

TO: House Criminal Justice Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
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RE: House Bill 22 – Opponent testimony



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To Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for this opportunity to provide opponent testimony for House Bill 22.

The ACLU of Ohio has several concerns with HB 22 that lead to our opposition. Among them are the following, from the more specific to the general:

Failure to follow a “lawful order”

HB 22 further criminalizes failing to obey law enforcement, in this case failure to follow a “lawful order.” What is not explained is what is “lawful” and what is an “order.” The history of such laws and their enforcement demonstrates many times this lack of clarity leads to increased problems among citizens and law enforcement.

For more about the issues and controversies such laws have caused, I refer you to *The Power of Police Officers to Give “Lawful Orders”* from a 2020 edition of The Yale Law Journal.
(https://www.yalelawjournal.org/pdf/MooneyComment_6w54gon8.pdf)

As this article demonstrates, problems arise when both citizens and police do not know or ignore the distinction between an order and a suggestion or what exactly is a “lawful” order. This is further exacerbated by the large amount of deference courts typically give to law enforcement and routine failures to hold them accountable when they make serious mistakes or overstep their authority. In other words, when laws are vague, broad, and uncertain, problems inevitably follow.

Indeed, HB 22 sets up this potential scenario – a large demonstration or protest of, say, 5,000 people takes place. Ten people in the middle of the crowd begin to break the law, attracting the attention of police. Police give a dispersal order. But, the crowd is large enough and the order is ineffectively communicated so many never hear the order and do not disperse.

Under HB 22, hundreds or thousands of people are now subject to arrest, detention, and imprisonment because they failed to follow a lawful order.

I understand HB 22 requires the crowd to act “with purpose” to keep police from, for example, apprehending suspects. Unfortunately, factual disputes about such things as dispersal orders at protests are not uncommon in the world of free speech litigation. Were they given, when were they given, how were they delivered, and under what circumstances? Indeed, this very issue is the subject of a current lawsuit by the ACLU of Ohio against the Columbus Police Department for its use of force against protestors several years ago. It is but one example of enforcement problems with these laws in the real world.

Interfere with/inhibit provision

Suffering from many of the same problems just described is language in HB 22 that criminalizes any and all actions that “inhibit” an officer from their “control of a subject or detainee.”

At an earlier hearing, Rep. Seitz identified a glaring free speech problem with HB 22. That issue was language that prevented “taunting” of police. There is a long history of First Amendment case law upholding what has been and could be interpreted as taunting of police. The ACLU of Ohio is thankful this issue was quickly identified and the language removed via a recent amendment.

However, with this “inhibit” language, the same (if not more) problems remain. Who defines inhibit? HB 22 offers no definition. What specific actions does it apply to, or not? Are there not numerous otherwise lawful, if not constitutionally protected, actions police and prosecutors will define as inhibiting the control of a suspect? If history is a guide, the answer is resoundingly “yes.”

HB 22 is redundant and confusing

Everything HB 22 seeks to (further) criminalize is already illegal under Ohio law, from assaulting a law enforcement officer, to throwing objects at them, to interfering with their apprehension and detention of a suspect.

In addition, HB 22 fundamentally changes Ohio's obstructing justice law. In a legal and statutory sense, "obstructing justice" typically and basically refers to actions one takes to assist another in evading law enforcement. However, HB 22 expands this definition and purpose of the law to include actions that do not assist anyone at all.

Seven years ago, the Ohio General Assembly created the Ohio Criminal Justice Recodification Committee, a group of invited stakeholders tasked with recommending changes to Ohio's criminal laws. A primary, stated purpose of this committee was to streamline Ohio laws, making them more understandable and efficient for all involved.

This was done with the OGA's own recognition lawmakers continually pass criminal laws with little thought as to how these laws and language exist in a universe of similar laws and policy. If you have ever tried to make sense of Ohio's drug sentencing or record sealing laws then you fully understand. It is why, I suspect, HB 22 originally contained no, or confusing, criminal penalties for expansions it makes to existing Obstructing Justice law.

To date, none of the recommendations made four years ago by the Recodification Committee have been adopted. But, lawmakers continue to pass the types of laws that led to the committee's creation. Passage of HB 22 would be the latest example.

Members of the House Criminal Justice Committee, it is for these reasons and more the ACLU of Ohio urges your rejection of House Bill 22.