



**Testimony of Kimberly McCullough, Policy Director
In Opposition to HB 2797
House Judiciary Committee
March 7, 2019**

Chair Williamson and Members of the Committee:

The American Civil Liberties Union of Oregon¹ opposes HB 2797, which creates a mandatory minimum sentence for delivery or manufacture of a drug that plays a factor in another person's death, also known as a drug-induced homicide law. There are more humane and effective ways to reduce harm and death from drug use. This bill is a regressive move back toward the failed War on Drugs and its negative implications for our society.

Before discussing the specifics of this bill and policy, we first want to acknowledge and empathize with the deep pain that lead to its introduction. The death of a loved one to drug use and addiction is tragic, and unfortunately common. Most people in our society personally know someone struggling with addiction, and a large portion of us have lost one or more loved ones to drug-related harms. We have no doubt that this bill has been introduced as an earnest attempt to stop harm to our communities and loved ones.

Unfortunately, the same and similar drug policies have been tried repeatedly, and have created rather than reduced harm.² The policy proposed in HB 2797 is not new. Similar laws have been in place at the federal level and in other states since the beginning of the Drug War. Yet these types of laws have done nothing to reduce rates of drug use, addiction, and overdose.

The War on Drugs has been a catastrophic failure. Federal and state "tough on crime" laws aimed at people who use and sell illegal drugs has been a leading cause in mass-incarceration, helping to fill the United States' jails and prisons at higher rates than any other country in the world. These laws have created collateral consequences that impose barriers

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 45,000 members and supporters statewide.

² "An Overdose Death Is Not Murder: Why Drug-Induced Homicide Laws Are Counterproductive and Inhumane", <http://www.drugpolicy.org/resource/DIH>.

to people with convictions rebuilding their lives, and exacerbated drug-related death, disease and suffering — all while failing to reduce drug use, addiction, or related harms.

Beyond failing to reduce drug addiction and overdose, laws like HB 2797 have caused a significant number of problematic and unintended consequences in our communities. For example:

- **Laws like HB 2797 discourage witnesses to overdoses from calling 9-1-1**, out of fear that they will be arrested and charged with a serious crime.
- Research also shows that in states that have enacted similar laws, **the majority of prosecutions are being brought against individuals who do not fit the characterization of a “dealer” at all**, such as friends, family, and co-users of the overdose decedent. **The majority of these people are struggling with addiction themselves, and need treatment and recovery services, not incarceration.**
- **In cases that do involve organized drug distribution, the defendants are typically low-level dealers.** And again, many of these low-level dealers are struggling with addiction themselves.
- **Research shows that these laws are disproportionately used against people of color.** This is true despite the fact that people of all colors use and sell drugs at roughly the same rates.
- **Laws like HB 2797 divert our limited resources away from our public health system** and into a criminal justice system that feeds mass incarceration.

As to the specifics of this bill, it sweeps in much more than the type of behavior that typically carries a harsher penalty in our criminal justice system. More specifically:

- **HB 2797 does not require a drug sale to occur**, but instead covers the sharing of drugs between friends and family members.
- **HB 2797 does not require a minimum threshold amount of drugs to be delivered**, but instead applies even if only one pill or dose was shared or sold.
- **HB 2797 does not focus on drug dealers who are up the chain**, but also covers low-level drug dealers and people who are not even drug dealers at all.
- **HB 2797 does not require that the drugs contain a contaminant**, but instead covers even “clean” or “pure” drugs, including actual pharmaceuticals.

- In the case of contaminated drugs, **HB 2797 does not require the person who shared or sold drugs to have knowledge of or have contributed to the contamination.**
- **HB 2797 would apply even if the leading factor in the death was something other than the drug** that was shared or sold. For example, the death could have been caused by mixing drugs and alcohol or another more dangerous substance, or by a pre-existing condition or issue that was triggered by drug use.

To reduce overdose, addiction and drug-related deaths in Oregon, there are many things we can do.³ For example:

- We need to rapidly scale-up **evidence-based treatment and recovery services.**
- We need to continue to widen the distribution of the opioid antidote **naloxone.**
- We need to implement and increase access to a wide variety of **harm-reduction strategies**, including pill and drug testing, overdose prevention sites, needle exchanges, and evidence-based drug education.
- We need **reduce stigma** associated with substance use and addiction, so people who need help will be empowered to reach out and find the support and assistance they need.
- We need to **decriminalize drug use and possession.**⁴ We took a huge step forward in 2017 with the passage of a law that defeloned small-scale drug possession under certain circumstances, but more is needed to move away from the War on Drugs and toward a more effective and humane public health approach.

For these reasons, the ACLU of Oregon urges you not to pass HB 2797, but to instead help Oregon move toward a public health approach to addressing drug use, addiction, and overdose. Please feel free to contact me if you have any questions, comments, or concerns.

³ “A Public Health and Safety Approach to Opioid Addiction and Overdose”, <http://www.drugpolicy.org/resource/public-health-and-safety-approach-problematic-opioid-use-and-overdose>.

⁴ Drug Policy Alliance Report, “It’s Time for the U.S. to Decriminalize Drug Use and Possession,” <http://www.drugpolicy.org/resource/its-time-us-decriminalize-drug-use-and-possession> (“Drug decriminalization is a critical next step toward achieving a rational drug policy that puts science and public health before punishment and incarceration. Decades of evidence has clearly demonstrated that decriminalization is a sensible path forward that would reap vast human and fiscal benefits, while protecting families and communities.”).