

Testimony against HB227
House Government Oversight Committee
Submitted by Douglas Rogers on June 16, 2021

Chair Wilkin, Vice Chair White, ranking member Sweeney and other members of the House Government Oversight Committee, thank you for this opportunity to submit testimony on HB227. My name is Doug Rogers. I graduated from Yale Law School in 1971, was a Captain in the Military Police, was a partner in the Vorys law firm in Ohio for over 20 years and am not opposed to guns or the Second Amendment.

I am opposed to HB227, however, because among other things it would allow untrained vigilantes to carry concealed firearms in public, reduce the number of required background checks, reduce the required training, endanger unwary citizens and shackle the police and courts.

Do not allow dangerous individuals to carry concealed firearms

There is a long history of states imposing restrictions - including outright prohibitions – on carrying concealed weapons to avoid surprise attacks.¹ Years ago the then Governor of Texas explained such a law by saying that the “mission of the concealed deadly weapon is murder. To check it is the duty of every self-respecting, law abiding man.”² In 1850, the Supreme Court of Louisiana upheld the constitutionality of a ban on concealed weapon and explained, “the right guaranteed by the Constitution of the United States...is calculated to incite men to a manly and noble defence of themselves, if necessary, and of their country, without any tendency to secret advantages and unmanly assassinations.”³

Yet under HB227 the following “persons who are not currently eligible for a concealed weapons license” would nevertheless be allowed to carry a concealed deadly weapon and approach a second person who did not know the first person had a gun (it could be someone (i) on a street, (ii) selling merchandise in a market or (iii) operating a cash register):

- “A person who is currently being charged with a felony [but not indicted], a misdemeanor drug offense, a misdemeanor offense of violence, negligent assault, or falsification of a concealed weapons license;
- A person who has been convicted of a misdemeanor drug offense or misdemeanor assault of a peace officer;
- A person who, within the past ten years, has been convicted of misdemeanor resisting arrest;
- A person who, within the past five years, has been convicted of two or more counts of misdemeanor assault or negligent assault;
- A person who, within the past three years, has been convicted of falsification of a concealed weapons license or of any misdemeanor offense of violence other than resisting arrest, assault of a peace officer, or domestic violence;

- A person whose concealed weapons license is suspended because the person was convicted of a specified misdemeanor offense involving an interaction with law enforcement;
- A person who has not completed the required competency certification;
- A person who is not a resident of Ohio or employed in Ohio.”⁴

Do you want to allow such individuals to carry loaded, concealed weapons onto public parks and into markets to surprise and endanger children and other loved ones?

Dangerous elimination of any training requirement

Currently any applicant for a CHL (concealed handgun license) must complete a NICS background check and must have received 8 hours of training on the safe use of firearms.⁵ In contrast, under proposed R.C. §2923.111, a person 21 years of age and older could legally carry a concealed firearm without having received any training on the use of firearms.⁶

The sponsors of HB227 said, “We believe that training is essential to properly using and carrying weapons appropriately, but gun owners certainly don’t need a state mandate to force them to acquire it.”⁷ That is an absurd statement which apparently assumes all people who use guns are good citizens. Connor Betts (the shooter in Dayton),⁸ Adam Lanza (the shooter at Sandy Hook),⁹ Dylann Roof (the shooter in Charleston) and Stephen Paddock (the shooter in Las Vegas)¹⁰ carried guns, but obviously they were not lawful people or good citizens at the time they shot/killed their victims.

Ohio law enforcement representatives have opposed eliminating training in order to carry a concealed firearm. Testifying against the predecessor to HB227 in the last General Assembly - HB178 - the Executive Director of the Ohio Patrolmen’s Benevolent Association, Tom Austin, said, “There must be a minimum training requirement for someone entrusted with the awesome right of carrying a weapon that can deprive another person of their life.”¹¹ Thomas Riggerbach, Sheriff of Van Wert County, similarly testified, “The requirement of training has been an important part of Concealed Carry in Ohio.”¹² Also, the Chief of Police of the City of Delaware, Bruce Pijanowski, testified on behalf of the Ohio Association of Chiefs of Police that in HB178 the “last remaining vestige of gun safety regulation has been stripped away.”¹³ The General Assembly should not disregard such experts and eliminate the training requirement for concealed carry.

