



OHIO ASSOCIATION OF CHIEFS OF POLICE

Testimony in Opposition of H. B. 228
Ohio Association of Chiefs of Police

Chairwoman Roegner, Vice Chair Lipps, Ranking Member Leland, and members of the House Federalism and Interstate Relations Committee, thank you for the opportunity to submit opponent testimony on Substitute House Bill 228. The Ohio Association of Chiefs of Police opposes Substitute House Bill 228 and particularly the “stand-your-ground” provision. As it relates to the “stand-your-ground” provision, the bill seeks to repeal one of the elements one must prove to prevail in a self-defense action—that is, the individual would no longer have to prove that he did not violate the duty to retreat. The Association believes that there is no problem with the current law and is unaware of any complaints with the current provision. Current law balances societal interests. There are strong public policies for preserving the sanctity of life on one hand, and on the other hand, for allowing one to protect himself from harm. Allowing citizens to “stand-your-ground” upsets this balance. It allows the killing of an individual in certain situations where the death could have been avoided and thus makes a criminal homicide a justifiable homicide.

It is unfortunate that the word “retreat” is used to describe one of the elements one must prove to prevail with self-defense—it gives the wrong connotation of what is required. The duty to retreat does not imply some cowardly act by a person; it means the person has the duty to attempt to mitigate, mollify, escape, withdraw from, avoid the situation, or defuse the confrontation IF HE CAN. Proponents contend that the duty to retreat is a mandate to flee from a confrontation and that fleeing puts you in a foot race with your attacker—an attacker who may shoot you in the back as you attempt to flee. Other proponents talk about the elderly, the infirm, or those who are wheel chair bound being unable to safely flee a confrontation. To the Association, these statements demonstrate a misunderstanding of the current law. The duty to retreat is only required if the person has reasonable means of retreating (mitigating, mollifying, escaping, withdrawing, avoiding or defusing the situation) without jeopardizing himself. There are numerous situations under current law where an individual is not required to retreat. Police and prosecutors have no desire to prosecute legitimate self-defense cases. In analyzing the duty to retreat, they will take into consideration all the facts of the particular situation. It is important to note that the issue of self-defense arises in a whole variety of situations; from an unexpected confrontation by a total stranger to confrontations between acquaintances, close friends, or family members. This subject is heavily factual and depends upon the individual and unique circumstances of the situation. There are many times when one cannot even attempt to defuse the situation and in these cases, there is currently no duty to retreat.

Again, under the current self-defense law, an individual has an obligation to try to defuse a confrontation before it escalates to the point where he fears imminent danger—if he doesn't, then the duty to retreat is breached and it is unlikely he will prevail in alleging self-defense.

The Association believes that repealing the duty to retreat will create a condition whereby killings, currently considered to be criminal, will become justifiable homicides. The only thing holding some individuals back is the duty to retreat—they know that unnecessary or excessive violence could land them in prison. Remove the duty to retreat, you remove a legal constraint that will allow pride, passion, and ego to prevail over common sense.

Notwithstanding *Cleveland v. State*, (128 Ohio St.3d 135, 2010-Ohio 6318), the Association contends that Section 9.68 violates the Home Rule Amendment of the Ohio Constitution. A constitutional provision takes precedence over a statutory provision. That is, the Home Rule provision gives municipalities the authority to enact law, whereas, Section 9.68 attempts to prohibit enactment of certain law. The Home Rule Amendment states: "Municipalities shall have the authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws." The General Assembly cannot by declaration prohibit municipalities from passing police regulations. Acts of the General Assembly trump municipal enactments when the municipality's provision conflicts with an enactment of the General Assembly. Section 9.68 is not a general law; it is a preemption provision. The Association contends that the General Assembly cannot cast a preemption blanket over an entire field.

The Association also opposes the provisions in this bill that would change the current law dealing with an affirmative defense in self-defense situations. Proponents contend that having to prove the elements required for a self-defense action violates their Fifth Amendment rights. To this end they want to place the burden on prosecutors to prove it was not self-defense. For example, in a typical self-defense scenario, someone is killed and current law provides the perpetrator with a legal means to demonstrate that the killing was justified and thus not a crime. Again, the proponents want to shift the burden onto prosecutors to prove that the action was not done in self-defense.

Under current law, to legally prevail in a self-defense situation, the law requires the individual to prove by the preponderance of the evidence that: 1) He was not at fault in creating the situation giving rise to the affray. This means he is totally not at fault in creating the confrontation. Also, a person is not in a position to claim self-defense if he sought trouble armed with a weapon; or provoked or renewed a fight that had broken off; 2) He had reasonable grounds to believe and an honest belief, even if mistaken, that he was in imminent danger of death or great bodily harm, and his only reasonable means of escape, withdrawal, or retreat from such danger was by the use of deadly force; and, 3) He did not violate any duty to retreat, escape, withdraw, avoid, or defuse the confrontation prior to the situation escalating to the point where one believed he was in imminent danger.

The Association is also opposed to the various reduction in penalties for violation of the conceal carry and improperly handling firearms in a motor vehicle provisions

Section 2923.12 requires a licensee, when stopped, to keep his hands in plain sight. The Association opposes the provision that excuses the licensees from this requirement if it is impractical to do so. One would ask, if a licensee cannot keep his hands on the wheel and in plain sight, how is he able to drive in the first place. The Association also opposes the provision that would repeal the requirement that the licensee keep his hands in plain sight in Section 2923.16.

In closing, it is unfortunate that the proponents did not make a better case as to why the current law should be changed. They provided no examples of abuse or need for the law change.