Issue One – 2018 Ohio Ballot Initiative

Prevention Action Alliance statement on Issue One

Prevention Action Alliance resolutely believes non-violent individuals with substance use disorders should receive treatment for their disease instead of being incarcerated. The proposed constitutional amendment fails to provide a well-crafted approach to this end. Ensuring individually tailored, successful treatment is too complicated for a ballot measure to effectively require. Issue 1 would hamstring courts from guiding people into treatment by taking away important disincentives. Treating people with substance use disorders is multifaceted. It requires much more than a broadly worded ballot measure. Thoughtful legislation guided by experts in the fields of substance misuse and abuse and taking into consideration proven, evidence-based strategies will lead to positive outcomes. We implore the Ohio General Assembly to seek bi-partisan legislative solutions to address the incarceration of non-violent offenders with substance use disorders. We also ask that voters to vote against this well-intentioned, yet poorly construed ballot initiative.

Our guiding beliefs – Prevention Action Alliance:

- Prevention is underfunded. Additional focused funding is needed to move prevention strategies and services “upstream” of the problem to intervene before the substance misuse occurs. Specific strategies need to target the audiences for which they are suited best, based on risks for substance use.
- Individuals with substance use disorders need more access to individualize, evidence-based treatment and community supports for ongoing recovery.
- Something this important should be done by thoughtful legislation and not a constitutional ballot initiative. The creation of such legislation should be guided by the experts in the fields of substance misuse and abuse and take into consideration evidence-based strategies with proven outcomes.
- Social justice often drives the conversation around drug policy. Social injustice comes in too many forms and the problem needs a rigorous comprehensive societal approach.

Concerns about Issue One:

- Treatment Needs
  - A tool (incarceration) that has proven to be an incentive to encourage one to go into treatment will be eliminated.
  - Funds are not guaranteed to go to the most qualified treatment providers and it doesn’t provide opportunities for treatment providers to customize treatment protocols.
Safety
- No significant consequences for breaking laws, no matter how violent, associated with drug use.
- Dealers can masquerade as having a substance use disorder and keep dealing.
- Reducing the severity of the crime from a felony to a misdemeanor will further add to the workload of local courts and strain the limited space in jails, adding additional burdens to unprepared communities with limited or no resources. As a result, consequences for drug possession will be so inconsequential that de facto legalization of drug possession – all drugs: heroin, fentanyl, LSD, cocaine and others - will exist.

Funding
- Proposed funding levels have historically not been realized (closing of mental health hospitals, lottery sales, gambling funds) It is more of one-time money. Prisons are currently well over capacity so reducing the population will not save on facilities and utilities costs.
- No funds are called to be earmarked for prevention services.

Drug Courts
- It could effectively eliminate local drug courts, which have been shown to be successful because they incentivize treatment with the promise of avoiding criminal felony records.
- If the worst result of a possession offense is a misdemeanor with no incarceration, drug courts will lose their effectiveness. California, with a similar initiative, has seen an alarming decline in its drug courts.
- There are 167 of these specialized drug courts statewide, with positive outcomes.

What we found others saying:

OBM Finds Issue 1 'Prescriptive' Language 'Overstates' Potential Savings

The Office of Budget and Management (OBM) released its fiscal analysis of State Issue 1, which proposes a constitutional amendment that bars prison time for many drug possession offenses, thus freeing up funds that can be used for drug treatment and other purposes. OBM finds “the proposed amendment would not produce significant savings to the state and could (depending on interpretation) actually increase costs to the state by tens of millions of dollars. For local governments, the proposed amendment would add costs that likely would not be covered by potentially available appropriations under the amendment.”
Cleveland.Com editorial board:

“Amending the Ohio Constitution to recast this state’s drug laws is like using a chainsaw for surgery: It’s anything but precise. And once it’s embedded in the state’s constitution, a do-over is all but impossible.”