Foolish elimination of background checks

In addition, although some sponsors of HB227 and/or committee members indicated this legislation had nothing to do with background checks, that is incorrect. The Director of Governmental Affairs of the Fraternal Order of Police of Ohio testified that HB178 “removes the need...for background checks.”¹⁴ The applicable wording in HB227 is the same as in HB178. For each person who is deemed to have obtained a concealed weapons license under proposed R.C. §2923.111(A), there could be one less background check performed.

Perhaps as an alternate argument, the sponsors contended that “the background check system can’t stop killers” and, “The Charleston, South Carolina church murderer [Dylann Roof] was not stopped by a background check,”¹⁵ omitting the fact that it was a loophole – not the background check system¹⁶ - that allowed Mr. Roof to purchase a gun.

In 2015 Mr. Roof applied for the purchase of a gun, but since the FBI did not complete the background check in 3 days, a loophole in the law allowed the gun sale to Mr. Roof proceed.¹⁷ Mr. Roof was later invited into the church and sat in a small group Bible study for around 45 minutes.¹⁸ Then he opened his fanny pack, took out his gun and killed 9 parishioners.¹⁹ He would not have been invited into the church Bible study if his gun had been apparent.

Background checks make it more difficult for dangerous individuals – such as individuals who have broken the law and/or have serious emotional problems – to possess firearms.²⁰ Why make it easier for those individuals to carry deadly weapons by reducing the need for background checks?

Both proponents have made the argument that “bad guys” always circumvent background check laws, so we should not have background checks, since they only affect “good guys.” Under this theory, we should not have any speed limits - not only on major highways, but on suburban streets next to schools - since the only people who violate speed limits are criminals. Society has laws both (1) to announce what accepted standards are and (2) to attempt to enforce those standards.²¹

Shackling law enforcement

In addition, proposed R.C. §2923.111(B) would provide, “The mere carrying or possession of a deadly weapon that is not a restricted deadly weapon ... does not constitute grounds for any law enforcement officer ... to conduct any search, seizure, or detention, no matter how temporary in duration, of an otherwise law-abiding citizen.”²² It is well-settled, however, that generally in determining whether there was probable cause for an arrest or search, a court should consider the “totality of the circumstances.”²³ The limitation in proposed R.C. §2923.111(B) would preclude the police and courts from considering the totality of circumstances.

For the General Assembly to try to single out one factor – possession of a firearm – that a police officer and court cannot even take into account in determining whether an arrest, a search or even an investigative stop under *Terry v. Ohio*²⁴ is reasonable would unduly shackle our police, courts and law enforcement in general.²⁵

As more and more people choose to carry a concealed gun without a license, moreover, how are the police be able to determine if an individual carrying a gun can legally carry the gun concealed? Indeed, professors Ayres and Donohue concluded that “allowing citizens to carry concealed weapons imposes burdens on police in that they must ascertain whether the gun is being carried legally.”²⁶

Passage of HB227 would make law enforcement more difficult.

Ohio's existing regulations on concealed weapons are constitutional

The Ohio Supreme Court held that “there is no constitutional right to bear concealed weapons.”²⁷ The Court also concluded the existing concealed weapons statute that HB227 would amend - R.C. §2923.12 - “does not unconstitutionally infringe the right to bear arms.” The Court continued, “The General Assembly has determined that prohibiting the carrying of concealed weapons helps maintain an orderly and safe society. We conclude that that goal and the means used to attain it are reasonable.”²⁸

