

May 22, 2019

Testimony of Jack D'Aurora in Opposition to HB 178

1. Introduction

I am a business lawyer in Columbus,<sup>1</sup> a contributor to the op-ed section of the Columbus Dispatch and a Navy veteran.<sup>2</sup> Though not a gun owner, I have fired a variety of firearms<sup>3</sup> and appreciate the importance of guns for hunters, competitive shooters and collectors and in defense of the home. My opposition to HB 178 is based on my belief it will likely increase the homicide rate in Ohio.

2. The Second Amendment and RTC Laws

The 27 words that comprise the Second Amendment are silent about the breadth of a citizen's right to carry guns in public.<sup>4</sup> While the U.S. Supreme Court has held the Second Amendment confers a personal right to own firearms, the court also made clear that government has the right to place reasonable restrictions on guns: "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of

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<sup>2</sup> I flew F-14s and made two deployments aboard the carrier, U.S.S. Kitty Hawk.

<sup>3</sup> I have shot a 22 cal. handgun, 38 cal. handgun, 45 cal. handgun, 9 mm. handgun, M-16 rifle and AR-15 rifle.

<sup>4</sup> A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

arms.”<sup>5</sup> To be clear, there is no constitutional mandate that citizens must be allowed to carry concealed weapons without training.

3. There is No Need for HB 178,  
and It Will Likely Increase the Homicide Rate in Ohio

The reason often given for RTC laws is that citizens must be able to defend themselves, but there is no evidentiary support for this idea. First, there is little need for self-defense against strangers. In those cases in 2017 where the shooter and victim were both identified—50 percent of all homicides—the victim was either related to the shooter or was an acquaintance, friend, boyfriend, girlfriend, neighbor, employer or employee of the shooter in 40.3 percent of homicides. In only 9.7 percent of homicides was the victim shot by a stranger.<sup>6</sup> Stated another way, the greatest risk we face is being shot by someone we know.

Second, the statistics often quoted concerning the defensive use of guns are inaccurate. One study concluded that more than 200,000 criminals are shot annually in the act of committing a crime by civilians defending themselves, but this number is more than twice as high as the current annual estimates of all persons treated in hospital emergency departments for nonfatal gunshot wounds resulting from criminal assaults or shootings by law enforcement.<sup>7</sup>

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<sup>5</sup> *District of Columbia v. Heller*, 554 U.S. 570, 626-627.

<sup>6</sup> FBI Uniform Crime Report for 2017 (<https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/expanded-homicide>), attached as Appendix 1.

<sup>7</sup> “Concealed carry of firearms: facts vs. fiction,” Johns Hopkins Center for Gun Policy and Research, Nov. 16, 2017 (<https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/concealed-carry-of-firearms.pdf>)

There is another issue to consider when easing the restrictions on RTC laws: will there be an upswing in homicides? In 1996, John Lott produced a study that concluded, more guns result in less crime, but the National Research Council found in 2002 there was no evidence that RTC laws either decreased or increased gun violence.<sup>8</sup>

Since then, Lott's theory has been subjected to criticism,<sup>9</sup> and more recent studies have concluded that RTC carry laws actually increase murder rates. In the study he completed in 2013, Michael Siegel, M.D., of the Boston University School of Health, found a "robust correlation" between estimated levels of gun ownership and actual gun homicides. For each percentage point increase in gun ownership, the gun homicide rate increases by 0.9 percent.<sup>10</sup> Researchers John J. Donohue, Abhay Aneja and Kyle D. Weber concluded in 2018 that states with RTC laws have homicide rates that increase by 10 percent over 10 years.<sup>11</sup> Ohio's homicide gun rate of 5.3 deaths per 100,000 residents in 2017 was the highest since 1999 and was 18 percent higher than national rate of 4.5 deaths per 100,000.<sup>12</sup>

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<sup>8</sup> "Firearms and violence," National Research Council of the National Academies, Committee to Improve Information and Data on Firearms, executive summary (<https://www.nap.edu/read/10881/chapter/2>)

<sup>9</sup> "Do right-to-carry gun laws make states safer?" The Atlantic, June 24, 2017 (<https://amp.theatlantic.com/amp/article/531297/> )

<sup>10</sup> The American Journal of Public Health, Nov. 2017. (<https://ajph.aphapublications.org/doi/10.2105/AJPH.2013.301409>)

<sup>11</sup> "Right-to-carry laws and violent crime," National Bureau of Economic Research, June 2017, revised January 2018, at pp. 6-9, attached as Appendix 2.

