



House Bill 366 Opponent Testimony

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House Criminal Justice Committee

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Chair Abrams, Vice Chair Williams, Ranking Member Brown, and members of the House Criminal Justice Committee:

On behalf of the Office of the Ohio Public Defender (OPD), thank you for the opportunity to submit opponent testimony on House Bill 366 (HB 366). As the provider of legal representation for indigent Ohioans accused of a crime, we believe HB 366 will disproportionately impose unduly harsh sentences on those accused of low-level theft, especially those struggling with substance use disorders. We also have concerns about individual privacy stemming from the proposed “retail theft portal” created by the bill.

The OPD understands the bill’s sponsors’ intent to target large scale, organized retail theft and to deter theft ring activity within the state. This narrative, however, is inconsistent with the provisions of the bill. First, the crime of organized theft of retail property created under R.C. 2913.08 of HB 366 will, as currently written, capture criminal conduct that would otherwise be considered low level theft activity that an individual may engage in spontaneously but repeatedly. Those who struggle with substance use disorders may steal retail items sporadically with the intention of selling them. These individuals are a far cry from “professional” thieves, nor are they rarely, if ever, part of an organized theft enterprise. Yet, under HB 366, should that individual steal enough items, with the intent to sell, that add up to an aggregate value of more than \$1,000.00 within a 12-month period, they would face a third-degree felony charge. As the price of everyday goods continues to rise, this threshold will easily be met within the 12-month period by some of the lowest levels of theft. We are in no way advocating that such individuals should avoid being held accountable for their theft, as the current criminal code provides adequate avenues for prosecution. We do see it as an injustice, however, to impose the same penalties intended for organized theft. We assume these persons are not the intended target of this provision, but as written, it will send more individuals to prison who struggle with



substance use and are likely unable to pay any fines imposed by the court, costing the State more money without having any increased deterrent effect on organized theft.

Furthermore, the penalties for organized retail theft are disproportionate when compared to other, arguably more serious, types of theft. For example, the OPD respectfully notes that under R.C. 2913.08(F) of HB 366, theft of \$1001.00 from a retail corporation is to result in a third-degree felony, but under existing law in R.C. 2913.02, stealing \$7,499.00 from an individual results in a fifth-degree felony. Under the logic of HB 366, stealing a television valued over \$1000 from a store warrants a more severe punishment than stealing \$149,000.00 from an individual who is not within a protected class, which is grand theft – a fourth-degree felony.

Another provision that creates a disproportionate penalty is R.C. 2909.07(C)(2) of HB 366, which makes criminal mischief a third-degree felony if it involves “a retail pump or meter of an electric vehicle charging station.” This provision puts this act on the same level as tampering with a “critical infrastructure facility” (e.g. a dam) and imposes a more serious offense than tampering with the engine of an occupied aircraft in a way that creates a substantial risk of harm to a person, which is a fourth-degree felony. Making this conduct a third-degree felony, especially when the conduct is already covered by vandalism and criminal damaging, is an extreme approach to a non-violent property crime. We urge this committee to address these disproportionate penalties and pursue a more narrowly tailored approach to organized retail theft.

Finally, the OPD has privacy concerns regarding the “secure retail theft web portal” created by R.C. 177.04(D) of HB 366. The mandated creation of this web portal runs counter to other efforts within this legislature to regulate the use of facial recognition technology. In 2020, the Attorney General’s Facial Recognition Task Force issued a report and recommendations about the unique need to provide oversight and guidance to public use of facial recognition searches.¹ This stemmed from concerns about misidentification, racial disproportionality in misidentification, and misuse of a powerful technology. Consequently, the report recommended significant auditing of law enforcement use and guardrails/limits on how and when facial recognition would be used as an investigative tool.²

¹ *Report & Recommendations*, Ohio Attorney General Facial Recognition Task Force (January 26, 2020); <https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/AG-Facial-Recognition-Task-Force-Report-FINAL.aspx#:~:text=Based%20on%20this%20review%2C%20we,for%20other%20states%20and%20localities> (last accessed June 20, 2024).

² *Id.* at p. 7.



Without the proper guardrails, the creation of this retail theft web portal could undermine the efforts of this legislature and the Attorney General's Office to protect Ohioans' privacy. If such a portal exists, large retail corporations with their own private and sophisticated facial recognition or gait analysis systems used to identify potential shoplifters could upload the facial data to this portal. There is currently no avenue for the State to audit this data effectively, test for its accuracy, or evaluate the reliability of the proprietary systems that are used. As a result, Ohio shoppers will be the ones who pay the price for the inaccuracies and biases of this expanded surveillance state. We urge this committee to either remove the web portal provision or ensure that Ohioans' civil liberties will be protected from both state and private surveillance.

Again, the OPD understands and appreciates the sponsors' intent behind HB 366, however, we submit that the bill will lead to a costly increase in the incarceration of individuals who are not the targets of this legislation and will impose sentences that are highly disproportionate to the alleged criminal conduct. We are also concerned the web portal provisions will lead Ohio down a slippery slope toward unfettered corporate surveillance. For these reasons, we urge this committee to reject HB 366.

Sincerely,



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