

Ohio Senate Government Oversight and Reform Committee - Testimony on HB 381

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Chairman Lang and members of the House Criminal Justice Committee, thank you for hearing my testimony today. I am a former special needs teacher, a mother and grandmother, and a retired attorney. I spent over 20 years reading and interpreting Ohio laws for the judges on the Ohio 6th District Court of Appeals.

This proposed legislation is ill advised and unnecessary. This bill does two main things, it removes the duty to retreat safely during an altercation, and it allows a defendant in both criminal and civil cases to claim self defense and not have to justify that claim. Further, if a defendant claims self defense and the plaintiff cannot disprove that claim, the defendant is immune from prosecution and doesn't have to pay his lawyer. The bill absolves a defendant from having to go to the trouble and expense of justifying his sometimes fatal actions.

Why do we need this law? Is Ohio wrongly convicting people who acted in self defense? I have yet to hear a cogent reason why this bill should become law. Supporters of this bill say that the duty to retreat places an undue burden on law abiding citizens. Where is the burden of safely walking away from a dangerous confrontation? Senator Terry Johnson stated "A person's first duty is not to walk away; it's to defend your life." Why is defending yourself with violence a valid choice over safely leaving a dangerous situation?

This bill absolves people who claim self defense from having to prove they acted in self defense. Supporters of the bill say, "Why should I have to defend my actions if I am a law abiding citizen and I was acting in self defense?" The answer is that you must defend yourself because you hurt or killed someone and not everyone agrees that you were acting in self defense.

Portions of this bill are confusing or troubling. Proposed ORC 2901.05(A)(1) states that a criminal defendant who claims self defense does not have to prove this defense, instead, the prosecution must disprove it. There is no other affirmative defense in Ohio law that works this way. Defendants normally have to prove their defenses.

Section (A)(2) states that a person arrested for a crime of violence may file a motion for a pre-trial hearing before a judge to determine self defense. This pre-trial motion provision allows an essential part of the case to be decided by a judge, not a jury. In the defendant's self defense motion, he merely has to say that he acted in self defense, without any justification for this statement. The defendant can remain silent through the hearing. If the State does not disprove the self defense claim the judge must find that the defendant acted in self defense, making the defendant immune from prosecution. Further, the state must pay all of the defendant's costs, including attorney fees. This is the only instance where a person charged with a crime who is found not guilty, doesn't have to pay his lawyer.

Section (B)(2), which addresses the issue of presumption of self defense in certain instances like home invasion and kidnapping, is entirely unnecessary. Under (A)(2), any defendant claiming self defense in any violent crime has a presumption of self defense when he files the pretrial motion. Since section (B) has different procedures and standards of proof than (A)(2), courts will be confused as to which applies to any given case.

Finally, the immunity provisions of this bill are troubling. Proposed ORC 2901.092 and 2307.601(E) grant immunity from arrest, prosecution, and a civil law suit to anyone who alleges he has acted in self defense and the plaintiff cannot prove otherwise. The issue is determined by a judge, not a jury. The bill actually goes so far as to forbid a law enforcement officer to arrest a person for use of force unless the officer has probable cause to believe the use of force was not justified. Who is to decide that issue?

By enacting these provisions, the legislative branch is using powers reserved to the judicial branch, that is resolving disputes. I hear allegations that a court has abused its power by “legislating from the bench.” In this bill, the legislature is resolving disputes from the statehouse. By granting an entire class of people immunity from prosecution, the legislature is deciding which disputes have merit and which don’t. This is not their job, it is a job for the courts. The legislative branch makes the laws and the judicial branch decides if they have been broken. The legislative branch exceeds its power when it states that some cases can’t be decided by the court at all.

Thank you for listening to my testimony today. I will gladly answer any questions you may have.