

The Facts

About Issue 1

Issue 1 on the November ballot, funded by George Soros and Facebook billionaire Mark Zuckerberg, purports to be about getting treatment for drug users. But it's much more than that. It will also reduce possession of major amounts of drugs to the equivalent of traffic violations, it usurps the power and flexibility of Ohio's judges and drug courts, it will levy huge costs on our counties with no funds to pay them, and it will endanger our families and children – all at a time when opioid deaths in Ohio are exceeding the death toll from the Vietnam War. Issue 1 is a danger to Ohio. Here is what Issue 1 really does, and why it must be defeated.

Don't be fooled by the spin that backers are putting on Issue 1. Please study the facts, and then Vote NO! on election day.

(Paid for by Vote No Protect Ohio, 196 E. State St., Columbus, OH 43215)
www.votenoprotectohio.com

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Description of Issue 1

Issue 1 is an initiated proposed amendment to the Ohio Constitution. To be enacted, it must receive a majority of votes cast by Ohioans in the Nov. 6 election this year.

With the announced purpose of reducing Ohio's prison population, Issue 1 would significantly change drug laws in Ohio. For example, it would reduce possession of amounts of drugs capable of killing thousands of Ohioans to misdemeanors. But it goes further. Even drug offenders charged with misdemeanors could not be given jail time for either of the first two offenses in any two year period.

Issue 1 would also provide for the immediate release from prison of felony drug offenders whose crimes would be classified as misdemeanors in the proposed amendment. Additionally, it would provide for prisoners convicted of other felonies to be released early by participating in some form of rehabilitative activity. Proponents have estimated that approximately 10,000 felony inmates currently in state prisons would be released.

Seventy percent of savings from this reduction in prison population would then be redirected to the State Department of Mental Health and Addiction Services to make grants to fund substance abuse treatment programs around the state. The other 30 percent would be disbursed to recovery programs such as probation programs and graduated response programs, with at least half of this amount going to a grant program for victim trauma recovery services.

Issue 1 would also allow revocation of offender probation and imprisonment only for violation of laws, barring use of violation of terms of probation as a cause for revocation.

The proposed amendment also would require courts to decide all questions of interpretation of Issue 1 language liberally in favor of reducing incarceration of inmates.

For the language that will appear on the November ballot:

[https://ballotpedia.org/Ohio_Issue_1,_Drug_and_Criminal_Justice_Policies_Initiative_\(2018\)](https://ballotpedia.org/Ohio_Issue_1,_Drug_and_Criminal_Justice_Policies_Initiative_(2018))

For the text of the proposed amendment,

[https://ballotpedia.org/Ohio Issue 1, Drug and Criminal Justice Policies Initiative \(2018\)](https://ballotpedia.org/Ohio_Issue_1,_Drug_and_Criminal_Justice_Policies_Initiative_(2018))

What's Wrong with Issue 1?

Issue 1 puts forth some lofty goals. Many believe we should divert non-violent drug offenders from incarceration to treatment, for example. And many believe that money spent for incarceration could be better spent on treatment.

But Issue 1 goes much further than simply stating goals. It adds 1901 words to the Ohio Constitution that will have far-reaching effect on Ohio drug and felony laws, and that opponents believe will have major negative consequences for our state.

The major problems are detailed below.

1. **Issue 1 will redefine Ohio drug possession laws from felonies to misdemeanors, making possession of even large amounts of deadly drugs into the equivalent of traffic offenses, with no possibility of jail for offenders.***

The amendment states in plain language, "With respect to state laws that make possessing, obtaining or using a drug or drug paraphernalia a criminal offense, in no case shall any offense be classified higher than a misdemeanor." Under the most favorable interpretation of this section to proponents, this language when read with the rest of the amendment would mean that misdemeanor possession under Issue 1 could be as much as

- 49 unit doses of cocaine
- 49 unit doses of heroin
- 19 grams of Fentanyl

In all three cases these amounts, all of which would be simple misdemeanors under Issue 1, are far greater than could be considered amounts for personal use. The Fentanyl limit is especially disturbing. This drug was responsible for at least 2700 deaths in Ohio in 2016, the last year we have numbers for. According to the Drug Enforcement Administration, 2 milligrams of Fentanyl is a fatal dose for an adult. Nineteen grams of Fentanyl would be enough to kill 9,500 of our fellow citizens. Yet possession of that much deadly poison would subject the offender only to misdemeanor charges.

