



## Ohio Prosecuting Attorneys Association

Louis Tobin  
Executive Director  
House Bill 22  
Proponent Testimony  
April 22, 2021

Chairman LaRe, Vice-Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to provide proponent testimony on House Bill 22 to modify the offense of obstruction of justice to prohibit failure to follow a lawful order from a law enforcement officer under certain circumstances and to prohibit diverting or obstructing the law enforcement officer's attention in specified ways.

We initially had some concerns about this bill due to what we felt were some overbreadth and vagueness problems involving the prohibitions on acts like taunting, annoying, or harassing a law enforcement officer in the performance of his or her duties. We are grateful to the sponsors for addressing those concerns through amendments that were accepted a few weeks ago and additional amendments today and we are now happy to offer our support for this bill.

House Bill 22 updates to our criminal law in response to events that took place last year that unfortunately turned peaceful protests into riots and vandalism. The bill is an appropriate response to people interfering with law enforcement in the performance of their duties. Prosecutors of course support the right to peaceful protest we can all acknowledge that when peaceful protests morph into riots and vandalism priorities have to shift before people or property get seriously hurt or damaged. Law enforcement has to be able to restore order and they have to be able to do it without further interference from those who caused the disturbance to begin with. Some of the activity that took place last year not only made it harder for law enforcement to restore order, it placed the peaceful protesters in danger, placed bystanders in danger, it placed businesses in danger and ultimately threatened the nature of the peaceful protests and the public's safety. What happened does warrant some additional protections for our law enforcement officers even in light of existing offenses that either do not cover the same acts or do not provide an appropriate penalty.

In regards to concerns about the meaning of failure to follow a lawful order, I think examples provided of how this will be a problem are not necessarily analogous given that the bill includes a requirement that the person who is failing to follow the lawful order must be doing so "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." Additionally, failing to follow a lawful order already appears in other places in our criminal code. For example, R.C. 2917.13 prohibits failing to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind. R.C. 2921.331 prohibits failing to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.

R.C. 2923.12 and 2923.16 both prohibit a person who is a concealed handgun license holder who is then carrying a concealed handgun from failing to comply with any lawful order of any law enforcement officer given while the person is stopped, including, but not limited to, a specific order to the person to keep the person's hands in plain sight.

At least regarding R.C. 2917.13, which deals with misconduct during an emergency, courts have held that the purpose of the statute is to “give law enforcement the power to exercise extraordinary control to protect the public” and that for this reason, “some deference is owed to an officer’s assessment of danger to bystanders and discerning impediment to efforts and safety of the officers attempting to manage the situation.” *State v. Green*, 2020-Ohio-4370, citing *Parma v. Odolecki*, 2017-Ohio-2979 and *Kinzer v. Schuckmann*, 850 F.Supp.2d 785, 794 (S.D. Ohio 2012). Caselaw contemplates that the authority derives from legal authority granted to the officer. So, the “lawful order of a police officer that R.C. 2921.331 contemplates, and with which an offender fails to comply in order for a violation to occur, is one that involves the offender’s act or omission in operating a motor vehicle which, by law, an officer is charged with authority to direct, control, or regulate.” *State v. Adams*, 2011-Ohio-4008. Similarly, the lawful order of a police officer under R.C. 2917.13 contemplates an order given at an emergency like a fire, accident, disaster, or riot. And a lawful order under R.C. 2921.32, as proposed, would necessarily entail an order given to someone who was purposefully trying to hinder the discovery or apprehension of another person who was committing a crime. It is not limitless authority.

Thank you for the opportunity to provide testimony. I would be happy to answer any questions.