



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB20 Permanently Disabled Victim Sponsor Senator Hackett

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the House Criminal Justice Committee. My name is Niki Clum, and I'm the Legislative Liaison for the Office of the Ohio Public Defender. Thank you for the opportunity to testify in opposition of SB20.

As this committee knows, SB20 requires an additional mandatory six years in prison when a victim is under 10 years old and suffers a permanently disabling injury. The sponsor testimony stated that this legislation was inspired by a case involving alleged shaken baby syndrome. It is important for this committee to know that the science around shaken baby syndrome is in the midst of an evolution. Now is not the time for Ohio to pass a law that requires additional penalties for an offense that may be completely discredited in a few years.

Some of the country's leading experts on shaken baby syndrome have changed their medical opinion regarding whether the syndrome is over diagnosed or even exists.¹ In at least one lab experiment using infant simulated dummies, researchers were unable to create the acceleration needed to cause the types brain injuries that are associated with shaken baby syndrome through shaking.² The researchers found that a fall onto a soft bed or couch resulted in more acceleration to

¹ Haberman, Clyde, *Shaken Baby Syndrome: A Diagnosis That Divides the Medical World*, The New York Times, September 13, 2015, <https://www.nytimes.com/2015/09/14/us/shaken-baby-syndrome-a-diagnosis-that-divides-the-medical-world.html>

² Langreth, Robert, *The Dubious Science of Shaken-Baby Syndrome*, Forbes, February 5, 2011, <https://www.forbes.com/sites/robertlangreth/2011/02/05/the-bogus-science-of-shaken-baby-syndrome/> citing Balezon, Emily, New York Times citing research by Neurosurgeon Ann-Christine Duhaime.

the brain than they could achieve through shaking.³ Some researchers have concluded that shaking a child will not cause the types of injuries that are associated with the syndrome.⁴ Additionally, other researchers have found that brain injuries in children may not be noticeable at first, but can become serious after the brain has had time to bleed in the skull.⁵ For example, if a child falls and injures their head on a playground on Sunday while supervised by their mother, they may not exhibit symptoms of an injury until Tuesday when they are supervised by their babysitter. Suddenly, the babysitter is being accused of shaking the child and causing the injury. Because the scientific community has yet to reach a consensus on shaken baby syndrome, Ohio should not now pass a law that could force innocent people in prison for longer periods of time.

Shaken baby cases are very expensive to litigate. Unlike other specifications which are traditionally binary; firearms either work or they don't, these cases require expert medical testimony. Since the science is inconclusive and the amount of potential prison time would be so extensive, SB20 will result in more of these cases being litigated. As this committee knows, the Ohio Public Defender is responsible for reimbursing a portion of the cost of providing indigent defense in Ohio to each county. Passing SB20 will increase the overall cost of indigent defense. SB20 will lower the percentage of costs the Ohio Public Defender can reimburse to the counties, and the counties will have to bare that additional cost.

Ohio cannot afford SB20. We cannot afford the additional cost of litigating these cases, the cost of additional incarceration, and the social cost of putting potentially innocent people in prison for

³ *Id.*

⁴ *Id.*

⁵ *Id.*



longer periods of time. Thank you for the opportunity to speak today before your committee. I am happy to answer questions at this time.

