OHIO ASSOCIATION for JUSTICE
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Proponent Testimony on HB 472 -
Governmental Liability for Motor Vehicle Negligence

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Good afternoon, Chair Hillyer, Vice Chair Grendell, Ranking Member Crossman and Members of the House Civil Justice Committee. My name is Richard Topper. I am a past Trustee of the Ohio Association for Justice and have practiced negligence law attorney in Ohio for over 40 years. Which means I was around when the original sovereign immunity law was enacted.

The Ohio Association for Justice is committed to preserving the Seventh Amendment and Article 1 of Ohio's Constitution, which guarantee the citizens of Ohio the right to trial by jury in civil cases. We support HB 472. This bill will allow more Ohioans to be made whole when damage done by police, fire and emergency medical motor vehicle negligence when that governmental employee is not on an emergency call.

We have divided our testimony in two parts. I will discuss the law and how we ended up where we are and Mr. Bowman will share a situation where this law incentivized big government to ignore injured Ohioans.

Ohio passed its sovereign immunity act in 1985. The Act included caps on noneconomic damages and non-liability for bills and losses covered by the Plaintiff's own collateral sources. In addition, the statute provided that employees of political

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subdivisions, including police and fire officers, are not personally liable for their negligence unless their act is either manifestly outside the scope of their employment or official responsibility with the governmental entity or done with malicious purpose, in bad faith, or in a wanton or reckless manner. See RC 2744.03(A)(6).

In the Sovereign Immunity Act, governmental entities accepted liability for the negligence of its employees' negligence in the operation of a motor vehicle as long as they were in the scope of their employment and authority at the time. See RC 2744.02(B)(1). The Act carved out immunity for police and fire vehicles for emergency calls. In reference to police, the statute gives immunity when: "(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct." The wording is very important when we look at the definition of "emergency call" set forth in RC 2744.01(A).

In 2744.01, an "emergency call" is defined as a "call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer." I've highlighted the words "inherently dangerous" and "immediate response" since when taken in conjunction with the language in the previous paragraph, "operating a motor vehicle while responding to an emergency call," we can see the legislative intent was that governmental entities are given immunity when responding to a true emergency.

We wouldn't be here today if not for a liberal reading by the Ohio Supreme Court of the definition of "emergency call." The facts in a 4-3 decision in the 2003 case of *Colbert vs. The City of Cleveland*, decided 18 years after the passage of the Sovereign Immunity Act are as follows: Two Cleveland City police officers believed they

witnessed a drug deal. They followed the suspects in their cruiser. The officers didn't activate their emergency lights or siren. They stopped at a stop sign, but when they proceeded, they collided with another driver who had the right of way. One would think that at the very least there was a question of fact as to whether this was a true emergency call.

Webster's Dictionary defines emergency as "an unforeseen combination of circumstances or the resulting state that calls for immediate action." As stated before, RC 2744 uses the word "emergency" twice. Rather than relying on the word "emergency," the Supreme Court focused on the phrase "call to duty" and ignored the words "Immediate response" and "inherently dangerous." The Supreme Court decided that a response to an inherently dangerous situation was just one type of call to duty. This was wrong.

Chief Justice Tom Moyer and Justice Paul Pfeiffer found the opposite and set forth the true legislative intent. Justice Pfeiffer wrote' "I believe that the General Assembly was attempting to distinguish emergency calls to duty from ordinary calls to duty. In doing so, the General Assembly implicitly differentiated ordinary personal observations of peace officers from "personal observations by peace officers of inherently dangerous situations that demand an immediate response."

Even though the "call to duty" in *Colbert* involved an observed allegation of a drug deal, governmental subdivisions have taken "call to duty" three steps further and defined almost any police vehicle negligence involves a "call to duty." That includes ignoring or fighting payment for crashes on non-emergency runs which involve neither an inherently dangerous situation or one which requires an immediate response. As a result, Ohioans cannot recover damages due to police negligence on non-emergency calls which are not covered by their insurance.

