



Office of the Ohio Public Defender

Timothy Young, State Public Defender

**Testimony in Support of SB180
Firearm Related Laws-Changes
Sponsors Senator Uecker and Senator Hottinger**

Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to testify on behalf of the Ohio Public Defender in support of SB180.

My name is Tim Young. I have been serving as the Ohio Public Defender since 2008. Prior to being appointed as the State Public Defender, I was a county public defender for 14 years where I tried numerous cases ranging from misdemeanors to homicides. I am a founder of the National Association for Public Defense, a member of the Ohio Sentencing Commission, and I was vice chair of the Criminal Justice Recodification Committee.

I support shifting the burden to the state - to prove beyond a reasonable doubt - that an individual did not act in self-defense. Ohio is the only state in the nation that still places the burden on the accused to prove they behaved lawfully – let me repeat that – instead of the government having to prove an act was unlawful, Ohio has steadfastly refused to join every other state and requires its citizens to prove they acted lawfully. Every other state has acknowledged that it is a fundamental principal of our criminal justice system that the state must show that an accused did not act lawfully. It is a fundamental tenant of law that to have one's liberty taken, the government must prove beyond a reasonable doubt they acted unlawfully. In the area of homicide, the government must prove it was an unlawful killing. If someone acts in self-defense then the taking of the life was not unlawful. Yet, Ohio alone does not require the government to prove that

the killing was unlawful but instead puts the burden on its citizens to prove instead that it was lawful. That turns the entire system on its head.

The Office of the Ohio Public Defender submitted written testimony last month in support of SB180, but I am here today to address concerns that were raised about this bill putting undue burden on prosecutors. It has been suggested that SB180 will require prosecutors to prove facts that only a defendant could possibly know. That is correct, SB180 will require prosecutors to prove facts only known to the defendant - just like every other criminal offense requires prosecutors prove facts only known to the defendant. Short of a confession, it is always impossible to know the actual intent of an offender. Only the accused knows if he or she was aware of the drugs in the vehicle, or if they intended to permanently deprive another of their property. Prosecutors in Ohio routinely convince judges and juries as to the alleged intent of a defendant in drug possession and theft cases, and obtain convictions. The same is true for prosecutors in every other state with regard to homicide offenses - there is not a lack of prosecutions and convictions as a result of the burden shifting for self-defense. News headlines nationwide are not declaring that there is an epidemic of acquittals for killers due to unrealistic expectations on the prosecutors. The United States is not suffering from undercrowded prison problem.

Some have argued that self-defense cases are different because the other party is deceased. However, that is true of all homicides. Similar to drug possession and theft cases, prosecutors get convictions for homicides cases when there are no eyewitnesses to the crime itself. Every day Ohio prosecutors convince juries beyond a reasonable doubt that an accused acted knowingly or recklessly when they behaved in a certain manner.

A criminal case where the only evidence of guilt is the confession of an accused is extremely rare. Intent is proven with circumstantial evidence surrounding the offense. In cases where self-



defense is claimed, key evidence will likely be at the scene where the event took place. Is there evidence of a struggle? Did the deceased have a weapon close to their person? Did the person claiming self-defense have a weapon? If so, how did they obtain the weapon? Did they bring the weapon into the situation or did they obtain it later after the interaction escalated? What are size and strength differences between the individuals involved? Does either party have a motive to harm the other? This is all information the State can present to a jury to show that the accused did not act in self-defense. The simple truth is that very few cases have facts that would support self-defense. We do not have a justice system where someone can just make an assertion – there must be facts and circumstances that support the assertion that can be supported and put forth under the rules of evidence.

It is simply unfair to continue to put a burden on Ohioans to prove they acted lawfully. It is the antithesis of our justice system – innocent until proven guilty. It is and should be the government's burden to prove unlawfulness. Locking someone up for a crime and taking away their liberty is not supposed to be easy. Proof beyond a reasonable doubt is a pillar of our criminal justice system and our democracy. It is intended to be a heavy burden. This legislature should ensure that Ohio joins the rest of the country in our laws on self-defense.

Thank you for the opportunity to speak today before your committee. I will take questions at this time.

