



Ohio Prosecuting Attorneys Association

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House Bill 228
Opponent Testimony
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Chairman Coley, Vice-Chair Uecker, Ranking Member Schiavoni and members of the Senate Government Oversight and Reform Committee, thank you for the opportunity to testify today as an opponent of House Bill 228.

Our primary area of concern with the bill is the provision that shifts the burden of proof to the prosecution to disprove self-defense beyond a reasonable doubt. An affirmative defense is “a defense involving an excuse or justification peculiarly within the knowledge of the accused, on which the accused can fairly be required to adduce supporting evidence. In other words, the defendant bears some burden to describe what the nature of the situation was and what was going on in their head. Under current law, this burden is a preponderance of the evidence – that it is more likely than not that the person acted in self-defense. This is not a high burden. It reflects over 200 years of common law and was upheld by the Supreme Court of the United States in *Martin v. Ohio* where the Supreme Court said “We are no more convinced that the Ohio practice of requiring self-defense to be proved by the defendant is unconstitutional than we are that the Constitution requires the prosecution to prove the sanity of a defendant who pleads not guilty by reason of insanity.” The proponents of this legislation have argued that crime victims in Ohio who justifiably use deadly force in self-defense are somehow presumed guilty and must prove their innocence. The very first sentence of R.C. 2901.05, the statute under debate states that “Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt, and the burden of proof for all elements of the offense is upon the prosecution.” The prosecution must decide to present a case to the grand jury, convince the grand jury that the person should be indicted, survive a motion for acquittal, and convince a jury of the person’s peers of guilt beyond a reasonable doubt.

Our second concern with House Bill 228 is the elimination of the duty to retreat in areas outside the home or vehicle. We think the current policy, that one should take advantage of a reasonable opportunity to retreat, is a good policy that prevents needless confrontations and potentially the unnecessary loss of life. It is important to emphasize that the duty to retreat is only a reasonable duty. It allows the prosecution and the court to consider factors like age, gender, size, or physical condition. In other words, an elderly person or a person who is significantly smaller than his or her attacker, will not be held to the same standard as a younger, more equally sized person.

Finally, we are opposed to reducing the penalties for the offense of carrying a concealed weapon. By reducing the penalty for carrying a concealed handgun from a first degree misdemeanor to a minor misdemeanor, the

bill makes the penalty for carrying a concealed handgun lower than the penalty for carrying another concealed weapon, like a knife. Moreover, the penalty is reduced for individuals who do not have a concealed carry license. R.C. 2923.12(C)(2) states that the section does not apply to someone carrying a valid concealed carry license, and R.C. 2923.12(F)(2) provides that the penalty is reduced from a first degree misdemeanor to a minor misdemeanor if a valid concealed carry license is produced within ten days of an arrest. In other words, law abiding individuals who have who have a concealed carry license are protected under current law and do not benefit from these changes. On the contrary, the change primarily benefits individuals who are not law abiding. It seriously weakens our laws on concealed carry to the benefit of individuals carrying illegally.

House Bill 228 rests on the idea that prosecutors are charging and obtaining convictions in cases where the use of force was justifiable. We simply do not believe this to be true. The mission of the Ohio Prosecuting Attorneys Association and therefore the mission of Ohio prosecutors is to pursue truth and justice, promote public safety, and secure justice for the victims of crime. Prosecuting an individual who has justifiably used force in self-defense does not further any of these goals. Someone who justifiably uses force in self-defense is a victim too and we stand for them in the same way we stand for the victim of a felonious assault. Prosecuting them accomplishes nothing. This is why the proponents of House Bill 228 cannot point to any miscarriage of justice under current law. Prosecutors appropriately use their discretion and current law strikes the appropriate balance between promoting public safety, preventing needless confrontation, and protecting the rights of the accused.

We urge a no vote on House Bill 228. I would be happy to answer any questions.