

Dear Ohio Sentencing Commission:

As public health and criminal justice experts, our goal is to encourage the development and use of effective, evidence-based solutions to the opioid epidemic that is devastating communities across the country. [We write because of concerns that Ohio prosecutors have been employing an ineffective and counterproductive response to the state's opioid problems.](#) We seek your help in collecting information about, and assessing the impact of, what appears to be problematic prosecutorial practices.

Overdose is now the leading cause of death for individuals [under fifty](#). No state has been untouched by the crisis, but [Ohio has been one of the hardest hit: it ranks third on the list of states with the highest rates of opioid deaths.](#)

Substance use disorder (what some refer to as addiction) is a [chronic disease](#), not a moral failing. It is a public health issue, not a criminal behavior. To end this devastation, we must embrace a public health approach to the crisis by increasing access to evidence-based treatment and reducing the stigma associated with substance misuse. Across the country and in Ohio, progress is underway through initiatives that address the opioid epidemic in this way, rather than as an issue of crime and punishment. But that progress can be undermined by punitive prosecutions of accidental overdose deaths, especially since [study after study](#) undermines the proposition that harsh criminal punishment helps deter or solve substance use disorder.

According to data collected from online news sources, Ohio pursues [more drug-induced homicide charges](#) than all but one other state in the country. These data show Ohio counties of Cuyahoga, Franklin, Summit, Clermont and Hamilton now rank among the [most active counties](#) in the United States for prosecutors charging people with homicide charges for accidental overdose deaths, and it seems quite possible that prosecutors in rural Ohio counties may also be bringing these charges, but that these cases do not get reported in online news sources. Notably, in a news report last month, Franklin County Prosecutor Ron O'Brien stated that in recent years he has brought prosecutions of [29](#) cases of involuntary manslaughter in relation to accidental overdose deaths.

Though newspaper reports sometimes suggest that these cases are brought only against "drug dealers," it is clear that often the people who are being prosecuted are individuals who struggle with substance use themselves, individuals who sold to support their own use, or individuals who were co-using with the deceased. One news account of the cases in Franklin County indicates that sentences of imprisonment in these cases have ranged from two to 15 years, raising concerns that limited state resources are going

to lengthy periods of unproductive incarceration, instead of being used for helpful and necessary drug treatment. We have never seen any evidence to support the claim that charging and sentencing persons for manslaughter for accidental drug overdoses helps in any way to curb large scale trafficking or helps reduce drug use or overdose deaths.

We are deeply concerned that, rather than using evidence-based treatment and intervention to stem the opioid crisis, critical resources are being spent on prosecuting and incarcerating people who are struggling with substance use disorder.

Not only is this policy ineffective, it makes communities less safe.

Prosecuting individuals for accidental overdose deaths discourages people from seeking the help they or their loved ones may need. Emergency responders can provide life-saving interventions, such as [naloxone](#), that can stop an opioid overdose from becoming fatal. We want people who can help save a life to make that call. That is why the General Assembly revised its Good Samaritan Law in 2016, encouraging people to call 911 in cases of overdose. It is why this past September, Franklin County received a [\\$3.9 million grant](#) from the Center for Disease Control and Prevention to better respond to overdose crises and connect survivors with treatment and recovery support. But drug-induced homicide prosecutions create an environment in which directly impacted people avoid seeking help for themselves and others because of their fear of prosecution.

Based on news reports, we are deeply concerned that prosecutors' use of this dangerous policy has grown and is continuing to expand in Ohio. We are concerned that prosecutors are doing so without any statewide discussions among prosecutors and courts about this use of Ohio homicide provisions and without systematic examination of its likely ineffectiveness in reducing drug use and overdose deaths, or its possible adverse impact on public safety and the community as a whole. **To end Ohio's opioid crisis, we need humane data-driven solutions. We ask that the Ohio Criminal Sentencing Commission begin a public examination of the use of homicide charges in accidental overdose cases throughout the state and their impact on public safety and the opioid crisis.** We ask that the Commission use the information and data it collects to propose evidence-based recommendations that can guide stakeholders and protect the community against the harms of this policy.

Sincerely,

Valena Beety

Professor of Law,
Deputy Director of Academy for Justice
Arizona State University
Sandra Day O'Connor College of Law

Leo Beletsky

Professor of Law and Health Sciences,
Faculty Director,
Health in Justice Action Lab
Northeastern University School of Law
University of California at
San Diego School of Medicine

Douglas Berman

Professor of Law, Director,
Drug Enforcement and Policy Center
The Ohio State University Moritz College of Law

Jeremiah Goulka

Senior Fellow - Health in Justice Action Lab
Northeastern University School of Law

Alex Kreit

Associate Professor of Law,
Co-Director Center for Criminal Law & Policy
Thomas Jefferson School of Law