The U.S. Supreme Court has similarly held that states have the right - without violating the Second Amendment to the U.S. Constitution – to put reasonable limitations on the sale and use of firearms. In *Heller v. District of Columbia*, conservative Justice Scalia – speaking for the Supreme Court – said that “the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.”²⁹ He emphasized that “the right secured by the Second Amendment is not unlimited,” and there is no right “to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”³⁰ He concluded that “nothing in our opinion should be taken to cast doubt on ... laws imposing conditions and qualifications on the commercial sale of arms.”³¹

Obligation of government to protect lives of its citizens

One of the sponsors said, “for those who are worried about guns, then don’t get a gun.”³²

That callous statement disregards the basic principle that government is meant to protect the lives of all, not just gun owners. Thomas Jefferson wrote that the “care of human life and happiness and not their destruction is the first and only legitimate object of good government.”³³ President Reagan said, “Government's first duty is to protect the people ...”³⁴ Justice Scalia wrote, “Government is not meant for saving souls, but for protecting life....”³⁵ Dismissively saying “do not carry a gun” does not protect my right to life under the Fourteenth Amendment to the United States or Article I, section 16 of the Ohio Constitution from individuals sanctioned by the State to carry concealed weapons.

I do not worry about firearms in the store of a federally licensed firearms dealer. I would worry, however, about individuals allowed under HB227 to carry a concealed weapon without a background check and without any training in the safe use of guns. I would worry about concealed firearms carried by someone who has been convicted of a misdemeanor drug offense or misdemeanor assault of a police officer. HB227 would allow such individuals to carry a concealed weapon without a background check.

I want to be able to avoid approaching individuals I see openly carrying a gun. However, I cannot take that precaution with individuals carrying concealed weapons.

Concealed weapons and crime

Proponents suggested that states which have passed laws permitting the carrying of concealed weapons without permits seen reduction in crime. A number of representatives indicated evidence of such result would be interesting, and I am not aware proponents have produced any such evidence. In any case, the scientific studies do not support the assertion of proponents of HB227 that “shall issue” laws reduce crime.

Proponents may have thinking of an article by John R. Lott, Jr. and David B. Mustard in 1997³⁶ and/or a subsequent book by Mr. Lott in 2010³⁷ that suggested “shall issue” concealed carry laws resulted in less violent crime.³⁸ Lott and Mustard concluded, “Allowing citizens without criminal records or histories of significant mental illness to carry concealed handguns deters violent crimes....”³⁹ They added there is “evidence that concealed handgun laws are associated with increases in property crimes involving stealth....”⁴⁰ In *More Guns*, Lott defined “shall issue laws” as “laws requiring that citizens who pass a background check and a safety class must be granted a permit to carry a concealed firearm for protection, if they apply.”⁴¹

Even if one accepted the methodology of Lott and Mustard, their conclusions would be irrelevant to HB227, because HB227 would eliminate any background check requirement and any training requirement. The “shall issue” states required either or both training and background checks, so comparing the results in those states to the results in a state that eliminated both requirements would be like comparing apples to oranges.

Professors Ayres and Donahue, moreover, reviewed the statistics of Lott and Mustard, considered additional statistics and concluded, “No longer can any plausible case be made on statistical grounds that shall-issue laws are likely to reduce crime for all or even most states.”⁴² They noted, “during the 1990s crime in non-shall-issue states fell far more than in shall- issue states.”⁴³ They also said, “if one were forced to make causal attributions from this graphical data, one might conclude that shall-issue laws tend to increase robbery rates.”⁴⁴

Last year, the Rand Corporation (“Rand”) completed a review of over 20 previous studies, including those of Lott and Mustard and came up with similar conclusions to Ayres and Donahue. Rand Corporation concluded, “Evidence for the effect of shall-issue laws on total homicides, firearm homicides, robberies, assaults, and rapes is inconclusive.”⁴⁵ Rand then added: “because analyses on all violent crimes may have greater statistical power to detect any such effects, and because our scoring criteria indicate it, we conclude that there is *limited evidence that shall-issue laws may increase violent crime.*”⁴⁶

Conclusion

It would be a slap in the face of law enforcement officers and past and future victims of gun violence to approve HB227. Please reject HB227. Thank you very much.

