

Submitter: Horst Meister

On Behalf Of:

Committee: Joint Committee On Addiction and Community Safety Response

Measure: HB4036

Making drug use a criminal offense has failed to prevent or even curb the abuse and sales of controlled substances for 50 years.

When an addictive drug is declared illegal, its street price increases, but demand for the drug is not affected. This creates lucrative opportunities for unscrupulous people. People are willing to risk arrest and incarceration because serving the demand for addictive controlled substances is hugely profitable, and the profits are not taxed.

It is futile to complain about foreign cartels smuggling drugs into the United States. If Americans were not willing to buy their products, the cartels could not sell them. There are no sellers if there are no buyers.

The United States is the largest and wealthiest drug market in the world.

Incarceration does not address drug abuse because addiction is a medical condition. The convicted person has already committed the offense they were charged with. The risk of possible imprisonment has not dissuaded addicts from indulging themselves for 50 years.

Incarceration is arguably more harmful than addiction in some ways. A person who is convicted, incarcerated and released will find it more difficult to get housing, a decent job, or an education because they have a criminal record. When a breadwinner is incarcerated, their family suffers financial difficulties.

There are two types of proscriptive laws, broadly speaking: *Malum prohibitum* and *malum in se*.

*Malum in se* refers to conduct that violates civilized standards of acceptable social behavior; for example, murder, armed robbery or rape. These are actions that everyone considers criminal in nature.

*Malum prohibitum* refers to conduct that constitutes an unlawful act only by virtue of statute. Examples of offenses that are generally regarded as *mala prohibita* include disorderly conduct, jaywalking, prostitution, public intoxication, most traffic violations, or littering.

Possession or use of a controlled substance is a violation by virtue of statute. Persons who are addicted to a controlled substance are not criminals per se, they are criminals by virtue of statute. Addiction itself is not a crime; the use of controlled

substances is. It is unjust to treat addicted persons as criminals when they have a medical condition that is amenable to treatment.

First responders say that the level of drug use has not changed since Measure 110 took effect. What has actually changed is that drug-related behaviors that were previously done in private because they were illegal are now being done in public, where people can see them. This circumstance creates a false impression of rampant drug use that is wrongly blamed on Measure 110. Laws do not promote drug addiction.

If drug use is re-criminalized, persons who are addicted to controlled substances will once more retreat from the public arena to indulge themselves in private, creating the false impression that criminalization was successful.

Drug abuse cannot be prevented because people like to use drugs. Tylenol, aspirin, Advil, antihistamines, ibuprofen and caffeine are also drugs.

According to law enforcement, ingesting two grams of fentanyl kills a person, so there are sound reasons for making it a controlled substance. Fentanyl is very dangerous. Penalizing drug dealers makes sense because they are knowingly selling a dangerous product that does kill people.

However, demonizing persons who use controlled substances because they are addicted is grossly unjust, and making them criminals when they in fact have a treatable medical condition is tyrannical.

The best path forward is to make treatment for addiction readily available or mandatory in certain circumstances and undertake educational measures to inform the public of the dangers of using controlled substances, but don't dump Measure 110 just because it didn't work. Fix it.