



# Office of the Ohio Public Defender

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*Timothy Young, State Public Defender*

**Interested Party Testimony Regarding HB228  
Self-Defense and Handling Firearms  
Sponsors: Representative Johnson, Representative LaTourette**

Chairman Coley, Vice Chair Uecker, Ranking Member Schiavoni, and members of the Senate Government Oversight and Reform Committee, I am Tim Young the Ohio Public Defender. Thank you for the opportunity to testify as an interested party regarding House Bill 228. My office 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.

When someone acts in self-defense, the person is acting lawfully. To understand how this contrasts with a true affirmative defense we can use duress as an example. A person acts under duress when they are forced to commit an unlawful act. This is different from self-defense, which is a lawful act. When a person acts under duress the person still acts unlawfully but they were forced to do so and have a legal excuse for the act. For example, a person's wife is held hostage and the person is told to rob a bank or she will be killed. It is always unlawful to

rob a bank. But duress is why you did it, even though it is unlawful. Thus, it is properly the defendant's burden to prove duress, a reason that excuses the illegal conduct.

But it is not unlawful to act in self-defense. Acting in self-defense is lawful. It is not a legal excuse for unlawful behavior. No legal reason is needed to excuse the action because it was not unlawful in the first instance. In one situation the act is illegal but excused (duress), in the other, the act is not illegal at all (self-defense). And that is why it is the government's burden to prove a person did not act in self-defense in 49 other states and the federal system.

From the perspective of how a trial would be conducted, nothing changes except how the jury is instructed. The burden is on the government to prove a person did not act within reason in exercising their right to self-defense. Proof of self-defense will still have to be submitted to make a successful claim, otherwise the State will easily prove you did not do so.

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. 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 the accused. 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.

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.