But the amendment goes further. For even the most severe drug possession misdemeanor, only probation would be allowed. The

amendment says, “The sanctions authorized may not exceed those of a first-degree misdemeanor, and, for an individual’s first or second conviction within a twenty-four month period, the sanctions shall not exceed probation.”

This means, for example, that a college student arrested for underage drinking could be subject to harsher treatment by our justice system than a drug offender in possession of enough Fentanyl to kill 9,500 people. There can only be one result: the drug cartels will see Ohio as an “easy hit,” with negligible penalties for those in possession of large amounts of drugs – hardly the kind of leadership that is good for Ohio. *The proposed amendment, at Sec. D, F and G

2. **Issue 1 removes from Ohio judges the discretion to order prison time for offenders who violate probation.**

Judicial practice in Ohio is that drug addicts are given probation based on conditions like undergoing detoxification. The object is to use the law to get the inmate straightened out so that he or she can be productive in society. But drug treatment is difficult, a “living hell” some addicts say. Relapses are common as users seek relief from the pain of withdrawal. Ohio judges are firm in their contention that it is the threat of jail time that makes rehabilitation work. Without that threat, too many addicts and offenders simply lack the discipline to complete treatment. Yet Issue 1 would remove that leverage from Ohio judges. It would actually undermine rather than enhance drug treatment. It matters little if additional treatment Issue 1 promises is available if the law doesn’t provide the teeth to see that addicts enroll in the first place, and stay committed until the course of treatment is completed.

Issue 1 provides that judges for misdemeanors, which drug possession and use will become under Issue 1, cannot send an addict to incarceration for anything but criminal activity. In other words, an addict experiencing the difficulties of detoxification could simply say to a judge, “I’m not going to rehab any more,” or “I’m not going to school as I promised.” The judge would have no meaningful recourse. Ohio drug court judges contend that the threat of incarceration is a lifesaver for many offenders, because it is that threat that gets them through treatment. Even offenders sent to jail for probation violation often comment that the action saved them by removing them from the temptation they experienced daily on the streets while they completed rehabilitation.

Under Issue 1, even violent felony offenders could ignore terms of probation, terms which in most cases they agreed to. For instance, a felony wife batterer on probation could violate an order to stay away from or not contact his victim, and courts would lack authority to imprison him. Victims of domestic abuse stand to live in fear of their batterers under Issue 1.

Under Issue 1, probation could only be revoked for commission of a crime, rather than violation of terms of probation.

Issue 1 provides that judges must establish graduated responses to non-criminal violations of probation, yet without the eventual hammer of imprisonment or jail, judges question whether graduated responses would be effective with violators.

3. **Judges in all 88 counties would be required to submit their proposed graduated responses to the state Department of Rehabilitation and Correction for approval before implementation.**

This provision directly violates the constitutional principal of separation of powers, effectively putting Ohio's criminal judges under the thumb of a state bureaucracy. Under the amendment, courts would be required to seek Department of Rehabilitation and Corrections approval for "graduated responses" to probation violations. These responses cannot include incarceration no matter how significant the probation violation, unless an actual crime was committed.

This kind of power over our judges by a state bureaucracy under control of the governor is a recipe for injection of partisan politics into the daily functioning of the courts which protect us from criminals. It also creates the potential that state bureaucrats in Columbus could ride roughshod over local community values and practices put together over the years by locally elected judges who represent the values of the community.

*The proposed amendment, at Sec. E

4. **Issue 1 would require shortening of prison sentences up to 25 percent for felonies, with certain exceptions, for inmates who "participate" in rehabilitative activity, work or education.***

Proponents talk most about changes in drug laws, but Issue 1's greatest effect will potentially be felt in the release of thousands of convicted felons, many of whom have committed violent crimes, into society well short of their original prison terms. Crimes committed by

those eligible for early release under Issue 1 could include armed robbery, vehicular homicide, arson, burglary of inhabited dwellings, drug trafficking, domestic violence offenses and child pornography offenses.

