

May 16th, 2017

## HB142 Proponent Testimony of Jeff Garvas

Chairwoman Roegner and members of the committee my name is Jeff Garvas and I am the founder and President of Ohioans For Concealed Carry. Eighteen years ago this month I approached two of my close friends in law enforcement, one a Geauga County fully commissioned special deputy and the other now a more than 30 year veteran of Cleveland Police, to help me form this organization.

I point this out because I want you to understand that I am a fan of law enforcement. Beyond those two gentlemen I have many friends and acquaintances in the field of law enforcement and I have profound respect for the profession. I don't want my statements about this legislation or the video I am about to play to be misconstrued as if I am anti-police. I want police officers to go home safe at shift's end.

A few years after forming OFCC we reached a crossroads. We could accept HB274, a concealed carry bill that had a mere fraction of the restrictions in today's concealed handgun law with the single poison pill amendment that nobody under the age of eighteen could be in a vehicle if someone was otherwise lawfully armed. Alternatively we could take a position *against* that bill and kill it in the final hours of a General Assembly. HB274 had no so-called notification requirements that we're here to discuss today almost two decades later. Frankly, it was probably the better concealed carry law by miles.

After the death of Tony Gordon, who was shot in the chest and rushed his minor nephew home before succumbing to his injuries, we stuck to our principles and rejected that poisoned legislation.

Unfortunately, HB12 was littered with even more poison pill amendments aimed at making gun owners walk away from the bill again. We had the buckeye-tuck which required you to make sure that your gun was *completely* visible while driving, causing "man with a gun" calls & motorcyclists literally ordered by the police to cover up their gun – because that law lacked any common sense.

These seemingly silly provisions were sold by policymakers, who don't conduct traffic stops, as being in the best interests of law enforcement and officer safety. I am told that out of all fifty states only ten *require* you to inform the police in some manner. Ohio is by far the most intrusive by *requiring you* to speak when a police officer is in the mindset of absolute control over the conversation and their verbal commands. In a moment I'm going to show you how that mindset or total control happens.

Every time I've discussed the notification requirement I find myself asking what other law exists where we compel a person to volunteer information that is not specifically asked of them, mandate that they verbalize it, or charge them with a criminal offense based on an arbitrary undefined period of time called promptly. What does and does not meet the statutory definition of promptly - in seconds please? How does the type-A personality of a police officer in control then factor into "promptly"?

Bryan Ledford was charged after exactly fifty-one seconds – it was spelled out in the criminal complaint against him. William Bartlett blurted out "I have a carry..." 5 seconds after his door was opened. He ended up in jail and then the ER with a wrist injury.

Everyone in this room has heard the Miranda rights on television or reality television shows following actual police officers:

***You have the right to remain silent.*** That right doesn't just begin at the point where you are being detained or taken into custody. You are never required to incriminate yourself.

Even Ohio Revised Code 2921.29, which requires us to disclose our name, address and date of birth "when **requested** by a law enforcement officer", requires probable cause. You either must be suspected of committing a criminal offense or be a witness to a felony or you cannot be required to provide this information. Regardless, the officer *asks* for it. You are not required to volunteer it.

Further, if the crime you are being suspected of is age based **you are not required to provide your date of birth**. But if you're accidentally carrying a gun on an expired license you still must inform.

Isn't it ironic that if you fail to "promptly" inform a police officer that you are armed and he or she arrests you for the criminal act of not informing "quickly enough" that they then **promptly** inform you that you now suddenly have the right to remain silent while you are being handcuffed for the act of remaining silent too long?

This requirement of Ohio law has to be a constitutional conflict with our First, Fourth and Fifth Amendment rights.

Five years ago I drove to my father's house in Cleveland in the early morning hours to take him to a surgery appointment. Unfortunately we found my father had died overnight and waited for Cleveland EMS and eventually Cleveland Police to arrive. My mind kept racing between this is really happening and "oh don't forget to tell them you have a gun" because notification isn't limited to traffic stops.

Despite thinking I was fully prepared the moment I saw a cop I blurted out "I have to tell you that I am armed!" and he looked at me and said, "how about we start with who you are?" – For the next hour and a half we never once talked about the gun holstered on my hip. What if I failed to notify and an officer who doesn't like people who carry later decided to arrest me over it during such a tragic event?

This bill is an opportunity to fix a 12 year old poison pill amendment with common sense. Remove the burden to say "I HAVE A GUN!" when the police only want answers to their specific questions. Those questions can and should include "are there any guns in the car" or "are you lawfully or unlawfully carrying a firearm today?" -- Most gun owners, myself included, will still *volunteer* the information without being asked, but we shouldn't be subject to arrest for an arbitrary period of time that is impossible to define.

Police officers are trained to dominate the conversation, to not get tripped up or distracted by questions or diversions, and maintain the upper hand in their interactions. It makes far more sense for them to ask a person if they are armed or licensed than to mandate we try to interrupt them before the promptly clock has expired. Nobody wants to blurt out "I have a gun" in these high stress interactions.

On June 8<sup>th</sup> of 2011 officers Daniel Harless and Mark Diels were on patrol in Canton, Ohio. They came upon a stopped car and initiated a traffic stop. What occurred for the duration of that traffic stop is so outrageous and ignorant that no less than two agencies have asked us for clean copies of the video to teach their officers. Hopefully it will educate future officers on what not to do.

Once the officers finally formally “stop” and approach the driver over four minutes and forty seconds into the stop they ask him “What’re you doing” and then resort to repeatedly calling him a liar.

This contact only happens after the second officer has spent a considerable amount of time searching the interior of the vehicle’s backseat without first removing the driver from the vehicle. From the backseat he shined his flashlight into the driver’s face and told him to shut up and look away.

As you will see the driver, who was licensed for approximately one month, is very flustered. The first words out of his mouth **five seconds after his door opens** are “I have a Carry...” and the words drift off.

Officer Harless fails to pick up on the word carry and interrupts with a threat should the driver lie to him. It’s a very effective intimidation tactic that causes the driver to lose focus on his obligation to notify.

The driver continues to be flustered and states that before they do anything else, well, he’s never done this before – it makes sense in his head, but officer Harless has no idea what he is talking about. It is clearly evident that he is trying to be compliant both with the law and the officer’s orders.

At this point the threats of telling the truth apparently take over and the driver moves into trying to explain why he is where he is, unfortunately moving on from the discussion about being armed.

The whole time this is occurring he has his license to carry a firearm in his hands. It isn’t until the officer finally asks him why he has the item in his hands that he is given a reasonable opportunity to completely inform that he is armed.

Eighty six seconds have transpired and the traffic stop turns into an arrest, an ER visit, and the end of one police officers career with the Canton, Ohio police department.

This legislation will fix this situation by putting the burden of asking on the officer where it belongs, without relieving the law abiding gun owner of telling the truth.

I hope that the video I am about to show you will convince you of the necessity of fixing this poorly designed requirement as quickly as possible. I only wish we had a captive audience six years ago when this happened.

Sincerely,

Jeff Garvas, President  
Ohioans For Concealed Carry