- “It’s the legislature that should address such an important but politically volatile and complicated matter as making sure state sentencing law and Ohio’s general assembly approach to drug crimes appropriately emphasize treatment over incarceration.
- Fentanyl in the drugs would be subject to a misdemeanor, ignoring how even tiny amounts of this lethal opioid that is so frequently purveyed by drug dealers can kill.
- An amendment of almost 2,000 words to the Ohio Constitution, an amendment few Ohioans will find the time to read or have the knowledge to interpret, is a recipe for unforeseen consequences and endless litigation.
- What treatment to order is best made in the courtroom, not by Issue 1’s “one-size-fits-all” predetermined misdemeanor conviction.
- Convicted felons get up to a 25 percent reduction, plus an additional 30 days off the prison term the court already ordered them to serve, just for participating in prison programs and education. Isn’t that what inmates are supposed to be doing anyway? Issue 1 proponents claim hard-core drug
- We need to bring together mental health professionals, law enforcement, prosecutors, judges and others to develop comprehensive solutions.”

Columbus Dispatch Richard Berens, Judge of Fairfield County Common Pleas Court.

- Allows release of even violent offenders from prison early and severely limits courts’ abilities to supervise violent offenders on probation
- It will result in less-effective treatment, not more. Claimed cost savings are wildly exaggerated. Offenders can’t even go to jail until the third offense within two years. Two opportunities to use and overdose before jail can be imposed. It gives drug users less reason to stop. For those who have never used, but are tempted to, it provides less of a reason not to “just try it.”
- It sends the message loud and clear: Hard drug use isn’t dangerous, isn’t serious in the eyes of the law in Ohio.

Supreme Court Justice Maureen O’Connor

- Issue 1 could result in Ohio having some of the most lenient drug laws in the country, making the state a potential magnet for substance abuse activity.
• The constitutional amendment would reduce purchase, possession or use of a host of drugs, including fentanyl, heroin, cocaine and LSD, from felony to misdemeanor offenses, among other things.
• Jail time couldn't be imposed until the third offense.
• Predicts that Issue 1 would severely hamper the effective use of Ohio’s drug court programs to reduce drug abuse and addiction.
• In 2017, approximately 1,900 people — about 22 people for each of Ohio’s 88 counties — were imprisoned for Felony 4 and 5 drug possessions, but only after every other alternative treatment, intense supervision and jail — had likely been tried.

**Louis Tobin, Executive Director, Ohio Prosecuting Attorneys Association**

**Paul Pfeifer, Executive Director, Ohio Judicial Conference**

**Issue 1 is dangerous.**

• Possession or use of any number of deadly drugs like fentanyl, heroin, and meth will result in probation - lighter punishment than offenses like disorderly conduct and reckless operation.
• The message to children is that these drugs are not dangerous.
• The message to drug traffickers is that doing business in Ohio is low risk.
• Violent offenders cannot be sent to prison for probation violations. They will be free to disregard judges' orders with little consequence.

**Issue 1 undermines treatment.**

• Treatment for addiction is not provided or required by this amendment. An addict is on his own in getting sober.
• Courts connect addicts to treatment and help motivate success.
• Many addicts forego treatment entirely without the threat of prison.
• The proposal dooms effective treatment efforts in courts across Ohio.

**Issue 1 reduces sentences for violent offenders.**

• Drug traffickers, human traffickers, aggravated robbers, and others will be eligible for up to a 25% sentence reduction.
• Victims of violent crime will receive only partial justice.
• Issue 1 places the rehabilitation and well-being of those who break the law ahead of the rehabilitation and well-being of innocent victims.
Issue 1 is an unfunded mandate. It shifts costs to local government.

- Proponents speculate that savings from letting violent offenders and drug offenders out of prison will result in millions of dollars for treatment.
- It is not clear that the savings will be anything other than a one-time savings.
- Speculation about savings is not the same as dedicated funding.
- Local taxpayers will be left with the bill.

Ohio State Bar Association President Robin Weaver

- “When you categorically strip our judges of their discretion and take away an important tool — the threat of prison time — you significantly lower the chances that they will get sober, enroll in and complete a drug treatment program,”
- “Make no mistake, by removing accountability for defendants and shifting the cost burden to local governments, this proposal will set Ohio back, and because it would be written into the Ohio Constitution, it will take years and significant resources to fix.

Ashtabula County Prosecutor Nick Iarocci

- Iarocci said if Issue 1 passes it will exacerbate the issue of jail space at the county because more felony offenders would be bumped down to misdemeanors — meaning they couldn’t be sentenced to state prisons.
- If Issue 1 passes and felony offenders are to be treated and sentenced as misdemeanants, our local jail will be crowded even more significantly than it already is and more offenders waiting to for their day in court will be on the streets committing more crime since those of us in law enforcement and the courts will be prohibited from sentencing these offenders to, or incarcerating them in, state prisons.”