<sup>12</sup> "Ohio's gun-death rate rises in 2017 to highest since records began in 1999," The Columbus Dispatch, Dec. 11, 2018. (<https://www.dispatch.com/news/20181211/ohios-gun-death-rate-rises-in-2017-to-highest-since-records-began-in-1999>)

There are documented cases where a RTC owner unlawfully took a life. Donohue and his colleagues documented shootings that occurred over someone playing music too loud at a gas station, arguments over snow shoveling, and road rage. They also documented shootings where well-intentioned RTC owners were either shot or shot the wrong person.<sup>13</sup> We saw on national news last summer a man who was fatally shot at a convenience store. The victim had pushed to the ground a man who carried a concealed handgun. While on the ground, the man drew his gun and shot the victim as the victim backed away.<sup>14</sup>

RTC laws elevate homicide rates, and dispensing with training requirements increases the risk of more homicides.

#### 4. What it Takes to Decrease Gun Violence

The nation and our state suffers from at least six types of gun violence—felony murder, accidental shootings involving children, domestic violence, serial killings, suicide and gangland shootings—and yet we spend no effort getting to the root cause of these problems. Each has its own unique set of factors. If we want to get serious about making Ohio safer from gun violence, we need to study for each type of gun violence how guns are obtained, their source, the factors that lead to shootings, what preventative steps can be taken, etc.

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<sup>13</sup> “Right-to-carry laws and violent crime,” cited above, at p. 3, fn. 3.

<sup>14</sup> Michael Drejka will be tried this August for the murder of Markeis McGlockton. <https://www.cnn.com/2018/08/13/us/stand-your-ground-florida-shooting-charges/index.html>; <https://www.tampabay.com/news/publicsafety/trial-date-set-in-clearwater-parking-lot-shooting-august-2019-20181214/>

Our current approach—arming more citizens—is reactionary. We should be taking measures that are proactive and lead to a decrease in gun violence. We can do this without running afoul of the Second Amendment, but doing so takes courage, time and money.