In order to address Ohioans' need to recover uncompensated damages due to police and fire negligence, Representative Ingram introduced HB 267 in 2017, a bill very similar if not the same as the bill before us. HB 267 and the bill before us makes police and fire officers exercise ordinary care when operating their motor vehicle in all circumstance. Ohio Jury Instructions defines ordinary care means in a that "which a reasonably careful person would use **under like or similar circumstances** [emphasis added]." In addition, testimony is permitted when something is performed that is not within the jury's ordinary experience. In other words, officers will not be held to an ordinary driver's standard of care during an emergency response.

As far as I know, HB 267 which was introduced in the House Civil Justice Committee was not voted on in that committee. Another bill, HB 419, was sponsored by Representative Henne in November 2017 which preserved police emergency immunity as long as the vehicle sirens and lights were simultaneously activated. That bill was voted out of committee, but was not voted on by the House. In 2019, HB 27 was introduced and opposed by governmental entities. No vote was taken. It was similar to HB 267.

Another bipartisan compromise attempt was made with HB 421 in 2019. In HB 421, the bill preserved police immunity for emergency runs but amended the definition of "emergency call" to give immunity for true emergencies. The bill defined an emergency call as "a communication from a citizen, a dispatch, or a personal observations observation by an officer only if that communication, dispatch, or personal peace officer observation involves or concerns an inherently dangerous situation situation that demands an immediate response on the part of a peace officer." This bill met the original spirit of the sovereign immunity act passed in 1985. This bill passed the House. The Senate Judiciary Committee made additional, but acceptable compromises

to HB 421. Though the Senate passed HB 421, there was not enough time in the General Assembly calendar for the House to consider the changes.

In 2021, this committee added the revised emergency call definition as set forth in HB 421 into Senate Bill 56. SB 56 was then passed by the House. Once again, governmental entities objected to the definition of emergency call and due to those objections, the bill has been in Conference Committee since March 30th. The definitions of emergency call in HB 421 and SB 56 are reasonable. The language preserves governmental immunity for true emergency calls, but allows Ohioans to receive compensation for police motor vehicle negligence when they are not on an emergency call.

We also support the present bill. HB 472 does not set forth any new obligations. Ohio law requires every operator of a motor vehicle to use ordinary care to avoid injury to others. Failure to use ordinary care is negligence. HB 472 requires police and fire personnel to use ordinary care when they are operating a municipal corporation's vehicle or an EMT is operating a political subdivision's vehicle. As I've described, ordinary care is defined as **the care reasonable emergency personnel would use under like or similar circumstances**. For example, in the case of a true emergency, a municipality would not be liable for injuries caused when a police or fire vehicle exceeds the speed limit or proceeds through a red light with their sirens on and lights flashing. Those actions would be justified under emergency circumstances unless the actions are undertaken negligently or carelessly or if the run was not a true emergency.

HB 472 would not make police officers personally liable for their negligence. RC 2744.03 (A) specifically states that an employee which includes a police officer, fire fighter or EMT is NOT liable for negligence unless "the employee's acts or omissions

were manifestly outside the scope of the employee's employment or official responsibilities." And, HB 472 does nothing to alter that.

HB 472 preserves immunity in situations where the driver is fleeing a law enforcement officer at the time an accident occurs. In addition, HB 472 provides that a person's damages are reduced or taken away if the person is partially at fault or if a third party is at fault.

HB 472 solely takes away the emergency call exception from RC 2744. That's it. Municipalities are still protected under the current Revised Code 2744.05 by a damage cap on non-economic damages and a ban against recovery for punitive damages and collateral sources. This includes all amounts paid for by insurance companies or employers for wage loss. Under 2744.05, insurance companies may still not subrogate against municipal corporations.

What HB 472 does is protect innocent drivers from uninsured losses caused by emergency vehicle negligence. Losses such as property damage not covered by an insurance policy; their deductible and rental car expenses, medical expenses not covered by insurance coverage including deductibles and out of pocket expenses which under many insurance policies can be quite high; uncompensated wage loss or disability; and funeral expenses. And HB 472 brings Ohio in line with all of its neighboring states.

I urge this committee and the 134th General Assembly to revise sovereign immunity laws to require Government to take responsibility for their actions.

Chair Hillyer, this concludes my remarks. If you or members of the committee have questions, I would be pleased to answer those.