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**To: House Criminal Justice Committee**

**From: Kevin Werner, Policy Director**

**Date: March 16, 2021**

**Re: Opponent Testimony for House Bill 22**

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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 22. 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. OJPC has concerns regarding House Bill 22.

Although the intent of the bill may be to ensure the safety of both police and peaceful protestors, the practical implications create confusion and the likelihood of arbitrary enforcement and application. If passed, the bill will promote wrongful escalation and unfair convictions, including felonies, for obstruction. Rather than adding accountability mechanisms to ensure fair policing, the bill instead increases officers' ability to use people's confusion or low-level disobedience to justify escalating confrontations and giving criminal records.

Right now, more than ever, we are served by combatting the perception that officers are all-powerful, and we are served by improving police-community relations. The bill sends a clear message to police and the community—a message that is detrimental to these goals.

Specifically, I want to highlight three issues in the bill.

### **Lawful order issue**

Arbitrary enforcement and application will come as a result of there being no definition of what constitutes a "lawful order" in the bill or in the Ohio Revised Code. The loose concept is understood as anything the officer is doing in furtherance of his duties, which is extremely broad and open to interpretation. The takeaway from this bill is we are telling Ohioans they must do whatever a law enforcement officer instructs them to do. It places ordinary citizens in the



untenable position of having to decipher what is/is not a lawful order. Citizens who are engaging in lawful, peaceful protest on a sidewalk might be instructed by a law enforcement officer to “come over here” gesturing to cross the street. That peaceful protestor will now have to weigh the following:

*The officer gave me an order, so I should follow that order and cross the street. But was the order lawful? I am not doing anything unlawful. I am peacefully protesting and exercising my first amendment right of free speech. There is no crosswalk, and I know that crossing the street outside a crosswalk is jaywalking. I don't want to get a citation for jaywalking. But the officer is now yelling at me and gesturing more forcefully. What am I supposed to do?*

In another scenario, a car is parked legally on the street and the driver is sitting inside. An officer recognizes the person as being part of an investigation and comes to talk to the person. Their conversation escalates, and the officer says “I’m gathering evidence to help me in an investigation of a suspect, and I need to look in your trunk to do that. How about you pop your trunk.” The tone of voice the officer uses is not asking the driver for permission, rather he is being told to open the trunk. The driver is now expected to be a constitutional scholar on whether this is a “lawful order”, a question, or a violation of the 4<sup>th</sup> amendment -- and whether noncompliance with an officer breaks Ohio statute. The officer is now annoyed and escalating by raising his voice. Under the bill the range of consequences is broad, and it overwhelmingly increases officers’ power to unfairly play on citizens’ confusion.

### **Annoyance problem**

Another aspect of the bill that is problematic is Section (C) which reads “No person with the intent to annoy, harass, or distract a law enforcement officer engaged in the performance of the law enforcement officer’s official duties, shall throw any object or substance at or onto a law enforcement officer.” A demonstrator might have a sign that says, “COPS STINK!” An officer might be annoyed by that sign and instruct the demonstrator to hand over the sign. The demonstrator realizes the officer is annoyed and decides to continue the annoyance by intentionally throwing the sign at the officer, from a distance where it clearly won’t hit the officer, but as to force the officer to pick it up off the ground. Under the bill, this demonstrator just committed a felony.



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## **Increasing felony-level criminalization**

Ohio's criminal legal system is bursting at the seams. We already have ample and sufficient punishment for obstructing investigations in our current law. Adding felonies to our codes for a very broad range of actions, many of which are trivial levels of disobedience, is unnecessary and harmful.

## **Conclusion**

We all hope to see bills that increase public safety, protect the public, honor citizens' rights, and bring us together. This bill, instead, sends a harmful message: the police get the broadest, highest powers over the community, as well as the broadest, highest protection from the community. The bill says that our General Assembly is creating a divide, not a collaboration and productive relationships, between police and the tax-paying community members they serve. The bill does little to clarify the scope of "lawful orders" or "annoyance"—suggesting that officers have almost-unlimited power to issue and enforce commands that are somehow connected to their job and to arrest people for minor disrespect. We urge you not to stand behind that kind of message.

As General Assembly members, you can and should continue to support fair law enforcement practices, good police-community relations, and a culture of mutual respect between government actors and citizens. You can continue to support officers. And, at the same time, that does not mean you must stand for overbroad laws that criminalize Ohioans unfairly.

The Ohio Justice & Policy Center urges the committee to reject HB 22.

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