That's because this section would apply to all felonies, not just drug felonies, with the exception of "individuals who are serving sentences of death or life without the possibility of parole" and "individuals serving sentences for murder, rape, or child molestation."

To be eligible for a 25 percent sentence reduction, inmates would have only to "participate" in beneficial activities, rather than to complete them or graduate from them. (The prison system under the amendment could, but is not required to, give an extra 30 days off sentences for program completion.)

More concerning is the kind of criminals who would be eligible. Here are some examples of the kind of cases where offenders will be potentially eligible for release into society if Issue 1 passes:

- A man exchanging child pornography online and contacting a 12-year-old girl on-line for the purpose of sex is put in prison. However, He would not be considered a "child molester" under the language of Issue One, since no child was actually physically touched. So he would be eligible for up to two years off his eight-year term just for "participating" in some sort of rehabilitation program.
- A drunk driver, with a history of past offenses, drives into a street fair and kills two people and severely injures another. He gets 15 years on a plea deal. If he "participates" in classes in prison, he would be eligible to have nearly four years taken off his sentence just for attending, not completing those classes.
- A gang member shoots up the wrong house and hits a small child and her grandmother, but doesn't kill them. If he got a 20-year sentence and "participated" in a program, he could get five years off that sentence.

In each of these cases, a violent or heinous offender would be freed from confinement without having really completed anything by way of good-faith effort to rehabilitate himself or herself.

*The proposed amendment, at Sec. C

5. **Issue 1 would impose huge new burdens on cities and counties with little or no revenue stream to pay for them.**

Misdemeanors, which drug possession charges will become under Issue 1, are prosecuted and punished at the local level. For our counties and cities, passage of Issue 1 will mean additional costs, such as

- Additional transport of prisoners.
- Cost of preparing thousands of hearings required under Issue 1.
- Processing of early release petitions
- Additional costs of probation supervision
- Additional costs for first responders (more emergency runs for overdoses of relapsed addicts.)
- Additional coroner costs (more deaths are a certainty under Issue 1.)
- Costs of county jail incarceration for three-time offenders (the amendment allows some reimbursement to counties, but the entire funding mechanism in the amendment is unlikely to produce anything like the actual costs to local governments.)

These costs are in addition to treatment program costs for which there may be state reimbursement. One urban city attorney said his office would immediately get more than 2,000 cases, with no additional resources available to handle them.

There is insufficient revenue stream provided to pay for this transfer of costs from the state to local governments.

6. **The No. 1 complaint of Ohio employers is that they cannot find workers who can pass a drug test. If Issue 1 passes, it will compound that problem.**

Ohio already has a significant workforce problem which threatens to sap our state's economic strength and growth. Our development efforts will fail if would-be Ohio employers can't find the workers they need. Issue 1 would severely compound the problem by saying to users and potential users, especially young people, that having and using drugs is "officially sanctioned" by the state constitution.

If Issue 1 were to pass, Ohio would be an island of permissiveness in the Midwest, with far more liberal drug laws than our neighboring states. Those laws will cause drug dealers seeking a low risk of punishment for pour into our state; regrettably, they're going to pass real businesses – the kind who employ workers – on the way out.

7. The funding mechanism for treatment and other local support under the amendment is highly speculative, and unlikely to produce anywhere near the resources proponents claim.*

The amendment provides that 70 percent of savings from release of inmates charged with drug possession, and release of felons under the early release programs of the amendment, must to go the Ohio Department of Mental Health and Addiction Recovery for creation of a local grant program for treatment and support services.

Ohio currently houses 49,000 prisoners in the state system, 12,000 over the system capacity of 37,000 prisoners. Even if 10,000 prisoners were to be released, the system would still be over capacity. As a result, there would be no major prison closures or reductions in personnel, the two major costs of the system. Some savings resulting from prisoner-specific costs like food and medical care would be realized, but won't be nearly the amount needed to run significant local treatment programs across the state.

Moreover, the felon early release program produces savings only when prisoners get out, yet the state lacks the extensive range of rehabilitation courses offenders must take to qualify. Putting these in place for thousands of inmates will cost the state large amounts which cannot be repaid from savings, according to the amendment.

Even if savings are realized, they will be in small amounts far short of the amount needed to create and sustain effective local treatment programs.

