



Representative Terry A. Johnson
90th House District

Good Afternoon Chair Roegner, Vice Chair Lipps, Ranking Member Leland and members of the Federalism and Interstate Relations Committee. Thank you for taking the time to hear House Bill 228, a bill designed to modernize Ohio's laws related to self-defense. This bill is not going to grant any new place to carry a firearm, nor is this bill designed to allow vigilantes to walk the streets to dispense their own version of justice. This bill is specifically tailored to make sure that any law abiding person in the state of Ohio has the right to defend themselves or others and that the justice system lives up to the mantra of "innocent until proven guilty."

My joint sponsor and I propose a bill that fixes what is clearly broken in the Ohio Revised Code when it comes to self defense in light of common sense and landmark judicial decisions such as *DC v. Heller* in 2008. Ohio's last update to our self defense laws were enacted in 2008 by then Governor Ted Strickland to allow a person to defend themselves in their home or vehicle. This law, which was called "Castle Doctrine," was signed into law 16 days before the *Heller* decision which means Ohio is nearly 10 years behind jurisprudence. Castle doctrine did not even attempt to address some logical anachronisms that were placed in to the law in 2004 when lobbying groups and bureaucrats sought to make Ohio's then "concealed carry bill" so unappetizing they believed it would not become law. Again, we are not trying to grant some new set of rights or establish a new protected class but simply correct the errors of the past so we can have a productive debate in the future.

I also want to note that even though *Heller* states that "a handgun is the quintessential self-defense weapon," Ohio's self defense laws apply to any act of self defense weather the victim uses a firearm, a bat, a vehicle or something as absurd as a porcelain dolphin statue. Our legislation makes the following changes to Ohio Law:

1. Modify Ohio's Duty to Retreat
2. Modernize Ohio's affirmative defense in cases of self defense
3. Eliminate impossible provisions of Ohio Law when it comes to carrying a concealed firearm
4. Eliminate required signage that is no longer correct
5. Standardize penalties for those who improperly carry a firearm in a motor vehicle

I plan to cover the provisions of this bill that relate to the general act of self defense and my friend Representative LaTourette will discuss the portions that specifically relate to carrying a firearm.

The first provision of this bill modifies Ohio's "Duty to Retreat" which is a principle that exists as a combination of both case law and the ORC. The 1978 case *State v. Melchior* is where we find Ohio's most current judicial precedent regarding self defense. The case states that:

"[T]o establish self-defense, the following elements must be shown: (1) the slayer was not at fault in creating the situation giving rise to the affray [...] (2) the slayer has a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force [...] and (3) the slayer must not have violated any duty to retreat or avoid the danger."

In 2008, with the passage of the castle doctrine, Ohio legislatively restricted this decision by removing the duty to retreat for law abiding citizens who are in their own home or vehicle. This bill proposes to

update that section of law to remove the duty to retreat if a person is somewhere where they are lawfully allowed to be.

Make no mistake, the first two parts of *Melchior* and the duty to avoid danger still exist and a person who initiates or escalates the conflict to the point of deadly force is not acting in self defense. They are a criminal and the justice system exists to ensure they are dealt with appropriately. Additionally, this bill does not eliminate the duty to retreat for everyone in every circumstance. In the event that someone is trespassing or they have been asked to leave a business, for example, they no longer have a lawful right to be there and have a duty to retreat before acting in self defense. If a person were to retreat in to their house to get a knife or bat and then reengage the situation, they would no longer be acting in self defense since at that point they are the aggressor and have violated the duty to avoid danger.

This is not a bill that will allow the unrestricted use of weapons and allow people to claim self defense when the first two portions of the *Melchior* test are not met. In fact, this will not be the most far reaching law in the country, if passed. Ohio will join 38 other states with laws similar to what is proposed in this bill. Perhaps one day, Ohio will be as progressive as California and allow those acting in self defense to “pursue their assailant if reasonable in the situation” in addition to having no duty to retreat but I choose to conservatively advocate for only the latter.

The second provision of this bill modernizes Ohio’s statute related to the affirmative defense of claiming self defense. America’s founding fathers envisioned a justice system where the burden of proof laid on the accuser and not the accused. Unfortunately, Ohio is in the extreme minority of states that require a person who acted in self defense to prove that they did so based on preponderance of evidence. In 1987 the case *Martin v. Ohio* argued that Ohio’s law was unconstitutional. The Justices at the time disagreed since there was no constitutional right to self defense, individual states could shift the burden of proof accordingly.

Fast forward to the *Heller* decision where the Supreme Court of the US declares that “the inherent right of self-defense has been central to the Second Amendment right.” After this declaration of a right to self defense, state legislatures and judicial conferences around the country began to shift their burdens of proof back to the prosecution. Ohio, however, has steadfastly retained our model of guilty until proven innocent in cases of self defense despite the premise *Martin* now being out of date according to some legal scholars.

This bill requires that a defendant still present evidence that they acted in self defense, however the burden of proof that the defendant is a criminal will be restored to the prosecution. Those who shoot first and ask questions later will still face a judge, they will still need to present evidence that they met the *Melchior* test and, if they can not produce any, they will go to jail. Plain and simple. But for the mother of three walking to her car who was ambushed by a mugger, I dare you to find a prosecutor who can prove she did not fear for her life and meet the three points of the test. In both cases we will continue to allow the courts to decide if the prosecutor can justify their rebuttal of the defendant’s evidence. If the prosecutors are upset that they now have to prove someone is guilty before they throw them in jail, I can kindly show them some less civilized portions of the globe where the local despot will appreciate their brand of “justice.”

I will now turn it over to my Joint Sponsor, Representative LaTourette to discuss the firearm specific portions of the legislation.