Douglas Rogers

¹ Adam Winkler, *Gunfight, The Battle over the Right to Bear Arms in America*, 2011, W.W. Norton & Company, Ltd., pp. 166-169

² *Id.* at p. 167, citing Clayton Cramer, *Concealed Weapon Laws of the Early Republic* (1999), p. 7.

³ Joseph Blocher and Darrell A.H. Miller, *The Positive Second Amendment*, Cambridge University Press 2020, p31.

⁴ Ohio Legislative Services Commission at <https://www.legislature.ohio.gov/download?key=16289&format=pdf>, pp. 2-3, comparing the federal prohibition on possessing a firearm (18 U.S.C. §922(g)), the state prohibition on possessing a firearm (R.C. §2923.13(A)), and the current limitations in Ohio on who can obtain a concealed weapons license (R.C. §2923.125(D)(1)).

⁵ E.g., the individual must receive training on the “ability to demonstrate and explain how to handle ammunition in a safe manner” ... and “demonstrate the knowledge, skills, and attitude necessary to shoot a handgun in a safe manner.” See pp. 4 & 7 of Attorney General Yost’s “Ohio’s Concealed Carry Laws and License Applications” (“Ohio’s Concealed Carry Laws”) @ [https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Concealed-Carry-Publications/Concealed-Carry-Laws-Manual-\(PDF\).aspx](https://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Concealed-Carry-Publications/Concealed-Carry-Laws-Manual-(PDF).aspx)

⁶ Proposed R.C. §2923.111 provides that generally a 21 year old person “shall not be required to obtain a concealed weapons license under section 2923.125 ... in order to carry ... a concealed deadly weapon that is not a restricted deadly weapon,” which would eliminate the current requirements for obtaining a concealed weapons license under R.C. §§2923.125 and 341.41.

⁷ <https://ohiohouse.gov/committees/government-oversight/bills/hb227>

⁸ <https://www.latimes.com/world-nation/story/2021-03-24/la-na-us-mass-shootings-timeline>

⁹ <https://abcnews.go.com/US/disturbing-things-learned-today-sandy-hook-shooter-adam/story?id=27087140>

¹⁰ <https://www.nbcnews.com/storyline/las-vegas-shooting/vegas-gunman-stephen-paddock-inspired-criminal-father-s-reputation-n964066>

¹¹ <https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178>

¹² *Id.*

¹³ *Id.*

¹⁴ See (a) testimony of Michael Weinman, Director of Governmental Affairs of the Fraternal Order of Police of Ohio, Inc. against HB178 in 2019 @

¹⁵ <https://ohiohouse.gov/legislation/134/hb227/committee>, p. 2.

¹⁶ <https://www.nytimes.com/2015/07/11/us/background-check-flaw-let-dylann-roof-buy-gun-fbi-says.html>,

¹⁷ <https://www.nytimes.com/2015/07/11/us/background-check-flaw-let-dylann-roof-buy-gun-fbi-says.html>, (“Mr. Roof exploited the three-day waiting time that has allowed thousands of prohibited buyers to legally purchase firearms over the past decade...”). “The FBI background check worker, described by Comey as an experienced examiner who has been ‘struggling’ over

the church shooting, never heard back from prosecutors in Lexington. But if she had called police in Columbia and seen their arrest record on Roof, she would have known he had admitted to possessing a controlled substance. And that, Comey said, would have triggered an FBI denial of his weapons purchase on the grounds that he was ‘an unlawful drug user or addict.’” <https://www.npr.org/sections/thetwo-way/2015/07/10/421789047/fbi-says-background-check-error-let-charleston-shooting-suspect-buy-gun>

¹⁸ <https://www.newyorker.com/magazine/2017/02/06/inside-the-trial-of-dylann-roof>, p. 6.