Miriam Walton, Ashtabula County Mental Health and Recovery Services Board executive director

- One concern is that drug traffickers would be able to shield themselves as addicts to get into treatment to avoid jail.
- “Jail can sometimes be the pathway to detox,” she said, adding that while treatment is always the best option, “it’s nice to have a little bit of force behind that because this is a
Ashtabula County Common Pleas Court Judge Thomas Harris

- “It really does prohibit judges from using jail as a tool for getting people to go into treatment,”
- “The county has few resources for those going through the detox process outside of jail.”

What the proponents are saying:

Ballot Proponents – Talking points

- Issue 1 reduces the number of people in state prison for low-level, nonviolent crimes and put the money to better use by directing savings to drug treatment and crime victims.
- Saves taxpayer dollars: Ohio spends more than $1.8 billion per year on a broken prison system where too many people who pose little public safety risk are incarcerated while treatment and prevention programs suffer.
- Issue 1 will save tens of millions of dollars annually in prison spending and direct the savings to addiction treatment and victims of crime.
- Issue 1 puts our public safety dollars to better use: Wasting law enforcement resources and prison on people struggling with addiction makes no sense.
- Issue 1 requires misdemeanors instead of felonies for low-level drug possession offenses and requires community service, treatment or local jail, instead of state prison, for people convicted of these crimes or who break probation rules (such as missing a meeting).
- Treatment and supervision work better to improve public safety than a revolving prison door.
- Reduces recidivism: Issue 1 expands earned-credit programs so that qualified people can be considered for release if they participate in rehabilitation programs. Experts agree that requiring people to earn their way out of prison through rehabilitation reduces the likelihood they’ll commit more crimes.
- Issue 1 protects public safety: This was carefully written to ensure that people that are a danger to public safety remain incarcerated. No one convicted of murder, rape or child molestation will benefit from any aspect of this measure.
• All fourth- and fifth-degree felony drug possession and drug use crimes would become misdemeanors. Offenders would face no jail time for first or second offenses within a two-year period.
• Judges would be prohibited from sending someone to jail for a probation violation, unless they committed a new crime.
• Prison time for those who complete rehabilitation programs could be reduced, excluding those who committed certain crimes such as murder, rape or child molestation.
• Money would be set aside for drug treatment and crime victim programs.
• Those convicted of drug crimes could request re-sentencing or even release.
• Drug trafficking crimes would remain felonies

The Neighborhood Safety, Drug Treatment, and Rehabilitation Amendment would:
• Reclassify drug possession as misdemeanor crimes, except for drug possession or trafficking offenses categorized as first-, second- or third-degree felonies;
• Prohibit jail sentences for drug possession until an individual’s third offense within 24 months;
• Allow inmates convicted of crimes to reduce their sentences up to 25 percent by completing rehabilitative, work or educational programming;
• Send cost savings from reduced prison expenses to drug treatment programs and crime victim services.

According to the official ballot language, passage of the Issue 1 amendment would:
• Require sentence reductions of incarcerated individuals, except individuals incarcerated for murder, rape, or child molestation, by up to 25 percent if the individual participates in rehabilitative, work, or educational programming.
• Mandate that criminal offenses of obtaining, possessing, or using any drug such as fentanyl, heroin, methamphetamine, cocaine, LSD, and other controlled substances cannot be classified as a felony, but only a misdemeanor.
• Prohibit jail time as a sentence for obtaining, possessing, or using such drugs until an individual’s third offense within 24 months.
• Allow an individual convicted of obtaining, possessing, or using any such drug prior to the effective date of the amendment to ask a court to reduce the conviction to a misdemeanor, regardless of whether the individual has completed the sentence.
• Require any available funding, based on projected savings, to be applied to state-administered rehabilitation programs and crime victim funds.
• Require a graduated series of responses, such as community service, drug treatment, or jail time, for minor, non-criminal probation violations.
• Issue 1 would allow prisoners to reduce their sentences by up to 25 percent by completing educational, work or rehabilitative programs while incarcerated. Current rules allow up to 8 percent reduced.