



# Ohio Prosecuting Attorneys Association

Louis Tobin  
Executive Director  
House Bill 228  
Opponent Testimony  
February 13, 2018

Chair Roegner, Vice-Chair Lipps, Ranking Member Leland and members of the House Federalism and Interstate Relations Committee, thank you for the opportunity to provide opponent testimony on House Bill 228.

Our primary concern with House Bill 228 is the change to R.C. 2901.05 regarding the burden of proof for the affirmative defense of self-defense. An affirmative defense is “a defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence.” In other words, the defendant bears some burden to produce evidence that they were in fact acting in self-defense. Currently, that standard is a preponderance of the evidence – that it is more likely than not that the person acted in self-defense. While we recognize that Ohio is likely the only state that places the burden of proof on the defendant, we maintain that the evidentiary standard that must be met is not one that unduly burdens someone who asserts that they were acting in self-defense.

Furthermore, requiring a person to prove by a preponderance of the evidence that they were acting in self-defense does not, as some proponents have argued, create a presumption of guilt. The very first sentence of Revised Code section 2901.05, the statute under debate, very clearly states that “Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution.” Requiring a defendant to adduce evidence of self-defense does not negate the requirement that the prosecution prove guilt beyond a reasonable doubt.

Under House Bill 228, once a defendant produces evidence that “tends to support” that an action was taken in self-defense, the burden shifts to the prosecution to prove beyond a reasonable doubt that it was not self-defense. Evidence that “tends to support” is not a recognized legal standard, could be virtually anything whether reasonable or not, and places virtually no burden on the defendant to show that his or her actions were justified. Requiring the prosecution to prove beyond a reasonable doubt that a person did not act in self-defense, when that person might be the only person with the evidence of what took place, places an undue burden on the prosecution. Even the “castle doctrine” may be rebutted by a preponderance of the evidence. Our great concern is that in placing such a low burden on the defendant and such a high burden on the prosecution House Bill 228 will lead to acquittals for individuals who have in fact committed very serious crimes.

Our second concern with House Bill 228 is the elimination of the duty to retreat in areas outside the home or vehicle. We think the current policy that one should take advantage of an opportunity to retreat, when reasonable to do so, is a good policy that prevents needless confrontations and the unnecessary loss of life. Some of the proponents of repealing this provision apparently believe that the same standard for retreat applies to all, regardless of their age, gender, size, or physical condition. But the duty to retreat is only a reasonable duty to retreat that allows the court to consider factors like age, gender, size, or physical condition when determining whether actions taken in self-defense were reasonable. In other words, an elderly person or a person who is significantly smaller than his or her attacker, will not be held to the same standard as a younger, more equally sized person.

Finally, we are opposed to the changes to the penalties for the offense of carrying a concealed handgun under R.C. 2923.12. This amendment reduces the penalty for individuals who are carrying handguns illegally. An individual with a valid concealed carry license is already protected by R.C. 2923.12(C)(2), which states that the section does not apply to someone carrying a valid concealed handgun license, and R.C. 2923.12(F)(2), which provides that the penalty is reduced from a first degree misdemeanor to a minor misdemeanor if a valid concealed carry license is produced within ten days of an arrest. Also problematic is the fact that the change would make the penalty for illegally carry a concealed handgun lower than the penalty for illegally carrying another concealed weapon, such as a knife. Under the bill, this is true even if the illegally carried handgun is loaded (unless the offender committed another offense while carrying the handgun). This proposed change seriously weakens Ohio's laws on concealed carry to the benefit of individuals who are illegally carrying concealed handguns. We recommend removing this change from House Bill 228.

Ultimately, House Bill 228 rests on the idea that prosecutors are charging and obtaining convictions in cases where the use of force was justifiable. We simply do not believe this to be the case. We should have faith in our elected officials' judgement and trust that they will use their discretion wisely. This means trusting our prosecutors to make decisions about when it is and is not appropriate to charge someone with a crime in the first place. If a prosecutor abuses this discretion and the public loses that trust they are free to elect someone else. As such, House Bill 228 is unnecessary to address any legitimate concerns with the law of self-defense in Ohio. Current law strikes the appropriate balance between promoting public safety, preventing needless confrontation and the loss of innocent lives, and protecting the rights of the accused.

I would be happy to answer any questions you might have.