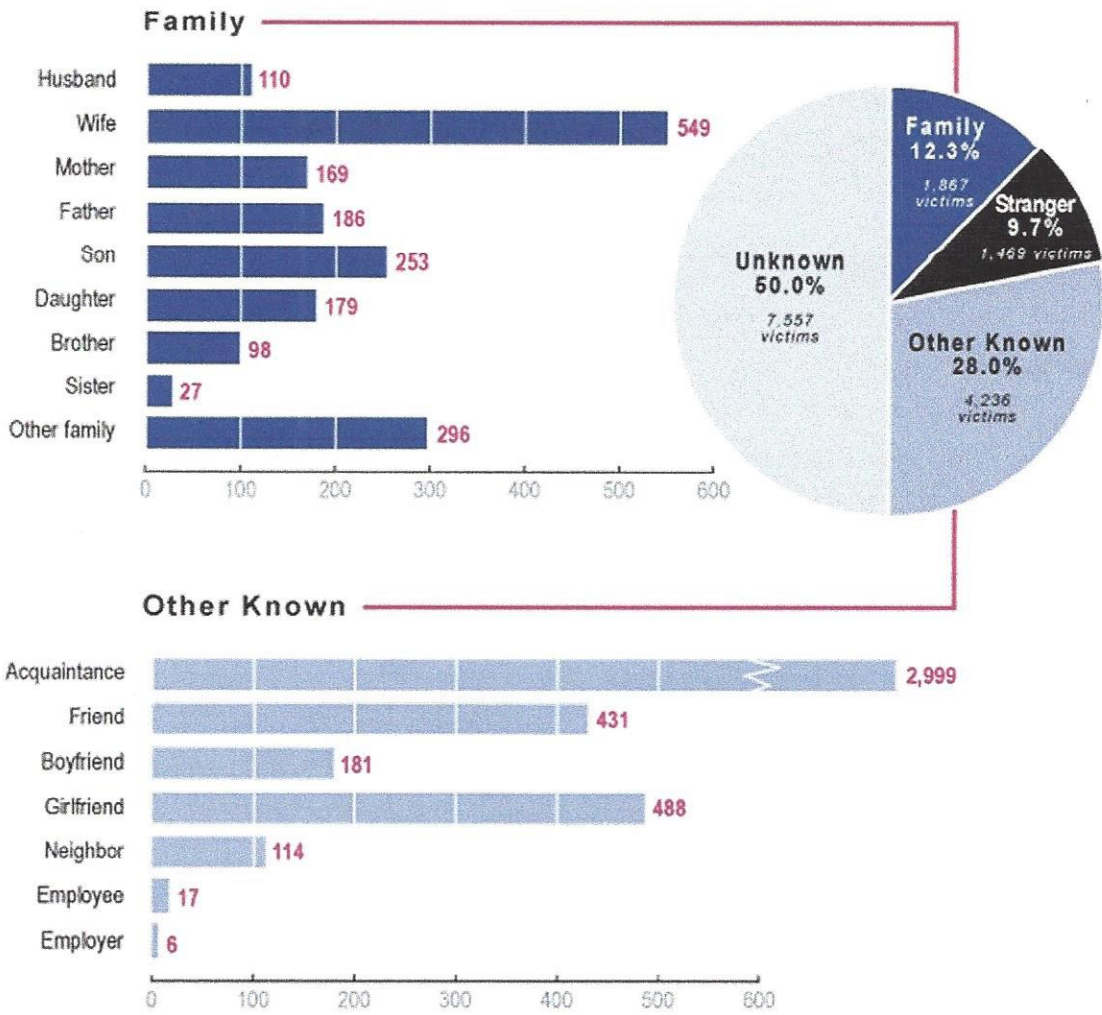
#### 5. Conclusion

HB 178 is appealing to gun owners because it conveys a sense of security, but that sense of security is false. Worse yet, HB 178 will likely cause more harm than good. I urge you to vote against it.

# - APPENDIX 1 -

## Expanded Homicide Data Figure

**Murder by Relationship<sup>1</sup>**  
 Percent Distribution,<sup>2</sup> Volume by Relationship, 2017



<sup>1</sup> Relationship is that of victim to offender.

<sup>2</sup> Due to rounding, the percentages may not add to 100.0.

NOTE: Figures are based on 15,129 murder victims for whom supplemental homicide data were received, and includes the 7,557 victims for which the relationship was unknown.

From the FBI Uniform Crime Report for 2017 (<https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/expanded-homicide>)

in civilian hands (Planty and Truman 2013). Adding 16 million permit holders who often dwell in very low-crime areas will likely not yield many opportunities for effective defensive use for the roughly 1 percent of Americans who experience a violent crime in a given year, especially since criminals tend to attack in ways that prevent defensive measures.

## **2. Mechanisms of Increasing Crime**

Since the statistical evidence suggests that the benign effects of RTC laws are outweighed by the harmful effects, we consider five ways in which RTC laws could increase crime: a) elevated crime by RTC permit holders or by others, which can be induced by the greater belligerence of permit holders that can attend gun carrying or even through counterproductive attempts by permit holders to intervene protectively; b) increased crime by those who acquire the guns of permit holders via loss or theft; c) a change in culture induced by the hyper-vigilance about one's rights and the need to avenge wrongs that the gun culture can nurture; d) elevated harm as criminals respond to the possibility of armed resistance by increasing their gun carrying and escalating their level of violence; and e) all of the above factors will either take up police time or increase the risks the police face, thereby impairing the crime-fighting ability of police in ways that can increase crime.