*The proposed amendment, at Sec. B

8. Many serious felons will regain gun rights.

Under Issue 1 many felony convictions will be lowered to misdemeanors. In each case the offenders will have rights to own and possess guns, a right currently denied to felons, restored because they

will no longer have felony convictions. The result: Prisoners currently classified as felons, some with serious drug issues, will be released into society and they also will be free to possess weapons.

9. Issue 1, if passed, will become part of Ohio's Constitution where it can only be changed through long process and a return to the electorate for approval.

One of the principal lessons of the drug crisis in Ohio is that drug possession and use patterns adjust very rapidly to advancements in law enforcement. Just since 2010, we have seen the heart of the problem progress from pill mills and addiction to prescription opioids, to heroin and crack cocaine, and now to Fentanyl. And increasingly authorities are encountering carfentanil, which is said to be 50 times as deadly as fentanyl. There is simply no way to know what changes in the law may become necessary, and yet under Issue 1 it would be very difficult to change.

Law enforcement and judicial leaders across Ohio believe that it is a mistake to put provisions which should be in statute law into the Constitution where they are effectively out of reach in the event of some new, yet unforeseen, drug emergency. They argue that the problem is constantly changing, and that lawmakers and the justice system must remain agile and flexible if they are to keep up with it.

Putting Issue 1 in the constitution is especially egregious since it would have been both easier and cheaper for backers of Issue 1 to propose it as initiative statute (law) rather than constitutional amendment. They did do that in California, but have selected the more restrictive route of constitutional amendment in Ohio. It leads to the question of what their motive is in putting so much specific law out of reach of Ohio's elected legislators, prosecutors, sheriffs, and judges.

Exactly How Dangerous Are Fentanyl and Carfentanil?

From the National Institute on Drug Abuse:

Fentanyl:

- Fentanyl is a powerful synthetic opioid analgesic that is similar to morphine but is 50 to 100 times more potent.
- Non-pharmaceutical fentanyl is sold in the following forms: as a powder; spiked on blotter paper; mixed with or substituted for heroin; or as tablets that mimic other, less potent opioids.
- Fentanyl works by binding to the body's opioid receptors, which are found in areas of the brain that control pain and emotions. Its effects include euphoria, drowsiness, nausea, confusion, constipation, sedation, tolerance, addiction, respiratory depression and arrest, unconsciousness, coma, and death.
- The high potency of fentanyl greatly increases risk of overdose, especially if a person who uses drugs is unaware that a powder or pill contains fentanyl

<https://www.drugabuse.gov/publications/drugfacts/fentanyl>



2 milligrams (.002 grams) = fatal dose of fentanyl

From the DEA:

Carfentanil

September 22, 2016

FOR IMMEDIATE RELEASE

DEA Issues Carfentanil Warning To Police And Public

Dangerous opioid 10,000 times more potent than morphine and 100 times more potent than fentanyl

WASHINGTON - DEA has issued a public warning to the public and law enforcement nationwide about the health and safety risks of carfentanil. Carfentanil is a synthetic opioid that is 10,000 times more potent than morphine and 100 times more potent than fentanyl, which itself is 50 times more potent than heroin. DEA, local law enforcement and first responders have recently seen the presence of carfentanil, which has been linked to a significant number of overdose deaths in various parts of the country. Improper handling of carfentanil, as well as fentanyl and other fentanyl-related compounds, has deadly consequences.

“Carfentanil is surfacing in more and more communities.” said DEA Acting Administrator Chuck Rosenberg. “We see it on the streets, often disguised as heroin. It is crazy dangerous. Synthetics such as fentanyl and carfentanil can kill you. I hope our first responders - and the public - will read and heed our health and safety warning. These men and women have remarkably difficult jobs and we need them to be well and healthy.”

Carfentanil is a Schedule II substance under the Controlled Substances Act and is used as a tranquilizing agent for elephants and other large mammals. The lethal dose range for carfentanil in humans is unknown. However, as noted, carfentanil is approximately 100 times more potent than fentanyl, which can be lethal at the 2-milligram range, depending on route of administration and other factors.

