



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

**Interested Party Testimony Regarding Am. HB228  
Self-Defense and Handling Firearms  
Sponsors Representatives Johnson and LaTourette**

Chairman Roenger, Vice Chair Lipps, Ranking Member Leland, and members of the House Federalism and Interstate Relations Committee. I am Niki Clum, the legislative liaison for the Office of the Ohio Public Defender. Thank you for the opportunity to testify as an interested party regarding Amended House Bill 228. The Ohio Public Defender supports shifting the burden in self-defense cases to the State to prove beyond a reasonable doubt.

Ohio is the only state in the nation that still places the burden on the accused to prove they behaved lawfully. In every other state the government must prove the act was unlawful. It is a fundamental tenant of law that to have one's liberty taken, the government must prove it was an unlawful use of force. Yet, Ohio alone does not require the government to prove that the force was unlawful. Instead, Ohio puts the burden on its citizens to prove they acted lawfully. That turns the entire justice system on its head.

As this committee knows, the amendments adopted today continue to require, as an element of the offense charged, that the State prove the force used by the accused was not lawful. Pursuant to the amendment, the State must prove it by a preponderance of the evidence. The problem with this amendment is that it allows the state to prove an element of a criminal offense by a lesser burden than beyond a reasonable doubt. The State is constitutionally required to prove every element of an offense beyond a reasonable doubt. By the lowering the standard for this element, the bill has created an unconstitutional situation where the State must prove an element of the offense by only a preponderance of the evidence. Self-defense must either be an affirmative defense where the defendant has the burden,

or an element of the offense that must be proven beyond a reasonable doubt. While OPD appreciates the effort to arrive at a compromise, unfortunately, it is likely unconstitutional.

Asking the prosecution to prove that the force was unlawful beyond a reasonable doubt is not an undue burden. It is not something the state will have to address in every trial. The amended bill requires that some evidence must be presented “upon which a factfinder could rationally find that the accused person used the force in self-defense” before the State has the burden of proving the force was not in self-defense. We do not have a justice system where someone can just make empty assertions – the rules of evidence require the facts and circumstances to support each claim. In most cases, self-defense will simply not be applicable. Furthermore, the State will likely know prior to trial that a defendant is claiming self-defense through the reciprocal discovery process. With that information in mind, the State will prepare their case so the evidence shows that the force was not used in self-defense. As a former prosecutor myself, I can tell you that a good prosecutor will prepare their case so that no reasonable person could believe the defendant was acting in self-defense – regardless of where the law places the burden.

It has been suggested that shifting the burden to the State will require the State to prove facts that only a defendant could know. That is correct, HB228 will require the State to prove facts only known to the defendant – just like every other criminal offense requires prosecutors to prove facts only known to the defendant. Short of a confession, it is 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. Despite not being clairvoyant, prosecutors routinely convince judges and juries of the intent of a defendant in drug possession and theft cases, and the state obtains conviction. The same is true for prosecutors in every other state in self-defense cases.



Some have argued that homicide self-defense cases are different because the other party is deceased. But that is true in all homicides. Similar to drug possession and theft cases, prosecutors get convictions for homicide cases when there are no eyewitnesses to the crime itself. A criminal case that rests solely on a confession of the defendant is extremely rare. Intent is routinely proven through the 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. Was 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 and when did they obtain the weapon? Does either party have a motive to harm the other? These are just some of the points the State can present to a jury to show that the accused did not act in self-defense. Prosecutors in other states have managed to get convictions in homicide cases despite having to prove beyond a reasonable doubt that a defendant did not act lawfully in self-defense. News headlines nationwide are not declaring that there is an epidemic of acquittals for killers due to unrealistic expectations on prosecutors. The United States is not suffering from an under-crowded prison problem.

As this committee knows, amendments adopted today limit when a claim of self-defense can be made. One provision in the amendment states that self-defense is not applicable in cases where force is used against an officer during a lawful arrest. This is already the law. If a person responds to a lawful arrest with the use of force, that person will be charged with resisting arrest. An exception is not needed because a claim of self-defense does not exist under current law in these circumstances. Another provision in the amendment states that self-defense is not applicable in cases where force is used to resist an unlawful arrest. In order to be convicted of resisting arrest, the state must prove beyond a reasonable doubt that the arrest was lawful. Why then shouldn't a person be able to resist



an unlawful arrest? After all, the person is being restrained and their liberty is being violated contrary to law. It is reasonable that a person would act in self-defense when they are being illegally controlled, detained, and transported against their will. Individuals should be able to raise self-defense claims when they have been the victim of an illegal arrest.

Proof beyond a reasonable doubt is a pillar of our criminal justice system. It is simply unfair to continue to put the burden on Ohioans to prove they acted lawfully. In other states and in most cases in Ohio, the State has the burden of proving the accused's actions were unlawful. Ohio should join the rest of the nation and require the State to prove beyond a reasonable doubt that the force used was not in self-defense.

Thank you for the opportunity to speak today before your committee. I am happy to answer questions at this time.