### **a. Crime Committed or Induced by Permit Holders**

RTC laws can lead to an increase in violent crime by increasing the likelihood a generally law-abiding citizen will commit a crime or increasing the criminal behavior of others. Moreover, RTC laws may facilitate the criminal conduct of those who generally have a criminal intent. We consider these two avenues below.

#### **1) The Pathway from the Law-abiding Citizen**

There are clearly cases in which concealed carry permit holders have increased the homicide toll by killing someone with whom they became angry over an insignificant issue, ranging from merging on a highway and talking on a phone in a theater to playing loud music at a gas station (Lozano 2017; Levenson 2017; Scherer 2016). When Philadelphia permit holder Louis Mockewich shot and killed a popular youth football coach (another permit holder carrying his gun) over a dispute concerning snow shoveling in January 2000, Mockewich's car had an NRA bumper sticker reading "Armed with Pride" (Gibbons and Moran 2000). An angry young man, with somewhat of a paranoid streak, who hasn't yet been convicted of a crime or adjudicated to be a mental defective, may be encouraged to carry a gun if he resides in an RTC state. That such individuals will be more likely to be aggressive once armed and hence more likely to stimulate violence by others should not be surprising.

Recent evidence suggests that as gun carrying is increasing with the proliferation of RTC laws, road rage incidents involving guns are rising (Biette-Timmons 2017; Plumlee 2012). In the nightmare case for RTC, two Michigan permit-holding drivers pulled over to battle over a tailgating dispute in September of 2013 and each shot and killed the other (Stuart 2013). Without Michigan's RTC law, this would likely have not been a double homicide. Indeed, the authors of two studies – one for Arizona and one for the nation as a whole – stated that “the evidence indicates that those with guns in the vehicle are more likely to engage in ‘road rage’” (Hemenway, Vrinotis and Miller 2006; Miller et al. 2002).<sup>7</sup> These studies may suggest either that gun carrying emboldens more aggressive behavior or reflects a selection effect for more aggressive individuals.<sup>8</sup> If this is correct, then it may not be a coincidence that there are so many cases in which a concealed carry holder acts belligerently and is shot by another permit holder.<sup>9</sup>

In general, the critique that the relatively low number of permit revocations proves that permit holders don't commit enough crime to substantially elevate violent criminality is misguided for a variety of reasons. First, only a small fraction of one percent of Americans commits a gun crime each year, so we do not expect even a random group of Americans to commit much crime, let alone a group theoretically purged of convicted felons. Nonetheless, permit revocations clearly understate the criminal misconduct of permit holders, since not all violent criminals are caught and we have just seen four cases where five permit holders were killed, so no permit revocation or criminal prosecution would have occurred regardless of any criminality by the deceased.<sup>10</sup> Second, and perhaps more importantly, RTC laws increase crime by individuals other than permit holders in a variety of ways. The messages of the gun culture, perhaps reinforced by the adoption of RTC

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<sup>7</sup>A perfect illustration was provided by 25-year-old Minnesota concealed carry permit holder Alexander Weiss, who got into an argument after a fender bender caused by a 17 year old driver. Since the police had been called, it is hard to imagine that this event could end tragically – unless someone had a gun. Unfortunately, Weiss, who had a bumper sticker on his car saying "Gun Control Means Hitting Your Target," killed the 17-year-old with one shot to the chest and has been charged with second-degree murder (KIMT 2018).

<sup>8</sup>A study of Texas concealed carry permit holders found that while their demographic composition is consistent with lower rates of overall crime, when they do commit a crime, it tends to be a severe one: “the concentration of convictions for weapons offenses, threatening someone with a firearm, and intentionally killing a person stem from the ready availability of a handgun for CHL holders” (Phillips et al. 2013).

