



Ohio Prosecuting Attorneys Association

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Senate Bill 237
Opponent Testimony
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Chairman Coley, Vice-Chair Huffman, Ranking Member Craig and members of the Senate Government Oversight and Reform Committee, thank you for the opportunity to provide opponent testimony on Senate Bill 237, a bill that we believe is unnecessary, that poses risks to public safety, and that will place substantial new burdens, financial and practical, on our justice system.

The repeal of the reasonable duty to retreat is both unnecessary and unwarranted. The current policy, that one should take advantage of a reasonable opportunity to retreat before using deadly force, is a good policy that prevents needless confrontations and potentially the unnecessary loss of life. It is important to understand that it is only a *reasonable* duty to retreat. It does not require the same thing of the elderly or the infirm as it does of the young or healthy. More importantly, in a truth based justice system we should want juries to have as much truthful information as possible. Yet this legislation specifically provides that the trier of fact shall not consider the possibility of retreat as a factor in determining the reasonableness of force used in self-defense. There is no way for a jury to make factual determinations about whether the use of force was reasonable or unreasonable without taking all factors, including the possibility of retreat into consideration. The exclusion of reliable evidence harms the truth seeking process and increases the risks of miscarriages of justice.

The bill goes even farther in supplanting the traditional role of juries as finders of fact by providing for immunity from prosecution altogether. The bill provides that the procedural act of filing a motion claiming self-defense establishes a viable claim of self-defense that must be disproved by clear and convincing evidence. It requires no evidence from the person filing the motion. It makes the procedural act of filing a piece of paper more important than the substantive facts surrounding the use of force. While this may be ideal from the perspective of a law-abiding gun owner who justifiably uses force in self-defense, it is unworkable and dangerous from the perspective of prosecutors who will need to overcome immunity in all manner of cases where violent offenders assert bogus claims of self-defense. At best, the prosecution will need to call witnesses and put on evidence at a pretrial hearing that will give the defendant a window into the state's trial strategy. At worst, a defendant whose actions were not justified will go free, having been granted immunity without a trial and without having had any burden of persuasion.

The bill expands the scope of self-defense to permit the use of force, including deadly force, to prevent or halt the commission of any “forcible felony.” By definition this includes any felony that involves the use or threatened use of physical force. There is no requirement of danger of death or great bodily harm. The definition also includes crimes like arson, strong arm robbery, and burglary, terrible crimes yes, but not necessarily ones that put a life at risk. This greatly expands the notion of self-defense that has historically applied only in situations where there is imminent danger of death or great bodily harm. Defense of property is not defense of oneself at all. A person could be immune from arrest and prosecution under Senate Bill 237 if they shoot and kill someone because they believed that the person was going to use force that did not involve a danger of death or great bodily harm. This will lead to miscarriages of justice.

Senate Bill 237 would require courts to conduct trials within trials in order to determine whether an individual should or should not be immune. This will be practically and financially burdensome to prosecutors, the judicial system, and ultimately to taxpayers. Many violent offenders will assert bogus claims of self-defense that may nevertheless prevent arrest, and will require this trial within a trial, at great cost to public safety and to the administration of justice in Ohio. The General Assembly made a significant change to the law of self-defense when it enacted House Bill 228 (132nd General Assembly) in December 2018 to place the burden on the prosecution to disprove self-defense beyond a reasonable doubt. Now, less than a year later, this bill will add a third layer, immunity, to this process. The state will need to disprove one of the elements of self-defense at a pretrial hearing, prove each of the elements of the offense beyond a reasonable doubt at trial, and in all likelihood disprove one of the elements of self-defense again at trial. We urge this committee and the Senate to allow time for implementation of House Bill 228, and time to identify problems with that law if any, before making even more sweeping changes to the law of self-defense in Ohio.

Thank you again for the opportunity to provide testimony in opposition to Senate Bill 237. I would be happy to answer any questions.