

**OHIO SENATE**

**JUDICIARY COMMITTEE  
FEBRUARY 21, 2017**

**SENATE BILL 20**

**OPPONENT TESTIMONY OF**

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OHIO ASSN. OF CRIMINAL DEFENSE LAWYERS**

The Ohio Association of Criminal Defense Attorneys is an organization of 800 or so members of the members of the private bar and public defenders who comprise the criminal defense bar in this state, and who share a passion for justice in the operation of the criminal justice system.

As the co-chair of the Public Policy Committee, I respectfully urge you not to report S.B. 20 or “Destiny’s Law”. The tragic circumstances surrounding the injuries sustained by Destiny Shepherd at the abusive hands of her mother’s boyfriend Terrance King cannot be overstated. However, those horrendous circumstances do not warrant an unnecessary and impractical addition to the Ohio Revised Code.

Initially, although the Committee Notice for today’s hearing indicated a “possible vote” on this bill, I would just note for the record that today is the first opportunity to offer opposition testimony on the bill. Based upon our testimony this morning, we believe the Committee should realize that there are issues that deserve further consideration and testimony before the Committee votes on whether or not to report the bill. Further, the Recodification Committee is currently in the process of examining the entire criminal code which issues of this type can be more appropriately addressed.

*I. Destiny’s case was mishandled: Terrance King could have received up to 24 years in prison.*

The leading reason that we oppose the bill is because it is totally unnecessary to accomplish the stated goal: to increase the sentence available to offenders who violently cause permanent serious physical harm. In the case of Destiny Shepherd who has been the current inspiration for this bill - Terrance King (“Destiny’s offender”) could and should have been sentenced to 24 years in prison had the trial court not merged the three offenses of which he was convicted into one offense, based upon the “allied offenses” merger doctrine. Mr. King was found guilty by a jury of one count of Felonious Assault and two counts of Child Endangering, all felonies of the second-degree, each with a maximum sentence of 8 years, and with the possibility the sentences could run consecutively for a total of 24 years. As demonstrated by the attached sentencing entry, the prosecutor, under the mistaken legal opinion that he could only proceed to sentence on one of the three counts, elected to proceed on the second count and have the remaining counts merge. However, the law did not require charges of Felonious Assault and Child Endangering to merge then, nor does it do so today.

The Second Appellate District, which includes Clark County, has held (decision appended) that these crimes do *not* merge, meaning Terrence King could have been sentenced to up to 24 years imprisonment. So, if the goal of this legislation is to increase the potential sentence for offenders like Terrance King, the law already provides a fully available mechanism to do so – the trial court has the discretion to impose consecutive sentences for non-allied offenses.

## *II. This Bill would cost millions annually:*

Moreover, this bill is expensive. Ten years ago, a similar bill was introduced in the 125th General Assembly in 2004 as H.B. 384 to create a specification for criminals who cause “serious physical harm that resulted in permanent injury.” Two years ago, a similar bill was introduced in the 130th General Assembly but did not proceed. In the current bill, the Fiscal analysis puts the cost to the state of Ohio as between \$2.2 million dollars and \$5.7 million dollars.

It should be noted, the 2017 Fiscal Note, as introduced, fails to observe any of the local impact by this change in law with regard to the additional litigation surrounding the determination of whether “permanent” harm was caused. The Fiscal Note only reflects the costs of longer terms of incarceration anticipated by the newly enacted specification. It is submitted, that this missing information as to local impact should prompt a request for LSC to address that discrepancy.

## *III. The bill is not only expensive, it is impractical:*

If we are to learn anything from past legislative endeavors of this kind, we should remember that injecting a new evidentiary issue which invites or requires expert testimony into prosecutions and defense of offenders promises to be a very significant fiscal expense. Case in point: the change in Ohio law occasioned by “Megan’s Law,” which in 1996 ushered in a sexual classification system to determine reporting and community notification requirements of a sex offender based upon whether the offender was “likely to re-offend.” Under that law, the trial court was required to hold this hearing as part of the sentencing hearing, or if the offender was already in prison for a sex offense, prior to his release from prison. Thousands of these hearings were held, and the consultation business of psychologists all over Ohio surged with the immediate demand for psychological risk assessments. Costs of prosecution increased significantly in all sex offense prosecutions, as did the costs of the criminal defense. Many thousands of dollars later, the General Assembly passed the “Adam Walsh Act” in 2007, and removed the need for an evidentiary hearing to determine the appropriate sex offender classification.

That fix will not be available with this specification. The specification must be proven beyond a reasonable doubt, and that will require evidence for and invite evidence against.

Under S.B. 20, the factual medical issue to be determined by a jury, or in a jury-waived trial by a judge, is this: [lines 445-451]

(EEE) “Permanent disabling harm” means serious physical harm that results in permanent injury to the intellectual, physical, or sensory functions and that permanently and substantially impairs a person's ability to meet one or more of the ordinary demands of life, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working

The evidence on this factual issue will require testimony that will seem much more like a social security eligibility hearing or workman's compensation hearing than a criminal trial.

- What is "substantial" impairment?
- Does "physical injury" include psychiatric injury?
- What is the likelihood of partial or total rehabilitation of the disability?
- Which daily activities are included?

The bottom line is that S.B. 20 is not needed to effectuate the desires of the Clark County Prosecutor in "Destiny's" case ten years ago. Ohio law was available then as it is now to adequately punish offenders who cause serious physical harm. Not only unnecessary, the specification created by the Bill will impose a potentially enormous fiscal impact upon the resources of the counties and the state.

On behalf of the Ohio Association of Criminal Defense Attorneys, I urge you not to report this Bill.

Sarah M. Schregardus  
Co-Chair of the Public Policy Committee  
Ohio Association of Criminal Defense Lawyers