<sup>9</sup>We have just cited three of them: the 2012 Pennsylvania bar shooting, the 2000 Philadelphia snow shoveling dispute, and the 2013 Michigan road-rage incident. In yet another recent case, two permit holders glowered at each other in a Chicago gas station, and when one drew his weapon, the second man pulled out his own gun and killed the 43-year old instigator, who died in front of his son, daughter, and pregnant daughter-in-law (Hernandez 2017). A video of the encounter can be found at <https://www.youtube.com/watch?v=I2j9vvDHIBU>. According to the police report obtained by the Chicago Tribune, a bullet from the gun exchange broke the picture window of a nearby garden apartment and another shattered the window of a car with four occupants that was driving past the gas station. No charges were brought against the surviving permit holder, who shot first but in response to the threat initiated by the other permit holder.

<sup>10</sup>In addition, NRA efforts to pass state laws that ban the release of information about whether those arrested for even the most atrocious crimes are RTC permit holders make it extremely difficult for researchers to monitor their criminal conduct.



laws, can promote fear and anger, which are emotions that can invite more hostile confrontations leading to violence. Presumably, George Zimmerman would not have hassled Trayvon Martin if Zimmerman had not had a gun, so the gun encouraged a hostile confrontation, regardless of who ultimately becomes violent.

Even well-intentioned interventions by permit holders intending to stop a crime have elevated the crime count when they ended either with the permit holder being killed by the criminal<sup>11</sup> or shooting an innocent party by mistake.<sup>12</sup> Indeed, an FBI study of 160 active shooter incidents found that in almost half (21 of 45) of the situations in which police engaged the shooter to end the threat, law enforcement suffered casualties, totaling nine killed and 28 wounded (Blair and Schweit 2014). One would assume the danger to an untrained permit holder trying to confront an active shooter would be greater than that of a trained professional, which may in part explain why effective intervention in such cases by permit holders to thwart crime is so rare. While the same FBI report found that in 21 of a total of 160 active shooter incidents between 2000 and 2013, “the situation ended after unarmed citizens safely and successfully restrained the shooter,” there was only one case – in a bar in Winnemucca, Nevada in 2008 – in which a private citizen other than an armed security guard stopped a shooter, and that individual was an active-duty Marine (Id.).

## **2) The Pathway from those Harboring Criminal Intent**

Over the ten year period from May 2007 through January 2017, the Violence Policy Center (2017) lists 31 instances in which concealed carry permit holders killed three or more individuals in a single incident. Many of these episodes are disturbingly similar in that there was substantial evidence of violent tendencies and/or serious mental illness, but no effort was made to even revoke the carry permit, let alone take effective action to prevent access to guns. For example, on January 6, 2017, concealed handgun permit holder Esteban Santiago, 26, killed five and wounded six others at the Fort Lauderdale-Hollywood Airport, before sitting on the floor and waiting to be arrested as soon

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<sup>11</sup>In 2016 in Arlington, Texas, a man in a domestic dispute shot at a woman and then tried to drive off (under Texas law it was lawful for him to be carrying his gun in his car, even though he did not have a concealed carry permit.) When he was confronted by a permit holder, the shooter slapped the permit holder’s gun out of his hand and then killed him with a shot to the head. Shortly thereafter, the shooter turned himself into the police (Mettler 2016).

In 2014, when armed criminals entered a Las Vegas Walmart and told everyone to get out because “This is a revolution,” one permit holder told his friend he would stay to confront the threat. He was gunned down shortly before the police arrived, adding to the death toll rather than reducing it (NBC News 2014).

<sup>12</sup>In 2012, “a customer with a concealed handgun license ... accidentally shot and killed a store clerk” during an attempted robbery in Houston (MacDonald 2012). Similarly, in 2015, also in Houston, a bystander who drew his weapon upon seeing a carjacking incident ended up shooting the victim in the head by accident (KHOU 2015).

An episode in June 2017 underscored that interventions even by well-trained individuals can complicate and exacerbate unfolding crime situations. An off-duty Saint Louis police officer with eleven years of service was inside his home when he heard the police exchanging gunfire with some car thieves. Taking his police-issued weapon, he went outside to help, but as he approached he was told by two officers to get on the ground and then shot in the arm by a third officer who “feared for his safety.” (Hauser 2017)