



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB207 Felonious Assault Offense Expansion – Suffocation and Strangulation Sponsor Senator Kunze

Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to testify on behalf of the Office of Ohio Public Defender in opposition of Senate Bill 207.

As this committee knows, SB207 would expand the offense of felonious assault to include causing or attempting to cause physical harm by strangulation or suffocation. This legislation is not needed. Strangulation and suffocation can already be charged as a felonious assault under current law. Under Ohio Revised Code 2903.11 felonious assault is the knowing act of causing “serious physical harm to another or another’s unborn.” If an individual is strangled and the resulting injury is like some of the injuries described to this committee in proponent testimony – for example, brain and spinal injuries, then charging that perpetrator with felonious assault is permitted and appropriate as those injuries would constitute “serious physical harm.” In some cases of strangulation, however, serious physical harm may not result. In those situations, the appropriate charge is misdemeanor assault. This is consistent with the way in which way all types of assaults are handled in Ohio. There may an incident where a push could be a felonious assault if the pushed person falls and hits their head causing serious physical harm. However, there may also be incident where only minor injury results from a push. In that case, the push would be charged a misdemeanor assault.

Testimony was provided to this committee that this bill is needed because charging an individual with felonious assault in in a strangulation case may require the testimony of a medical professional as the injuries from strangulation are not always visible. Again, this is consistent with the way all assault cases are currently handled. In the case of the individual that is pushed and hits their head, the

prosecutor will have to present testimony from a medical professional to tell the jury about the extent of the injury, establish that it is a serious injury, and that the injury resulted from the impact to the head. The testimony of a medical professional does not have to be obtained from an expert witness who requires a fee for their services. The prosecutor is permitted to subpoena the doctors and nurses that treated the victim to testify about the treatment they gave and their diagnosis. Even if there are the occasions where an expert is required, that is still likely less expensive overall than the cost of this legislation. The Legislative Service Commission stated that this bill could potentially result in thousands more being charged with second degree felonies. At the cost of \$26,365 annually to incarcerate an individual, this bill could result thousands or millions of dollars of additional cost to Ohio.

Classifying all strangulation and suffocation cases as second degree felonies will not make victims safer. Making these offenses felonies will not deter future cases. The research shows that longer prison sentences do little, if anything, to deter crime.¹ Furthermore, longer prison sentences do not result in further rehabilitation or reductions to recidivism.² The money Ohio would spend on incarcerating these individuals would be better spent on education, job training, mental health counseling, and substance abuse counseling, which the data shows are linked to reductions in recidivism.³ There was also testimony before this committee that medical professions are not always aware of all the injuries that can be associated with strangulation. That is a flaw of the medical community not the criminal justice system. The appropriate remedy is through the educational and training requirement of doctors and nurses, not by creating a new type of felonious assault where the actual injury sustained is irrelevant.

¹ *Five Things About Deterrence*, National Institute of Justice, Office of Justice Programs, <https://nij.gov/five-things/pages/deterrence.aspx>; citing Nagan, Daniel S., *Deterrence in the Twenty First Century*, 2013.

² *A Matter of Time: The Causes and Consequences of Rising Time Served in America's Prison*, Urban Institute Justice Policy Center, <http://apps.urban.org/features/long-prison-terms/reform.html>; citing Sered, Danielle, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, https://storage.googleapis.com/vera-web-assets/downloads/Publications/accounting-for-violence/legacy_downloads/accounting-for-violence.pdf; Durlauf, Steven N. and Nagin, Daniel S., *Imprisonment and Crime: Can both be reduced?*, 2011 American Society of Criminology, *Criminology & Public Policy*, Volume 10 Issue 1, January 26, 2011.

³ *Reducing Recidivism*, June 2014, The National Reentry Resource Center, A project of the Council of State Government Justice Center https://csgjusticecenter.org/wp-content/uploads/2014/06/ReducingRecidivism_StatesDeliverResults.pdf.



Current law is sufficient for handling these types of cases. This committee heard in testimony that sometime strangulation cases cannot be charged as felonious assaults because all the elements of a felonious assault are not present. If all the elements are not present, then the case should not be a felonious assault. It is reasonable, and constitutionally required, that prosecutors prove every element of an offense. In cases where serious physical harm has occurred, prosecutors are free to charge strangulation cases accordingly. However, offenses that result in little harm to no harm should not be felonies of the second degree.

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

