



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB16 EMS Responders – Civil Action Sponsor Senator Schaffer

Chair LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee. My name is Niki Clum, and I am the Legislative Policy Manager for the Office of the Ohio Public Defender (OPD). Thank you for the opportunity to provide testify in opposition of Substitute Senate Bill 16 (SB16).

OPD thanks Senator Schaffer and this committee for all the work on this bill. The substitute version of this legislation is a vast improvement from the as-introduced version. Many of OPD's concerns have been alleviated. We appreciate Senator Schaffer's willingness to incorporate feedback from interested parties.

While OPD is grateful for the changes in Sub. SB16, we continue to have some concerns, of which, this committee should be aware. As you know, the bill enhances penalties or creates new offenses when the victim is an emergency service responder (ESR), a household member, family member, or coworker of an ESR. Under the definition in the bill, an "[e]mergency service responder" means any law enforcement officer, first responder, emergency medical technician-basic, emergency medical technician-intermediate, emergency medical technician-paramedic, firefighter, or volunteer firefighter. The protected class of victims in SB16 is an extraordinarily large number of people. HB38 in the 132nd General Assembly proposed enhanced penalties for offenses against first responders, military members, law enforcement officers, and peace officers. In the fiscal note, the Legislative Service Commission found that population is approximately one million people, or 9% of Ohio's total population. The protected class under SB16 is much broader as it includes their family, household members, and coworkers. SB16 will create enhancements for offenses against millions of people, resulting in a greater number of people facing felony charges.

Creating another special class of victims is inconsistent with recommendations of the Ohio Criminal Justice Recodification Committee. In fact, the Recodification Committee recommended removing the law enforcement officer enhancement from the felonious assault statute. This was something the Recodification Committee debated, but they ultimately decided that harm is harm, and it is a slippery slope when you start to include some professions but not others. These types of enhancements can lead to absurd results. For example, under current law, the penalties for assaulting a bus driver are more severe than for assaulting one of the children on the bus. OPD agrees with the Recodification Committee that no person is more or less worthy of protection than anyone else because of their profession, and these types of enhancements should not be included in the Ohio Revised Code.

Furthermore, enhancement for certain victims comes with a big price tag. Sub. SB16 will subject more individuals to felony prosecution, and potentially prison, for the exact same behavior that is currently a misdemeanor of the first degree. At a cost of \$76.26 a day to incarcerate someone, SB16 will result in further burden on Ohio prisons and further economic burden on Ohio taxpayers.

OPD remains concerned about potential First Amendment violations in Sub. SB16. As this committee knows, the bill creates the new offense of Impeding Public Passage, which prohibits recklessly obstructing any highway, street, sidewalk, etc. that makes it impassable without unreasonable inconvenience after a request or order from an ESR to stop or remove the obstruction. This language allows ESRs to artificially or arbitrarily create a condition where an emergency vehicle needs to go through a protest. If individuals do not move or do not move quickly enough, they will all be charged with a misdemeanor of the first degree. Clearly, this would have a negative impact on the First Amendment right of citizens to assemble. OPAA argues that this is gap in current law and needs to be addressed in this bill. If someone is impeding passage, outside of exercising their First Amendment rights, and is asked to move by law enforcement, that is already illegal pursuant to the Disorderly conduct, Obstruction of Official Business, and Failure to Comply statutes. In fact, the bill acknowledges the overlap as the bill specifies the individual can be prosecuted for Impeding Public Passage and Obstruction of Official Business and Failure to Comply in the same case.



Earlier this session, Former Ohio Supreme Court Justice and Executive Director of the Ohio Judicial Conference Paul Pfeiffer told the House Criminal Justice Committee that the Ohio Criminal Code has gotten far too complicated. He pointed out the entire Ohio Criminal Code could fit into one volume of the Ohio Revised Code in 1990, and, today, it takes up five volumes.¹ Bills like SB16 are part of the reason why the Criminal Code has gotten so large and overly complex. In addition to Impeding Public Passage already being illegal, the bill creates a Menacing misdemeanor of the first degree when an individual causes an ESR to fear physical harm or death by displaying a deadly weapon. This behavior is already illegal under the Aggravated Menacing statute, and it is already a misdemeanor of the first degree.² Slightly changing the wording and making new offenses creates an unnavigable criminal code, and as Former Justice Pfeiffer pointed out, leads to mistakes at the trial level.³

Again, OPD wants to point out that there is no evidence that harsher penalties deter crime.⁴ Particularly, in the context of a protest where people may already be in an agitated state and not thinking clearly. Moreover, longer prison sentences do not result in further rehabilitation or reductions to recidivism.⁵ SB16 will, however, result in a larger bill for taxpayers, possible First Amendment violations, and an even more confusing and convoluted criminal code.

¹ Ohio House Criminal Justice Committee, Senate Bill 2 Proponent Testimony, March 11, 2020, <http://ohiochannel.org/collections/ohio-house-criminal-justice-committee> at 14:44.

² R.C. 2903.21(A) "No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs."

³ Id. at 16:04.

⁴ *Five Things About Deterrence*, National Institute of Justice, Office of Justice Programs, <https://nij.gov/fivethings/pages/deterrence.aspx>; citing Daniel S. Nagan, *Deterrence in the Twenty First Century*, 2013; see also David J. Harding, *Do Prisons Make Us Safer? New research that prisons prevent far less violent crime than you might think*, Scientific American, June 21, 2019, <https://www.scientificamerican.com/article/do-prisons-make-us-safer/>; *Locked In: The True Causes of Mass Incarceration-and How to Achieve Real Reform*, John Pfaff, Feb. 2017; *Until We Reckon: Mass Incarceration, and a Road to Repair*, Danielle Sered, March 5, 2019.

⁵ *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 *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration*, Danielle Sered, <https://storage.googleapis.com/vera-web-assets/downloads/Publications/accounting-for->



A better solution for protests might be listening to concerns of protestors. There are a lot of reasonable data-driven steps that can be taken to reduce police violence. We need to continue those conversations instead of passing bills like this one. These bills only make it worse by exasperating the problems that caused protest. The solution to every social problem is not creating new criminal offenses. Thank you for the opportunity to submit written testimony today.

violence/legacy_downloads/accounting-for-violence.pdf; *Imprisonment and Crime: Can both be reduced?*, Steven N. Durlauf and Daniel S. Nagin, 2011 American Society of Criminology, Criminology & Public Policy, Volume 10 Issue 1, January 26, 2011.



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