and I appear to present opponent testimony on Amended Substitute Senate Bill 1.

Like all Ohioans, including supporters of this bill, the ACLU of Ohio is greatly concerned about the serious problems of drug addiction and overdoses throughout our state and elsewhere. SB 1 addresses fentanyl and related compounds. Fentanyl is a synthetic opiate with legitimate medical purposes sometimes mixed with other drugs because of its potency.

Despite our collective concerns, Ohioans should be under no illusion SB 1 will meaningfully affect the overall problem of fentanyl use, abuse, possession, and trafficking in their communities due to the bill’s exclusive focus on severe punishment and prison time. In this sense, SB 1 continues the decades-long and thoroughly discredited “War on Drugs” approach, applying it once again to even more substances.

Supporters of this legislation repeatedly claim their intention is to strike a proper balance between punishing traffickers and acknowledging addicts and users should receive treatment. However, Senate Bill 1 does nothing of the sort as it creates much harsher penalties than current law for traffickers and users alike.

For example, under current law, possession of any amount of fentanyl under 20 grams is a 5th degree felony. However, under SB 1, possession of:

- Less than 1 gram = 5th degree felony
- 1 gram-less than 5 grams = 4th degree felony
- 5 grams-less than 10 grams = 3rd degree felony
- 10 grams-less than 20 grams = 2nd degree felony (mandatory term)

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

Obviously, Senate Bill 1 will increase prison sentences and further pack our state prisons, which have been seriously overcrowded for decades.

This problem is further exacerbated by SB 1's treatment of (almost) any substance containing any amount of fentanyl as only fentanyl under drug possession and trafficking laws. This is because SB 1's changes include not only "fentanyl-related compounds" but also "any compound, mixture, preparation, or substance" containing fentanyl. So, a person with any other drug (other than a very small amount of marijuana) containing any amount of fentanyl will be subject to these harsh new penalties. This is an important variable to consider when addressing this particular drug because fentanyl is added to many other substances besides heroin, including cocaine, MDMA, and others.

So, what may have been a lower-level drug case is now much more serious because somewhere along the supply chain, someone decided to lace another substance with fentanyl. Of course, dealers and users may not even know that occurred. But, they will be subject to these serious new fentanyl penalties all the same, because some amount, no matter how small, was added without their knowledge.

Please, think about that – under current law, made worse by SB 1 – we treat 100% pure fentanyl (and other drugs) the *exact same* as just 1% fentanyl mixed with 99% of something else, even an otherwise legal substance.

In previous testimony, some proponents of SB 1 have expressed concern about this exact issue but proposed no solution. Fortunately, the answer is simple, inexpensive, and would likely save Ohio taxpayers much money. Currently, Ohio's state crime lab tests drug evidence for the mere presence of other illegal drugs. But, these tests are unconcerned with, and so do not examine, the quantity present of those other substances. This is because Ohio law does not require it.

To conduct testing for the quantity of drugs in a compound or mixture would cost Ohio about \$375K annually. This is for testing, additional salaries, and additional training. Purchasing or upgrading current equipment would cost about \$730K. This is a ridiculously low expenditure by any measure. And yet this is all it would take for Ohio to change course, should this legislature be so inclined.

If the goal of Senate Bill 1 is to severely punish traffickers and users at all levels, its passage accomplishes that purpose. Instead, the ACLU of Ohio urges this committee to reject the discredited and counterproductive approaches of the past and develop a new framework and strategy to meaningfully address these serious problems affecting Ohioans everywhere. 40 years of the current approach have brought 40 years of failure.