



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of HB22 Expansion of Obstruction of Justice Sponsors Representatives LaRe and Wilkin

Chair LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee. Thank you for the opportunity to provide testimony in opposition of House Bill 22 (HB22) on behalf of the Office of the Ohio Public Defender (OPD).

Last week, Former Ohio Supreme Court Justice and Executive Director of the Ohio Judicial Conference Paul Pfeiffer told this committee that the Ohio Criminal Code has gotten far too complicated. He pointed out the entire Ohio Criminal Code could fit into one volume of the Ohio Revised Code in 1990, and, today, it takes up five volumes.¹ Bills like HB22 are part of the reason why the Criminal Code has gotten so large and overly complex. Many of the provisions in HB22 are already illegal and already carry similar penalties. Slightly changing the wording and making new offenses creates an un navigable criminal code, and as Former Justice Pfeiffer pointed out, leads to mistakes at the trial level.²

HB22 aims to ensure that an individual does not infer with the lawful work of law enforcement. That is already illegal in Ohio pursuant to the Failure to Comply and Obstruction of Official Business statutes. HB22 also aims to prevent individuals from using force against law enforcement or threatening them. That is already illegal pursuant to the Assault, Menacing, and Aggravated Menacing statutes. It is important to note that an individual can be convicted of assault by merely attempting to cause harm, and harm can be as minor a physical mark on the victim³ or victim stating they felt pain.⁴ For the convenience of this committee, I have created charts to show how the provisions in HB22 are already

¹ Ohio House Criminal Justice Committee, Senate Bill 2 Proponent Testimony, March 11, 2020, <http://ohiochannel.org/collections/ohio-house-criminal-justice-committee> at 14:44.

² *Id.* at 16:04.

³ *Westlake v. Filiaggi*, 8th Dist. Cuyahoga No. 93599, 2010-Ohio-4481, ¶15; *Westlake v. Filiaggi*, 8th Dist. Cuyahoga No. 93599, 2010-Ohio-4481, ¶15.

⁴ *In re Bowers* 11th Dist. Ashtabula No. 2002-A-0010, 2002-Ohio-6913.

largely in the Ohio Revised Code. Furthermore, these existing provisions already carry similar penalties as proposed in HB22. In some cases, current law carries harsher penalties. For example, attempting to harm a law enforcement officer is fourth degree felony assault. Under HB22, using force or throwing things at law enforcement is a misdemeanor of the second degree or a felony of the fifth degree.

I also want to point out that Officer Quinlan misspoke during his proponent testimony when he said that bill only prohibits mentally interfering with an officer after being told to desist the distracting behavior by law enforcement.⁵ There is no requirement in the bill that the individual must be warned by law enforcement prior to being charged under the provisions in the bill. In fact, the bill only requires that individuals act with reckless disregard – meaning the person acts with a heedless indifference - as to whether they are diverting or obstructing the officer’s attention, or as Officer Quinlan put it, mentally interfering. Without prior warning from law enforcement, how is an individual to know they are mentally interfering with police?

More importantly, under the bill, the person does not need to know that they are mentally interfering with police, they just need not care. It is not hard to imagine a circumstance where police are pursuing a suspect who flees into a crowd, whether it is a protest, political rally, concert, or some other lawful gathering. If the members of that crowd act with indifference as to whether they are obstructing the officer’s ability to obtain the suspect or whether they are between the officer and the suspect, those individuals are guilty under section (B)(2) of this bill. Even if those individuals did not know the officer was pursuing a suspect, these individuals are guilty by simply being indifferent as to whether they are in the officer’s way. Every one of those innocent crowd members could now be charged with a misdemeanor of the second degree or even a felony of the fifth degree depending on the circumstances.

Examples like this are why the current Obstruction of Official Business statute requires that the person have the purpose to “prevent, obstruct, or delay” the law enforcement officer. Obstruction of Official Business is a misdemeanor of the first degree or a felony of the fifth degree if the behavior

⁵ Ohio House Criminal Justice Committee, HB22 Proponent Testimony, March 4, 2020, <http://ohiochannel.org/video/ohio-house-criminal-justice-committee-3-4-2021> at 21:08.



creates a risk of physical harm to any person. Mentally interfering with an officer under the bill is a misdemeanor of the second degree or a felony of the fifth degree if the behavior creates a risk of physical harm to any person. Not only is current law sufficient to handle these kinds of situations, but it is also preferable to HB22 because it does not permit innocent people from being arrested for being in the wrong place at the wrong time.

Interfering with Lawful Action of Law Enforcement		
Offense	Criteria	Penalty
Failure to Comply R.C. 2921.331(A)	No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic	Misdemeanor of the first degree
Obstruction of Official Business R.C. 2921.31	No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.	Misdemeanor of first degree; or Felony of the fifth degree - if creates risk of physical harm to any person
HB22 Obstruction of Justice R.C. 2921.32(A)(7)	(A) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime....shall do any of the following: (7) Fail to follow a lawful order from a law enforcement officer	For underlying misdemeanors, the same degree level as the underlying offense; For underlying felonies, felony of the fifth degree; For underlying aggravated murder, murder, first- and second-degree felonies, felony of the third degree
HB22 Obstruction of Justice R.C. 2921.32(B)(2)	(B) No person shall do any of the following to a law enforcement officer in the performance of the law enforcement officer's duties with reckless disregard as to whether the action diverts or obstructs the law enforcement officer's attention: (2) Interfere with or obstruct a law enforcement officer in manner that does any of the following: (a) Inhibits or restricts the law enforcement officer's control of a subject or detainee; (b) Deprives law enforcement officer of control of a subject or detainee;	Misdemeanor of second degree; or Felony of the fifth degree - if creates risk of physical harm to any person



	(c) [E]nters, or, places an object or substance into, a space around the law enforcement officer that is large enough that the law enforcement officer cannot reach a person outside the area	
HB22 Obstruction of Justice R.C. 2921.32(C)	No person with the intent to annoy, harass, or distract a law enforcement officer engaged in the performance of the law enforcement officer's official duties, shall throw any object or substance at or onto a law enforcement officer.	Misdemeanor of second degree; or Felony of the fifth degree - if creates risk of physical harm to any person

Using Force or Threat Against Law Enforcement		
Offense	Criteria	Penalty
Assault R.C. 2903.13(A)	No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.	If victim peace officer – felony of the fourth degree
Menacing R.C. 2903.22(A)	No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.	Misdemeanor of the fourth degree
Aggravated Menacing R.C. 2903.21(A)	No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.	Misdemeanor of the first degree
HB22 Obstruction of Justice R.C. R.C. 2921.32(B)(2)	(B) No person shall do any of the following to a law enforcement officer in the performance of the law enforcement officer's duties with reckless disregard as to whether the action diverts or obstructs the law enforcement officer's attention: (1) Use force or threaten the immediate use of force against the law enforcement officer	Misdemeanor of second degree; or Felony of the fifth degree - if creates risk of physical harm to any person

Most of the provisions of HB22 are already illegal under current law. By criminalizing the same behavior again in a different statute, this legislature will continue to make the criminal code overly complex and ripe for error. The provisions that are not already illegal will result in innocent people facing misdemeanor or felony convictions. For these reasons, this committee should not pass HB22. Thank you for the opportunity to provide testimony in opposition of the bill.

