

OHIO HOUSE OF REPRESENTATIVES

**JUDICIARY COMMITTEE
OCTOBER 10, 2014**

SUB. HOUSE BILL 508

OPPONENT TESTIMONY

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The Ohio Assn. of Criminal Defense Lawyers (“OACDL”) is an organization of 800 or so members of the members of the private bar and public defenders who comprise the criminal defense bar in this state, and who share a passion for justice in the operation of the criminal justice system.

Our Association is very aware of the disturbing surge of heroin-related deaths that have occurred in recent years all across Ohio, as well as other states. We therefore recognize the well-intentioned efforts of the sponsor and co-sponsors of Substitute HB 508 to address this scourge that is occurring across the land, as a measure that would be directly targeted to those involved in heroin trafficking and heroin usage. We are nevertheless highly disturbed by several aspects of this bill which would wrought serious and unacceptable collateral damage to the criminal justice system in the process.

It must be initially recognized what an extreme measure is Sub HB 508. In the history of criminal jurisprudence, the classic definition of a crime is an act or acts done with a criminal intent. The mental intent part of criminal conduct is highly related to the concept of culpability. Generally, the more serious the criminal purpose, the greater the criminal culpability, and consequently the greater the possible punishment for those crimes. These various levels of criminal intent that comprise the great majority of criminal offenses under the Revised Code are defined by statute in R.C. 2901.21.

Although it is acknowledged that some crimes can be committed without any criminal intent, such as where the General Assembly has clearly indicated an intention to impose “strict liability,” those criminal offenses are very rare. This bill would propose making a strict liability offense carry a sentence of life imprisonment for committing the offense. It is unknown if there is any precedent for this in Ohio or elsewhere.

The OACDL believes that it is morally unjustified to equate a murder that occurs as the result of the purposefully killing another, the classic definition of Murder, with a form of Murder that simply involves “providing” another with illegal drug whose use of the drug is related to the person’s death. Under the bill, it does not even require the use of the drug to be the proximate cause of death, it is enough that it is “a proximate cause of death.” There is no moral equivalence between these two forms of causation of death, and therefore there should be no legal basis for the two different causations to result in the same criminal penalty: life imprisonment, with earliest parole review in 15 years.

We object also to the change occasioned by the Sub bill to target those offenders who “provide” the drug instead of those who sold the drugs. Drugs are oftentimes acquired and used by multiple offenders sharing the cost of the drugs, and using the drugs at the same time. For example two heroin users might pool their resources to purchase a small quantity of heroin and then divide the drug and shoot it at the same time, such as a husband and wife, or two or more friends. This bill would impose the same criminality upon the person who was involved in purchasing the drug and then dividing it with others, or who received it from the purchaser and shared the purchase with another. In any event, this bill would impose life imprisonment upon anyone who shared their drugs with another. Between a man shooting his wife dead or beating her to death, and dividing a small purchase of heroin with her that results in her death, under this bill they are all subject to the same punishment: life imprisonment.

We believe amendments should be considered for this bill to: (1) delete the intention to impose strict liability for commission of the offense. The bill should require the mental intent of “recklessness” as the *mens rea* that must be present to commit the offense; and (2) to remove the term of life imprisonment as the penalty for commission of the offense. Instead, a “springboard” of an additional range between 1-10 years should be imposed such as the Revised Code now employs in the sentencing of Repeat Violent Offenders (RVO) and Major Drug Offender (MDO), which could be imposed upon a violation of Involuntary Manslaughter as the underlying offense, which is much more aligned with the current structure of homicide offenses under the Revised Code.