



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB146 Domestic Violence – Strangulation/Choking Sponsor Senators Kunze and Antonio

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to testify on behalf of the Office of Ohio Public Defender (OPD) in opposition of Senate Bill 146.

As this committee knows, SB146 creates a felony domestic violence offense that requires mandatory prison when an individual impedes the normal breathing or blood circulation by applying pressure to the throat or neck, or by blocking the nose or mouth of a household or family member. A first offense is a third felony regardless of whether any injury results.

SB146 is not needed because strangulation and suffocation can already be charged as a second-degree felony under the current felonious assault statute. Under Ohio Revised Code 2903.11 felonious assault is the knowing act of causing “serious physical harm to another or another’s unborn.” If an individual is strangled and the resulting injury is like some of the injuries described to this committee in proponent testimony – for example, brain and spinal injuries, then charging that perpetrator with felonious assault is permitted and appropriate as those injuries would constitute “serious physical harm.” In some cases of strangulation, however, serious physical harm may not result. In those situations, the appropriate charge is misdemeanor assault or domestic violence. This is consistent with the way in which way all levels of assault are currently handled in Ohio.

This committee heard testimony that there is a high rate of correlation between prior incidents of strangulation and fatal domestic violence. Some research has found that 68% of

domestic violence victims have been strangled.ⁱ The high rate of correlation is likely due to the unfortunate fact that strangulation is a frequent component of domestic violence. When a death results, it is statistically likely there was a prior incident of strangulation. But when a death does not result, it is also statistically likely there was a prior incident of strangulation. The problem is SB146 treats all incidence of strangulation the same, requiring mandatory prison, regardless of the circumstances or whether there was even harm to the victim.

The Office of the Ohio Public Defender shares the bill sponsors' goal of protecting victims of domestic violence. That is why OPD supports Senator Coley's suggestion of expanding the definition of "serious physical harm" to include the injuries commonly caused by strangulation and choking. This is the better approach to ensuring the punishment fits the crime, specifically the punishment fits the harm resulting from the crime.

Classifying all strangulation and suffocation cases as third degree felonies will not make victims safer. Making these offenses felonies will not deter future cases. The research shows that longer prison sentences do little, if anything, to deter crime.ⁱⁱ Furthermore, longer prison sentences do not result in further rehabilitation or reductions to recidivism.ⁱⁱⁱ The money Ohio would spend on mandatorily incarcerating these individuals would be better spent on victim services, education, job training, mental health counseling, and substance abuse counseling, which the data shows are linked to reductions in recidivism.^{iv}

In cases of domestic violence where serious physical harm has occurred as a result of strangulation, prosecutors are free to charge strangulation as a felony under current law. However, offenses that result in little harm or no harm should not be felonies of the third degree. Thank you for the opportunity to speak today to your committee. I am happy to answer questions at this time.



ⁱ*Strangulation: The Most Lethal Form of Domestic Violence, Where's the Line*, June 29, 2018, <https://wherestheline.info/strangulation-the-most-lethal-form-of-domestic-violence/>

ⁱⁱ *Five Things About Deterrence*, National Institute of Justice, Office of Justice Programs, <https://nij.gov/five-things/pages/deterrence.aspx>; citing Nagan, Daniel S., *Deterrence in the Twenty First Century*, 2013.

ⁱⁱⁱ *A Matter of Time: The Causes and Consequences of Rising Time Served in America's Prison*, Urban Institute Justice Policy Center, <http://apps.urban.org/features/long-prison-terms/reform.html>; citing Sered, Danielle, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, https://storage.googleapis.com/vera-web-assets/downloads/Publications/accounting-for-violence/legacy_downloads/accounting-for-violence.pdf; Durlauf, Steven N. and Nagin, Daniel S., *Imprisonment and Crime: Can both be reduced?*, 2011 *American Society of Criminology, Criminology & Public Policy*, Volume 10 Issue 1, January 26, 2011.

^{iv} *Reducing Recidivism*, June 2014, The National Reentry Resource Center, A project of the Council of State Government Justice Center, https://csgjusticecenter.org/wp-content/uploads/2014/06/ReducingRecidivism_StatesDeliverResults.pdf.

