



THE BUCKEYE INSTITUTE

Protecting *Mens Rea*

Interested Party Testimony
Ohio House Judiciary Committee
Ohio House Bill 88

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Chair Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and members of the Committee, thank you for the opportunity to testify regarding **Ohio House Bill 88**.

My name is Alex M. Certo, and I am a legal fellow at **The Buckeye Institute**, an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.

Drug addiction and dependency have tragic consequences. And drug traffickers—especially those peddling dangerous and highly addictive fentanyl—must be held accountable and punished for the loss and pain they inflict on our communities. But addressing the problem fairly requires carefully distinguishing between predatory perpetrators and unsuspecting victims, and criminal laws should be written accordingly.

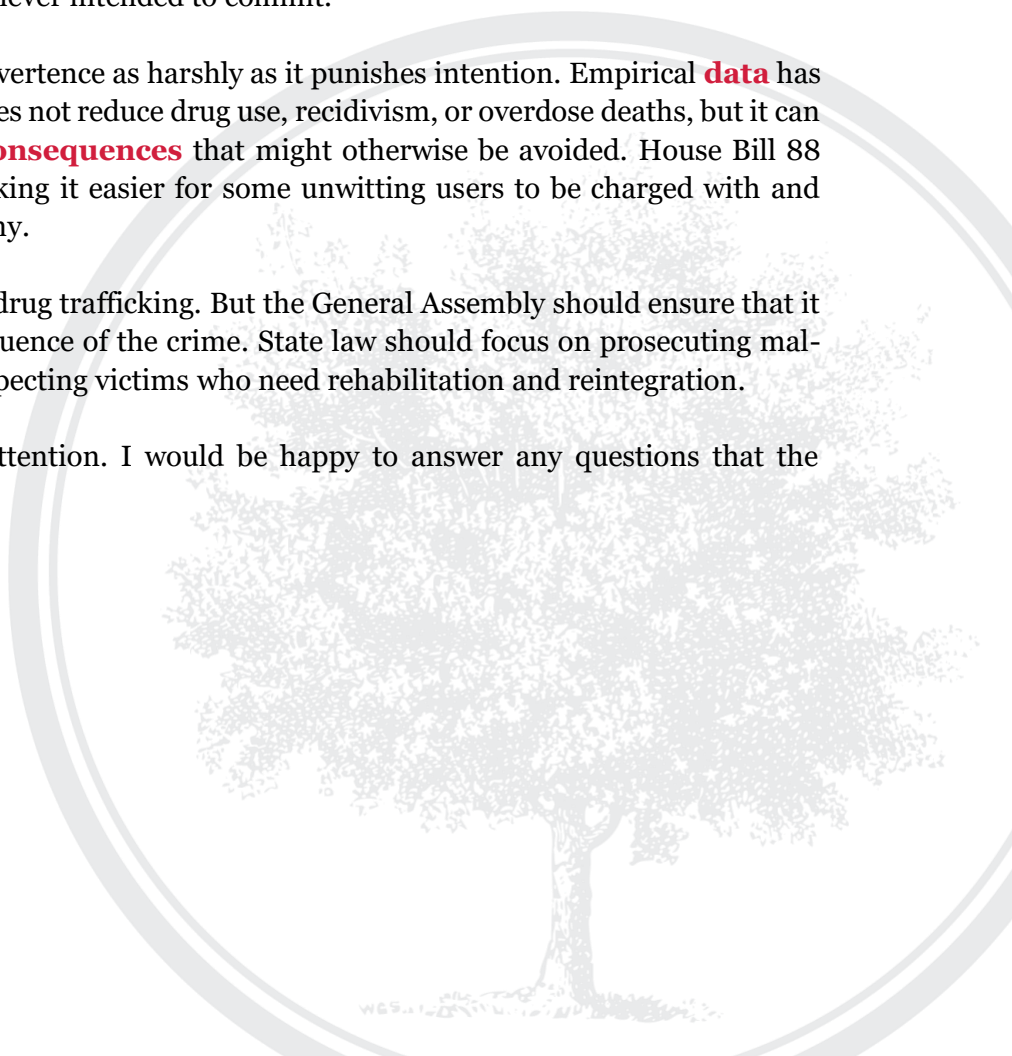
For more than a decade, Ohio has demonstrated its commitment to prudent, commonsense criminal justice policies and reforms. The state’s ***mens rea* reforms** in 2014 were the first and best of their kind in the country, helping police and prosecutors protect neighborhoods from those truly intending harm.

House Bill 88 retreats from those reforms by removing the *mens rea* requirement that an offender know or have reason to know that the drugs they possess contain fentanyl or a fentanyl-related compound. Removing that element of the offense will trap unsuspecting users—not traffickers—unaware that their drugs have been laced with fentanyl. Once trapped, such users will then face stiffer penalties for a crime they never intended to commit.

The state should not punish inadvertence as harshly as it punishes intention. Empirical **data** has long shown that incarceration does not reduce drug use, recidivism, or overdose deaths, but it can create unintended **collateral consequences** that might otherwise be avoided. House Bill 88 risks those consequences by making it easier for some unwitting users to be charged with and convicted of a higher degree felony.

Ohio must address fentanyl and drug trafficking. But the General Assembly should ensure that it targets the cause, not the consequence of the crime. State law should focus on prosecuting mal-intentioned criminals, not unsuspecting victims who need rehabilitation and reintegration.

Thank you for your time and attention. I would be happy to answer any questions that the Committee might have.



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