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To: House Criminal Justice Committee

From: Kevin Werner, Policy Director

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Re: Opponent Testimony for House Bill 3

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Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to testify today on House Bill 3. My name is Kevin Werner and I am the policy director at the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems.

What happened to Aisha Fraser is a heartbreaking and enraging tragedy. Our deepest and most authentic sympathies go to her family, her neighbors, her community and everyone impacted by the actions of the man who took her life. The family and the community is right to be outraged at what took place. And naturally, we all want to prevent anything like Aisha Fraser's murder from happening to another mother, another daughter, another family member and another community member.

OJPC recognizes the bill makes needed improvements to the revised code that we strongly support in the areas of training for our law enforcement officers and first responders. There is tremendous value and benefit to responding officers being trained to detect high-risk domestic violence situations before they occur. We applaud what HB 3 does to improve safeguards for high-risk domestic violence.

Our opposition to the bill is because of its provision to expand the aggravated murder statute. As a matter of policy, OJPC cannot and will not support expanding the use of the death penalty under any circumstances. OJPC is not indifferent to the impact on families this kind of violence imparts. On the contrary, it is *because* the devastating, long-term impact the death penalty system has on murder victim family members—sometimes called “co-victims”—that we oppose any expansion of the offense of aggravated murder.



The Urban Institute describes the need for our society to do more for homicide co-victims. The Institute notes research is limited but shows co-victims face serious challenges.¹ The Urban Institute writes:²

The sudden and violent loss of a loved one is one of the gravest experiences anyone can have. CVR researchers have identified three major challenges co-victims commonly experience:

- They can experience substantial psychological harm. Losing a loved one can be devastating, and when that loss is because of violence, it can lead to prolonged or complicated grief.
- In the aftermath of the homicide, co-victims must often interact with the criminal justice process, which can be lengthy, cumbersome, and difficult to navigate. Co-victims sometimes look to the conclusion of a criminal trial for a sense of closure, but that doesn't always happen, even once the case is resolved.
- Media and society at large react to homicide cases in ways that are often sensationalized or lead to heightened interest from co-victims' communities. This can force co-victims to deal with increasing attention as they are experiencing grief, leaving loved ones isolated from or stigmatized by their community at a time when they need support the most.

If we applied the concerning part of the bill to the murder of Aisha Fraser and circumstances her killer would likely find himself in, our opposition to the bill's aggravated murder expansion provisions is clear.

In addition to the complex, long term psychological harm noted by the Urban Institute, there is a power imbalance that develops in capital cases where the defendant has power over the family of the murder victim. This power dynamic is exacerbated by the media when so much attention is put on the person responsible for the murder. We learn all about the person responsible for the violence. We learn about childhoods, we learn about histories of being abusive or being abused. We learn about what were the motives and painstakingly go

¹ *Urban Wire*: The blog of the Urban Institute; "We need to do more for homicide co-victims," December 26, 2018. Available at: <https://www.urban.org/urban-wire/we-need-do-more-homicide-co-victims>

² *Ibid.*



RE: OPPONENT TESTIMONY

HOUSE BILL 3

MAY 20, 2021

PAGE 3

through the details of someone's life searching for the answer to the question: why would he do this? In that, the victim is diminished because all of the attention is put on the person responsible for the murder.

If you stop and think about it, as a society we're getting better at recognizing the harm this power dynamic causes. Some cable news stations are very upfront about not saying the name of the person responsible for this type of violence. For example, when mass shootings take place, station anchors and reporters covering the news will say, "we are intentionally not saying the name of the person responsible for the violence." OJPC is very intentional that we do not want to support a bill that can foster the type of toxic and traumatizing dynamic that elevates a person responsible for violence and diminishes the victim.

Second, if the man who killed Aisha Fraser was subject to the provisions of the bill and received the death penalty, the entire family would endure decades of litigation. They would endure multiple layers of state and federal post-conviction review and hearings. They would have to re-live the worst day in their lives, November 17, 2018, over and over again. Just when there has been some time and distance and they start to move on—bam—litigation starts in the federal courts. Or another reversal sends the case back to a lower court to sort out some minutia detail that will not change the outcome, but fidelity to the process required leads to the unintended consequence that harms. What happens to the family and co-victims is they go right back to that day. Anniversaries of their loved one's murder are especially hard. The entire process traumatic, it is unrelenting, and it does not help the families involved heal.

Instead of healing, families experience arrested development. I have personally listened to dozens of families of murder victims tell the Ohio Parole Board during death penalty clemency proceedings they have not had Christmas, holidays, or the joyous family celebrations since that fateful day 25, 30 or 35 years ago. These families have endured what no one should. The expansion of the aggravated murder statute in this bill will cause more families to have prolonged grief and suffering. More people routinely will re-traumatized by virtue of the capital process. Resources to provide the wrap-around services co-victims need, as cited by the Urban Institute, are instead diverted to the prosecution and defense of a death sentence.

OJPC appreciates the great care given by the sponsors of the bill. We humbly ask the provisions expanding the aggravated murder statute be stricken out of our concern for murder victims' families.



RE: OPPONENT TESTIMONY

HOUSE BILL 3

MAY 20, 2021

PAGE 4

The Ohio Justice & Policy Center urges the committee to amend HB 3 and remove the expansion of the aggravated murder statute.

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