¹⁹ <https://www.blackpast.org/african-american-history/charleston-church-massacre-2015/>

²⁰ <https://www.everytown.org/report/background-checks-and-ohio-2/> (“Since 1998, 86,000 sales to prohibited purchasers in Ohio have been denied. Each year, the background check system blocks nearly 1,700 illegal sales to convicted felons and more than 800 illegal sales to domestic abusers.”). See also,

<https://giffords.org/lawcenter/gun-laws/policy-areas/background-checks/universal-background-checks/> ;

<https://www.bradyunited.org/our-work/policy/brady-background-checks> ;

²¹ <https://courses.lumenlearning.com/wmopen-introductiontobusiness/chapter/meaning-and-purpose-of-law/>

²² A “restricted deadly weapon” includes a firearm that “any law of this state or the United States prohibits the subject person from possessing, having, or carrying.” See proposed R.C. §2923.11 (S) and (T). Because neither federal nor Ohio law prohibits a private citizen in Ohio from purchasing a semi-automatic gun through Armslist.com, such firearm purchased through Armslist.com would not be a restricted deadly weapon.

²³ *Terry*, *supra* at 27 and *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)

²⁴ 392 U.S. 1 (1968).

²⁵ See also *State of Ohio v. Dibble*, 2020-Ohio-546, ¶9 (2020)(“Under the good-faith exception, evidence obtained during a search conducted pursuant to a warrant that is unsupported by probable cause will not be excluded if the officers who obtained the evidence acted reasonably in good faith in relying on the warrant”).

²⁶ 2003), Faculty Scholarship Series Paper 1241 @

http://digitalcommons.law.yale.edu/fss_papers/1241, p. 1205, from 55 *Stanford Law Review* 1296 (2002-2003).

²⁷ *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779 (¶1 of syllabus)

²⁸ ¶15.

²⁹ *Id.*

³⁰ *Id.* at 626.

³¹ *Id.* at 626-627

³² <https://ohiohouse.gov/committees/government-oversight/video/ohio-house-government-oversight-committee-4-15-2021-179715> @ c. 16:45.

³³ <https://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020118-10.html>.

³⁴ <https://www.reaganfoundation.org/ronald-reagan/reagan-quotes-speeches/remarks-at-the-national-conference-of-the-building-and-construction-trades-afl-cio/>

³⁵ *On Faith Lessons from an American Believer Antonin Scalia* (2119), Crown Forum, e-book location 1347.

³⁶ John R. Lott, Jr. and David B. Mustard, *Crime, Deterrence, and Right-To-Carry Concealed Handguns*, 26 *Journal of Legal Studies* 1 (1997)(“Crime, Deterrence”)

³⁷ John R. Lott, Jr., *More Guns, Less Crime*, Third Edition (University of Chicago Press, 2010)(“More Guns”)

³⁸ *Crime, Deterrence*, *supra* at pp. 1 & 64, and *More Guns*, *supra* at 46 and 97.

³⁹ *Crime, Deterrence*, *supra* at 64.

⁴⁰ *Id.*

⁴¹ *More Guns*, *supra* p. 48, n. 16, relying on “shall issue definition” in Clayton E. Cramer & David B. Kopel, “‘Shall Issue’: The New Wave of Concealed Handgun Permit Laws” @ <http://www.clayotncramer.com/scholarly/shall-issue.html> .

⁴² Ian Ayres and John J. Donahue, III, "Shooting Down the More Guns Less Crime Hypothesis" (2003), Faculty Scholarship Series Paper 1241 @ http://digitalcommons.law.yale.edu/fss_papers/1241, p. 1296, from 55 Stanford Law Review 1296 (2002-2003)

⁴³ *Id.* at 1296.

⁴⁴ *Id.* at 1214.

⁴⁵ Rand Corporation, *Effects of Concealed-carry Laws on Violent Crime*, April 22, 2020, p.1, @ <https://www.rand.org/research/gun-policy/analysis/concealed-carry/violent-crime.html>.

⁴⁶ *Id.* at p. 20 (Italics in original, but Italics highlighted in this quote).