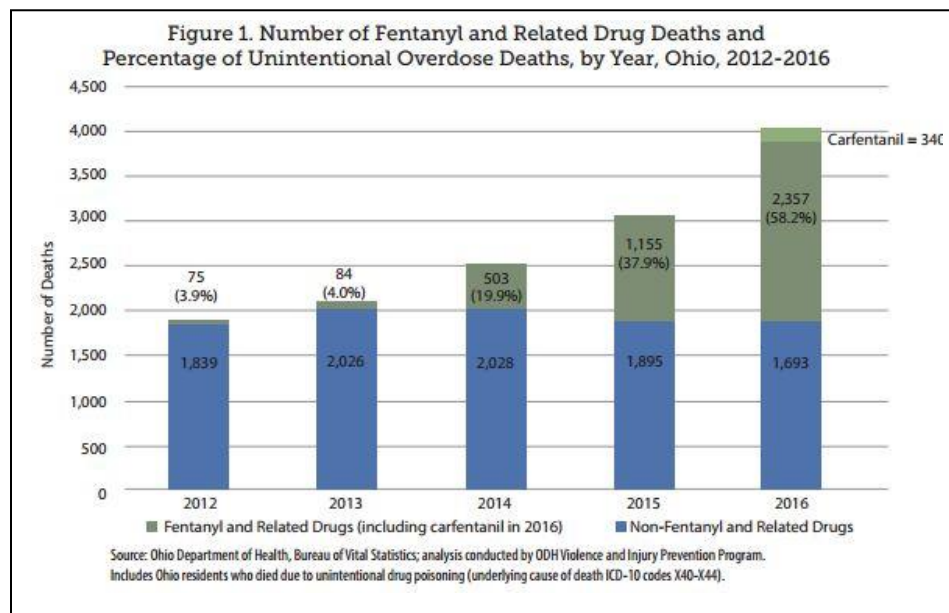
(Emphasis added)

<https://www.dea.gov/press-releases/2016/09/22/dea-issues-carfentanil-warning-police-and-public>

How Bad is the Opioid Problem in Ohio?

Opioid deaths in Ohio continued to grow rapidly through the end of 2016, the last year for which state health department statistics are available. Of particular concern is the growth in fentanyl and carfentanil. Large amounts of fentanyl possession are ranked as misdemeanors under Issue 1, despite the fact it's a deadly poison that killed 2,357 Ohioans in the most recent statistical year. Even worse, the total number of deaths rose astronomically from 75 fentanyl deaths in 2012 to 2,357 in 2016. The presence of this deadly killer on our streets in growing amounts suggests that this is the worst possible time for liberalizing drug laws and effectively inviting more Ohioans to become users.

Here is a chart showing Ohio Department of health overdose death statistics for the most recent five years.



By comparison, consider that a combined 4,865 Ohioans were killed in the Viet Nam and Korean wars combined. Moreover, Ohio consistently ranks in the top five states nationally for opioid deaths over the last few years. The depth and severity of the problem in Ohio cannot be overstated. It raises the question why backers of Issue 1 chose Ohio as the target of their social engineering experiment in drug liberalization.

Who is Behind Issue 1?

According to Ballotpedia, there were five major contributors to the signature-gathering effort to put Issue1 on the ballot.

Cash support included:

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|--|-------------|
| Open Society Policy Center (George Soros) | \$1,000,000 |
| Chan Zuckerberg Advocacy (Mark Zuckerberg) | \$1,000,000 |
| Open Philanthropy Project Action Fund | \$1,000,000 |
| Tides Advocacy | \$ 500,000 |
| Black Fork Strategies | \$ 300,000 |

All are liberal advocacy groups.

The lead organization behind Issue 1 in-state is the Ohio Justice and Policy Center of Cincinnati. Records show that OJPC in 1916 received \$50,000 in funding from George Soros.

Q & A

Q. I've heard two interpretations of Issue 1. One says that it makes possession of fentanyl up to 20 grams a misdemeanor, and the other saying that under Issue 1 an individual could possess *any* amount of fentanyl and it would still be a misdemeanor. What's going on?

