



Ohio Prosecuting Attorneys Association

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Substitute House Bill 228
Written Opponent Testimony
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Chair Roegner, Vice-Chair Becker, Ranking Member Leland and members of the House Federalism and Interstate Relations Committee, thank you for the opportunity to provide additional opponent testimony on Substitute House Bill 228. As you know, Ohio's prosecutors previously have raised concerns with provisions in this bill to shift the burden of proof of self-defense to the prosecution, eliminate Ohio's reasonable duty to retreat, and reduce criminal penalties for illegally carrying a concealed handgun. Today I would like to address an additional concern with an amendment that was added to the bill on April 10.

This amendment added additional language to R.C. 2901.09 that provides, among other things, that "The affirmative defense of self-defense, defense of another, or defense of that person's residence is not available to... A person who uses force during the person's attempted commission, commission, or escape after the commission or attempted commission of a felony offense of violence." See lines 634 – 639. Precluding the affirmative defense of self-defense only for felony offenses of violence is, we feel, much too limited.

"Offense of violence" is a clearly defined term in the Revised Code. It includes about thirty offenses and attempts to commit those offenses. While very serious offenses like aggravated murder, murder, and rape are defined as offenses of violence, some other very serious offenses like compelling prostitution and drug trafficking are not. The practical effect of this is that substitute House Bill 228 now provides a substantial legal benefit to the "pimp" who claims self-defense when he shoots the woman who he is pimping because she defended herself. It provides a substantial legal benefit to the drug dealer who shoots his customer or supplier (another drug dealer) in a confrontation over money or drugs.

While the affirmative defense of self-defense is available to these individuals currently, current law requires the pimp or drug trafficker to prove that it is more likely than not that they were acting in self-defense in order to obtain the benefit of the affirmative defense. Because the bill shifts the burden to the prosecution to disprove self-defense beyond a reasonable doubt it will be substantially more difficult to obtain a conviction in these scenarios and in others where it is more likely than not that a defendant was *not* acting in self-defense. As we have previously discussed, requiring the prosecution to disprove self-defense beyond a reasonable doubt when the only witness might be the dead victim is next to impossible. The examples of the pimp and drug dealer, while extreme, appropriately highlight the difficulties that prosecutors will face if House Bill 228 is enacted. They also appropriately highlight the risk to public safety presented by the bill.