



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of HB462 Prohibit Swatting Sponsor Representatives K. Miller

Chair LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for the opportunity to provide testimony on behalf of the Office of the Ohio Public Defender (“OPD”) in opposition of House Bill 462 (“HB462”). I am Niki Clum, the legislative policy manager for the OPD.

Earlier this session, Former Ohio Supreme Court Justice and Executive Director of the Ohio Judicial Conference Paul Pfeiffer told this 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 A LSC study found that Ohio has added 591 new felonies from 1980 – 2020. Bills like HB462 are part of the reason why the Criminal Code has gotten so large and overly complex. The behavior this bill is meant to address is already illegal, and, more often than not, it is already a felony. 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.²

As this committee knows, HB462 prohibits a person from purposely triggering an emergency response when none is warranted by reporting false or misleading information to a law enforcement or emergency services. The offense is a third-degree felony, unless serious physical harm results, then a violation of the prohibition is a first-degree felony. This committee

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 *Id.* at 16:04.

heard testimony that this bill is needed because of instances where gamers will make false reports of an emergency at the home of a fellow gamer. Law enforcement quickly responding to what they think is an emergency in the home of an unsuspecting citizen. Clearly, this can be a dangerous situation for everyone involved, which is why this behavior is already illegal under Ohio's Making False Alarms, Inducing Panic, Felonious Assault, and Involuntary Manslaughters laws.

Inducing panic includes causing serious public inconvenience or alarm by making a false report of a crime.³ The offense starts as a misdemeanor of the first degree. However, it becomes a felony of the fourth degree if physical harm results. Making false alarms prohibits reporting to law enforcement an offense the person knows did not occur.⁴ This offense also starts as a misdemeanor of the first degree. Both offenses become a felony of the fifth degree if the resulting economic harm is valued between \$500 – \$5000. Both offenses are a felony of the fourth degree if the economic harm is between \$5000 - \$100,000. Finally, the offenses are a felony of the third degree if the economic harm is \$100,000 or more.⁵ For both offenses, economic harm includes the cost of law enforcement officers, firefighters, rescue personnel, or emergency medical services personnel responding the false report.⁶ When you factor in the cost the emergency response, these offenses quickly become felonies. Additionally, Making False Reports specifies that a person can prosecuted under that section and any other section of the revised code. So, an individual could be charged with a felony of the fifth degree for

³ R.C. 2917.31(A)(1).

⁴ R.C. 2917.32(A)(3).

⁵ Inducing Panic is a felony of the second degree when the offense involves threats of weapons of mass destruction and/or occurs at a school.

⁶ R.C. 2917.31(E)(1)(b) and 2917.32(E).



Making False Alarms that resulted in \$500 worth of economic harm and felony of the fourth degree for Inducing Panic if physical harm resulted.⁷

In Ohio, Felonious Assault occurs when an individual knowingly causes serious physical harm to another.⁸ A person acts “knowingly” when “the person is aware of the existence of the facts and that his acts will probably cause a certain result or be of a certain nature.”⁹ The Ohio Jury Instruction goes on to say, “[s]ince you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence. You will determine from these facts and circumstances whether there existed at the time in the mind of the defendant an awareness of the probability that” the outcome would result.¹⁰ Prosecutors can easily prove that a defendant who calls the swat team to the home of an unsuspecting individual and claims a serious crime is happening in the home knew that the probable outcome would be injury to individual or law enforcement. From there, juries have shown they can determine if the person acted knowingly, even if the person is claiming they did not. Therefore, if an individual commits swatting and serious physical harm results, they can already be charged with felonious assault – a felony of the first or second degree depending on who is injured. If the worse should happen and someone was killed because of this behavior, the individual could be charged with Involuntary Manslaughter, a felony of the first or third degree depending on the circumstance.¹¹ Involuntary manslaughter involves causing the death of another as a proximate result of the offender’s committing or attempting to commit a felony or misdemeanor. If the individual was

⁷ “Physical harm” is established when there is any visible mark on the victim or even if there is no mark, if the victim claims they experienced pain. See *Westlake v. Filiaggi*, 8th Dist. Cuyahoga No. 93599, 2010-Ohio-4481, ¶15; *Westlake v. Filiaggi*, 8th Dist. Cuyahoga No. 93599, 2010-Ohio-4481, ¶15; and *In re Bowers* 11th Dist. Ashtabula No. 2002-A-0010, 2002-Ohio-6913.

⁸ R.C. 2903.11(A)(1).

⁹ Ohio Jury Instruction CR 417.11

¹⁰ Ohio Jury Instruction CR 417.11

¹¹ R.C. 2903.04



committing or attempting to commit a felony, the offense is a felony of the first degree. If the individual was committing or attempting to commit a misdemeanor, the offense is a felony of the third degree.

HB462 is not needed. The behavior it seeks to criminalize is already illegal and already a felony. Adding additional overlapping charges just leads to a confusing criminal code, mistakes in the trial court, and the coercive stacking of charges. Thank you for the opportunity to provide testimony. I am happy to answer any questions at this time.

