



TO: House Criminal Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: May 9, 2017
RE: Substitute House Bill 38

To Chairman Manning, Vice Chair Rezabek, and members of the House Criminal Justice Committee, my name is Gary Daniels, chief lobbyist for the American Civil Liberties Union of Ohio ("ACLU of Ohio") and I appear to present opponent testimony on Substitute House Bill 38.

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

Sub HB 38 is not complicated. It expands the definition of aggravated murder to include victims who are, or once were, military members, federal law enforcement officers, firefighters, and emergency services personnel. Current law applies to peace officers as well as a whole host of other victims added over the years.

Like current law for peace officers, this change only applies if the defendant targeted the victim because of their status as current or former military, federal law enforcement, firefighters or emergency services personnel.

Aggravated murder only carries two penalties - life imprisonment or death. That remains unchanged by Sub HB 38.

Under Sub HB 38, penalties increase for two other offenses when they are committed against these same people for the same reasons mentioned above. Those offenses are 1) attempt to commit aggravated murder and 2) felonious assault. Under this bill, people convicted of those crimes in these situations will receive a mandatory additional 3-11 years behind bars as those offenses switch from second degree felonies to first degree ones.

The ACLU of Ohio offers four considerations for Sub HB 38:

First, Ohio's prisons are overcrowded and have been for decades. The primary reason for this is the amount of legislation continually introduced and passed to create new crimes, enhance sentences, and expand current law. This includes 1 in every 10 bills introduced last session, as outlined in the ACLU of Ohio's recent Statehouse-To-Prison Pipeline Report. As a result of bipartisan efforts, states across the country continue to see their prison numbers decrease. But, not here in

Ohio. By increasing penalties and lengths of sentences, Sub HB 38 adds to Ohio's already numerous and serious problems in this regard.

Second, aggravated murder convictions can and do lead to the death penalty. This is particularly relevant in Ohio where, in recent years, we have seen several innocent people released from Death Row as well as several horrifically botched executions. Given Ohio's shameful track record with capital offenses and capital punishment, we should be mindful Sub HB 38, again, contributes to Ohio's problems.

Third, this a section of the Ohio Revised Code that continues to grow in size and scope. There is no question crimes, including the serious ones covered by this bill, committed against those tasked with protecting Ohioans, are reprehensible and deserving of punishment. The same would hold true if committed against educators, clergy, and elected officials, among others. As this section of the Ohio Revised Code has grown over the years, adding more people and more situations, I suspect it is only a matter of time before it grows even larger, with or without passage of Sub HB 38, and results in even more over-crowded prisons.

Finally, this body created and tasked the Ohio Criminal Justice Recodification Committee with examining Ohio's criminal laws and making recommendations to the Ohio General Assembly. That committee's work is ongoing and we expect those recommendations relatively soon. It would be prudent to wait until that time before passing bills with serious ramifications, like Sub HB 38.

A balance must be struck. Under consideration is increasing Ohio's numerous mass incarceration and death penalty issues via passage of Sub HB 38 when current law already severely punishes those who commit the acts addressed in this bill.

Given all these factors, we urge this committee to reject Substitute House Bill 38.