

ACLU Ohio

Criminal Justice Issues and Prisoners' Rights

<https://www.acluohio.org/en/news/senate-bill-25-opponent-testimony>

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[Skip to main content](#)

Below is our Chief Lobbyist Gary Daniels' opponent testimony on Senate Bill 25. This was delivered to the Senate Judiciary Committee on February 9, 2020.

To Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for this opportunity to provide the following opponent testimony on Senate Bill 25.

As you know, SB 25 is a bill to increase felony drug trafficking penalties by one degree if the trafficking took place "in the vicinity" of numerous locations, including, but not limited to, drug and alcohol treatment.

Proponents frame this severe change in Ohio law as necessary to protect vulnerable people against predatory dealers. The ACLU of Ohio believes proponents' concerns for drug addicts are genuine. We simply do not believe SB 25 will accomplish their goals and will do far more harm than good for at least these following reasons:

1,000 foot distance

SB 25 applies to violations within 1,000 feet of treatment locations (among other mystery locations; more on that in a minute). 1,000 feet is more than three football fields in each and every direction. In Ohio's larger cities, this extreme distance restriction will apply to wide swaths in many areas because of the dense nature of cities and number of treatment options available.

Because of this, SB 25 acts as a de facto raising of penalties in many cities but not so much in suburbs or rural areas. With SB 25's focus on cities and urban areas, we also believe black Ohioans - per usual with our criminal legal system - will be disproportionately affected as compared to white Ohioans. Passing SB 25 exacerbates these serious problems

If meant to address vulnerable Ohioans and not provide a back door way to increase drug penalties across Ohio, the 1,000 foot distance should be considerably reduced and restricted to the actual property of the treatment location.

Mens rea standard

Under SB 25, defendants must act "recklessly" with regard to their trafficking activities 3+ football fields in every direction. In other words, to receive the sentencing enhancement, they do not have to be deliberately targeting anyone seeking treatment. They are not even required to have any knowledge whatsoever of that person's problems. They only need to act "recklessly" in this regard. We submit "recklessly" as a mens rea standard makes little, if any, difference to reduce the broad scope of SB 25.

To ensure SB 25 not be a vehicle for numerous offenses *not* involving treatment locations or those receiving treatment, we maintain the proper standard is "knowingly," not recklessly.

Additional locations beyond treatment

SB 25 is also applicable to "recovery supports that are related to" alcohol and drug addiction services (Sec. 2925.01(RR)(2)). Exactly how expansive is that language intended to be? Does it mean pharmacies? Hospitals? Doctors' offices? Where people show up for drug or alcohol tests? Probation and parole offices?

What are the limits?

Again, to prevent SB 25 from applying so broadly it results in one set of laws for our cities and other for our suburbs and rural areas, this language needs significant clarification if not removal.

But, even if all those changes are made to align SB 25 with what supporters say their intentions are, it still will not protect those in treatment.

Ohio does not have the numerous and severe drug and overdose problems it does because of a lack of punishment and prison. As long as there are plenty of people taking drugs, drug trafficking will flourish no matter what penalties this body develops.

As research and data show, the reasons people get hooked on drugs are wide ranging, often systemic, and differ in presence and degree from person to person. Broad factors including personal and/or physical and/or emotional trauma, mental health concerns, a lack of income and similar economic issues, alienation from others or absence of positive support systems, and a lack of available and/or effective drug treatment, among other reasons.

Reducing and hopefully minimizing Ohio's drug problems require improvements to all those problems and more. What fails people with drug problems is a 40+ year approach of treating a health problem entirely through cops, courts, and cages. It is an approach proven not to work.

Drug trafficking is the number two reason people are sent to Ohio's bursting prisons. The latest budget forecasts a *\$2 billion per year* budget for our prison system. Yet drugs are every bit as cheap and plentiful as ever. Our overdose rates continue to be among the highest in the country. What we have been doing for almost half a century and counting is a complete failure.

Senate Bill 25 offers more of the same, doubling down on this failed status quo. If Ohio is serious about effectively tackling this problem we need well-planned, long-term, systemic efforts and solutions. As long as there are addicts, there will always be people available to sell them their next high no matter how harsh the punishment.

For these reasons and more, the ACLU of Ohio urges your rejection of Senate Bill 25.

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