



Ohio Prosecuting Attorneys Association

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House Bill 381
Opponent Testimony
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Chairman Lang, Vice-Chair Plummer, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to provide opponent testimony on House Bill 381, a bill that we believe is unnecessary particularly in light of recent changes to the law of self-defense, that poses risks to public safety, and that will place substantial new burdens, financial and practical, on our justice system.

Pre-Trial Immunity

The bill provides that the procedural act of filing a motion claiming self-defense establishes a viable claim of self-defense that must be disproved by clear and convincing evidence. It person filing the motion is not required to put forth any evidence even tending to support that they used the force in self-defense. It makes the procedural act of filing a piece of paper more important than the substantive facts surrounding the event.

While this may be ideal from the perspective of a law-abiding gun owner who justifiably uses force in self-defense, it is unworkable and dangerous from the perspective of prosecutors who will need to overcome immunity in all manner of cases where violent offenders assert bogus claims of self-defense and are granted immunity. At best, the prosecution will need to call witnesses and put on evidence at a pretrial hearing that will give the defendant a window into the state's trial strategy. At worst, a defendant whose actions were not justified will go free, having been granted immunity without a trial and without having presented even minimal evidence that the use of force was justified.

Forcible Felonies

The bill expands the scope of self-defense to permit the use of force, including deadly force, to prevent or halt the commission of any "forcible felony." By definition in the bill this includes any felony that involves the use or threatened use of physical force. There is no requirement that an aggressor present a danger of death or great bodily harm. The definition also includes crimes like arson, strong arm robbery, and burglary, serious crimes, but not necessarily ones that put a life at risk. This greatly expands the notion of self-defense that has historically applied only in situations where there is imminent danger of death or great bodily harm. Defense of property is not defense of oneself at all. A person could be immune from arrest and prosecution under Senate Bill 237 if they shoot and kill someone because they

believed that the person was going to use force that did not involve a danger of death or great bodily harm. This will lead to miscarriages of justice.

Duty to Retreat

current policy, that one should take advantage of a reasonable opportunity to retreat before using deadly force, is a good policy that prevents needless confrontations and potentially the unnecessary loss of life. It is important to understand that it is only a *reasonable* duty to retreat. It does not require the same thing of the elderly or the infirm as it does of the young or healthy. More importantly, the bill specifically provides that the trier of fact shall not consider the possibility of retreat as a factor in determining the reasonableness of force used in self-defense. In a truth-based justice system we should want juries to have as much truthful information as possible. There is no way for a jury to make factual determinations about whether the use of force was reasonable or unreasonable without taking all factors, including the possibility of retreat into consideration. The exclusion of reliable evidence harms the truth-seeking process and increases the risks of miscarriages of justice.

Conclusion

House Bill 381 would require courts to conduct trials within trials in order to determine whether an individual should or should not be immune from prosecution. This will be practically and financially burdensome to prosecutors, the judicial system, and ultimately to taxpayers. Many violent offenders will assert bogus claims of self-defense that may nevertheless prevent arrest, and will require this trial within a trial, at substantial cost to public safety and to the administration of justice in Ohio. The General Assembly made a significant change to the law of self-defense when it enacted House Bill 228 (132nd General Assembly) that went into effect only in March of last year. That bill placed the burden on the prosecution to disprove self-defense beyond a reasonable doubt. Now, less than a year later, this bill will add yet another layer, immunity, to this process. The state will need to disprove one of the elements of self-defense at a pretrial hearing, prove each of the elements of the offense beyond a reasonable doubt at trial, and then again disprove one of the elements of self-defense at trial where the defendant will be able to shape his or her strategy based on what was learned during the pre-trial immunity stage. We urge this committee and the House to allow time for implementation of House Bill 228 and proper analysis of what problems it creates.

Thank you again for the opportunity to provide testimony in opposition to House Bill 381. I would be happy to answer any questions.