OPPOSITION TESTIMONY

on

S. B. No. 180

and particularly the

STAND YOUR GROUND PROVISION

by

John Gilchrist

Legislative Counsel

Ohio Association of Chiefs of Police

            The Ohio Association of Chiefs of Police opposes S.B. No. 180 and particularly the “stand-your-ground” provision.  As it relates to the “stand-your-ground” provision, proponents seeks to repeal one of the element one must prove to prevail in a self-defense action–that is,  the individual would no longer have to prove that he did not violate the duty to retreat.  The Association believes that there is no problem with the current law and is unaware of any complaints with the current provision.  Current law balances societal interests.  There are strong public policies for preserving the sanctity of life on one hand, and on the other hand, for allowing one to protect himself from harm.  Allowing citizens to “stand-your-ground” upsets this balance. It allows the killing of an individual in certain situations where the death could have been avoided and thus makes a criminal homicide a justifiable homicide.  Anyone who is opposed to abortion on moral grounds should take a close look at this provision because it allows for the killing in certain situations where the homicide could have been prevented and this violates the same moral principle that holds that abortion is wrong.

            In addition, the Association finds it disturbing that the NRA and other gun lobbying groups are offering insurance for individuals who shoot someone in self-defense situations.  That is, the insurance provides coverage to help cover civil and criminal costs if the person should shoot someone in  self-defense situations.  Critics call this “murder insurance” because it encourages gun owners to take action and not worry about the consequences–that is, shoot rather than try to avoid the confrontation. (See Columbus Dispatch, 10/20/17, page A11 and 10/26/17, page A14)

            (1) It is unfortunate that the word “retreat” is used to describe one of the elements one must prove to prevail with self-defense –it gives the wrong connotation of what is required.  The duty to retreat does not imply some cowardly act by a person; it means the person has the duty to attempt to mitigate, mollify, escape, withdraw from, avoid the situation, or defuse the confrontation IF HE CAN.  Proponents contend that the duty to retreat is a mandate to flee from a confrontation and that  fleeing puts you in a foot race with your attacker–an attacker who may shoot you in the back as you attempt to flee. Other proponents  talk about the elderly, the infirm, or those who are wheel chair bound being unable to safely flee a confrontation.  To the Association, these statements demonstrate a misunderstanding of the current law. The duty to retreat is only required if the person has reasonable means of retreating (mitigating, mollifying, escaping, withdrawing, avoiding or defusing the situation) without jeopardizing himself. There are numerous situations under current law where an individual doesn’t have to attempt to retreat.   Police and prosecutors have no desire to prosecute legitimate self-defense shoots. In analyzing the duty to retreat, they will take into consideration all the facts of the particular situation. It is important to note that the issue of self-defense arises in a whole variety of situations; from an unexpected confrontation by a total stranger to a confrontations between acquaintances, close friends, or family members. This subject is heavily factual and depends upon the individual and unique circumstances of the situation.  There are many times when one cannot even attempt to defuse the situation and in these cases, there is currently no duty to retreat.

            Again, under the current self-defense law, an individual has an obligation to try to defuse a confrontation before it escalates to the point where he fears imminent danger–if he doesn’t, then the duty to retreat is breached and it is unlikely he will prevail in alleging self-defense.

            The Association believes that repealing the duty to retreat will result in more violence, including gun violence particularly by  those who are hot headed or violently aggressive.  Stated differently, repealing the duty to retreat is a recipe for more violence whereby killings, currently considered to be criminal, will become justifiable homicides.  The only thing holding some individuals back is the duty to retreat–they know that unnecessary or excessive  violence could land them in prison.  Remove the duty to retreat, you remove a legal restraint that will allow pride, passion, and ego to prevail over common sense.

            (2) Proponents also demonstrate their misunderstanding of the current law dealing with an affirmative defense.  They contend that having to prove the elements required for a self-defense action somehow violates their fifth amendment rights and that they are innocent until proven guilty.  To this end they want to place the burden on prosecutors to prove it was not self-defense. How does one prove a negative?  In a typical self-defense scenario, someone is killed and the perpetrator admits the killing, thus the prosecutor knows who did the killing and has fulfilled his burden of proof.  However, current law  provides the perpetrator with a legal means to demonstrate that the killing was justified and thus not a crime. With this, the burden then shifts to the perpetrator.  To legally prevail in a self-defense situation, the law requires the individual to prove by the preponderance of the evidence that: 1) he was not at fault in creating the situation giving rise to the affray.  This means  he is totally not at fault in creating the confrontation.  Also, a person is not in a position to claim self-defense if he sought trouble armed with a weapon; or provoked or renewed a fight that had broken off; 2) he had reasonable grounds to believe and an honest belief, even if mistaken, that he was in imminent danger of death or great bodily harm, and his only reasonable means of escape, withdrawal, or retreat from such danger was by the use of deadly force; and, 3) he did not violate any duty to retreat, escape, withdraw, avoid, or defuse the confrontation prior to the situation escalating to the point where one believed he was in imminent danger.

            It should be noted that there are various provision of current law that provide for an affirmative defense–in all of these situations the burden of proof is on the violator or perpetrator.  For example, Section 2923.12(A)(1) prohibits the concealed carrying of a deadly weapon (the definition of deadly weapon excludes a handgun).  However an affirmative defense is provided in Section 2923.12(D). That is, the individual can be exonerated if he can demonstrate that he carried it for defensive purposes while engaged in his business and that he could be susceptible to criminal attack. For example, the individual was carrying while taking a large sum of moneys to a bank.  In addition, prior to the enactment of the CCW law in 2004, it was illegal to carry a concealed handgun.  However, the then law also provided the same affirmative defense discussed above with the burden on the individual to prove the elements required by Section 2923.12(D).  In all provision dealing with affirmative defense, the burden is on the individual to prove he had a legal, justifiable excuse for violating a prohibition found in law .  However, the amendment to Section 2901.05 changes this for self-defense situations.  Under the amendment, the burden of proof in self-defense situations would shift to the prosecutor to disprove the action was done in self-defense.

In closing, it is unfortunate that the proponents did not make a better case as to why the current law should be changed.  They provided no examples of abuse or need for the law change.