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- **Ohio State Highway Patrol**



Opponent Testimony for House Bill 228
Senate Government Oversight and Reform Committee
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Chairman Coley, Vice Chairmen Uecker, Ranking Member Schiavoni and members of the Senate Government Oversight and Reform Committee: Thank you for the opportunity to provide testimony in opposition to HB 228. The Ohio State Highway Patrol opposes many of the provisions included in HB 228 including the “stand your ground provision” as well as the changes which alter the penalties to existing weapon and concealed carry permit violations.

With respect to the “stand your ground” provision- Troopers are dispatched to approximately 1400 road rage incidents every year. In most cases, the parties separate and go on their way without any interaction from law enforcement. In many cases we do not have enough evidence to open an investigation. We believe provisions of HB 228 will provide citizens with a legal defense to stay engaged in altercations as opposed to disengaging which is currently the case 85 percent of the time.

In 2004, the General Assembly passed legislation that provided Ohioans with the legal authority to possess concealed weapons through the permit process. The permit process includes background checks, education, training and demonstration of weapon competency. All of these aspects play a vital role to ensure the proper vetting of permit holders. Those who either cannot or chose not to go through the permit process are subject to penalties commensurate with illegal weapons violations, ranging from a first degree misdemeanor to a fourth degree felony, depending on the situation.

HB 228 significantly reduces the penalties for those who illegally carry concealed weapons. As currently written, HB 228 reduces these offenses to minor misdemeanors unless the individual is committing another offense, at which time the current penalties would apply. The reduction in penalty is particularly concerning because law enforcement officers cannot make custodial arrests for minor misdemeanor violations. In effect, HB 228 removes all incentive

for individuals to go through the permitting process, and it shields the criminal element—those who cannot pass a background check—from a custodial arrest.

HB 228 also reduces the penalty for improper transportation of a firearm in a motor vehicle to a minor misdemeanor unless committing another offense, at which time the current penalties would apply. Under current law, anyone (other than a permit holder) transporting a loaded firearm “ready at hand” in a motor vehicle is guilty of a fourth degree felony. The severity of the penalty serves to deter criminals and to protect law enforcement officers when approaching vehicles—an act inherently placing law enforcement at a disadvantage. By reducing the penalty to a minor misdemeanor, there is virtually no incentive for compliance. These criminals would not be subject to arrest and would only pay a minimal fine.

As previously detailed, HB 228 reduces many violations to minor misdemeanors “unless committing another offense.” This language creates a double standard for individuals committing the same offense. This is best demonstrated through a simple example. Two men are stopped in a vehicle for a minor misdemeanor traffic violation. It is determined that both the driver and the passenger are illegally carrying loaded handguns on their person. Under HB 228, the driver would be subject to a fourth degree felony because he/she had committed another offense; specifically, the traffic violation. However the passenger, who had not committed an offense other than illegal possession of the concealed weapon, would only be subject to a minor misdemeanor citation. In summary, the driver would be subject to arrest and a prison sentence, while the passenger who was guilty of the exact same violation (absent the traffic offense) would be released with a simple minor misdemeanor citation.

Other concerning provisions in HB 228 include the reduction of penalties for various permit violations. The bill reduces these violations to minor misdemeanors and eliminates permit sanctions unless the violator is committing another offense. Under current law, permit holders must obey the commands of a law enforcement officer during an encounter. Failure to do so is a first degree misdemeanor. Current law also prohibits a permit holder from knowingly having contact with the handgun during the encounter and carries penalties associated with a fifth degree felony.

Members of the committee, there is no valid justification for permit holders to knowingly touch their firearm during an interaction with a police officer. This puts the permit holder and the officer in a deadly situation, which is exactly why the penalty is so severe. Likewise, disobeying the lawful commands of a law enforcement officer when armed is equally detrimental to the safety of the permit holder and to the officer. Neither of these two requirements (obeying commands and not touching the firearm) place an onerous burden on the permit holder, yet they are integral in ensuring the safety of all involved. Failing to adhere

to these simple and common-sense requirements must not be taken lightly, which is why the current penalties are commensurate with these offenses. Reducing the penalties to non-arrestable offenses with no permit sanctions virtually eliminates the deterrence for this highly dangerous behavior.

Another provision in HB 228 reduces the penalties for failure to promptly notify a law enforcement officer of the possession of a concealed weapon from a first degree misdemeanor to a minor misdemeanor and eliminates the permit sanctions. The argument has been proffered that simply forgetting to advise an officer of a concealed weapon should not subject an otherwise law abiding citizen to a first degree misdemeanor. The Division believes everyone is safer when all parties involved know there is a weapon present. Prompt notification to the law enforcement officer is vitally important to ensure the safety of both the permit holder and the officer. Failure to make prompt notification should have consequences; however, the Division would be willing to examine a modification to the current penalties for a violation of this provision.

In closing, the Division believes those who fail to obtain the necessary permit to carry a concealed weapon (whether by choice or due to ineligibility), on their person or carry illegally in a motor vehicle, should be subject to current penalties commensurate with serious weapon violations. Additionally, permit holders who knowingly fail to abide by the aforementioned provisions established to protect law enforcement officers should also be subject to current penalties. Reducing these penalties to minor misdemeanors and linking penalties to the commission of other offenses will not promote consistency nor serve as an effective deterrent for the perilous behavior. Thank you again for the opportunity to provide testimony and your consideration of the Division's concerns.