A. You have heard two versions because top legal minds in Ohio read language of the amendment in different ways. Two of these are:

First interpretation: Language at Division (D) of the amendment states, "With respect to state laws that make possessing, obtaining or using a drug or drug paraphernalia a criminal offense, in no case shall any offense be classified higher than a misdemeanor." The amendment then, at Sec. (G) says in pertinent part, "Division(s) (D) of this Section do not apply to **convictions** . . . for any offense that, based on volume or weight, and as of January 1, 2018, was classified as a first, second or third degree felony offense." This interpretation holds that this language limits the effect of Division (D) to drug possession which is a fourth of fifth degree felony today. Because the current Felony 4 and Felony 5 language only would cover offenses of possession of up to 20 grams of fentanyl, enough according to the DEA to kill 10,000 of our fellow Ohioans, this interpretation says that up to 20 grams of fentanyl* is the maximum that could be designated a misdemeanor under Issue 1.

Second interpretation: This interpretation agrees with the first as stated above. However, it goes on to say that the word "convictions" as highlighted above has meaning that must be considered. Because of the clear language of Division (D), that no possession offense can be charged as a felony after the passage of Issue 1, it will not be possible to obtain a "conviction" for a felony of the first, second, or third degree. Therefore, the limits in Division (G) do not apply in the future. The only effect of Division (G) is to preserve felony convictions of inmates currently sentenced on Felony 1, Felony 2, or Felony 3 offenses. After passage of Issue 1, this interpretation argues, there can be no felony prosecution at any level for possession of fentanyl, therefore no convictions, and as a result all possession of fentanyl will be misdemeanor only.

*Other amounts would apply to other drugs like heroin and cocaine.

Q. So which interpretation do opponents of Issue 1 believe is correct?

A. Good legal minds might argue on how egregious this amendment is for Ohio. But for those that oppose Issue 1, it's like an argument about what's better -- a township or major city being destroyed by some disaster. For the victims who will be affected by Issue 1, both are intolerable. That is why we must vote NO on Issue 1.

In the view of the Vote No Protect Ohio campaign, both interpretations demonstrate how dangerous Issue 1 is to Ohioans, and how poorly Issue 1 was drafted. Either interpretation is sufficient reason to reject the amendment. As for who's right, the answer is we can't know for certain, and won't know until the matter is litigated, as it certainly will be if Issue 1 were to pass. So there are two reasons related to the possession provision that demand a "no" vote on Issue 1:

- No matter the interpretation, it would make possession of staggering amounts of fentanyl misdemeanors, with probation the only allowed penalty. Judges would be unable to impose jail time for the first two offenses in the previous two years.
- The ambiguity alone is reason to reject Issue 1. Constitutional language should be clear and unambiguous, not confusing and obscure, No matter how laudable their motives, Issue 1 backers did a poor job of drafting, and so their proposal should be rejected.

Q. There have been contradictory claims concerning whether drug trafficking sentences are affected by Issue 1. What's the truth?

A. The amendment does not directly address penalties for drug trafficking. However, it does, in Division (D), provide for up to 25 percent sentence reduction and early release of certain felons, including drug traffickers, who participate in rehabilitative activity. Supporters of Issue 1 have predicted that as many as 10,000 felons could be released* from state prisons if the issue passes. Only about 2,000 of those would be inmates convicted of possession. The others would be felons convicted of other crimes, which could include drug traffickers, human traffickers, armed robbers, burglars, wife batterers, arsonists, child pornographers and others guilty of heinous or violent crimes. The bottom line: Issue 1 does, in fact, provide for reduced sentences and early release for drug traffickers among others.

*<https://www.policymattersohio.org/research-policy/quality-ohio/corrections/issue-1-reducing-incarceration-improving-communities>

Q. Voters enacted “Marsy’s Law” effective Feb. 5, 2018 providing right of notification and other rights to crime victims. How does Issue 1 impact Marsy’s Law?

A. The goals of the two are in fundamental conflict. Marsy’s Law is aimed at expanding victim’s rights in the legal process. Issue 1, by contrast, creates new rights for criminals, including creating a right for early release of certain felony offenders. Administratively, the new right of early release provided by Issue 1 will collide directly with the requirements that victims must be notified and afforded the right to intervene at hearings that will be a part of implementing Issue 1. At a minimum, it will create a bureaucratic nightmare for local and justice system officials who will face expense and delays doing required notifications. But beyond that, it is likely to be painful for crime victims who see their offenders let free early and who are likely to feel that they have been shortchanged by the system in favor of criminals.