

WITNESS INFORMATION FORM

Please complete the Witness Information Form before testifying:

Date: March 7, 2021

Name: Andrea R. Yagoda

Are you representing: Yourself Organization

Organization (If Applicable): _____

Position/Title: _____

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Do you wish to be added to the committee notice email distribution list? Yes No

Business before the committee

Legislation (Bill/Resolution Number): HB 89

Specific Issue: CHL holders requirement to give notice to law enforcement if armed

Are you testifying as a: Proponent Opponent Interested Party

Will you have a written statement, visual aids, or other material to distribute? Yes No

(If yes, please send an electronic version of the documents, if possible, to the Chair's office prior to committee. You may also submit hard copies to the Chair's staff prior to committee.)

How much time will your testimony require? 10 minutes- but probably will not appear due to covid & no remote testimony.

Please provide a brief statement on your position: Opposed. It places both CHL holders and law enforcement at greater risk without any "revenue" that the statute as written has been abused.

Please be advised that this form and any materials (written or otherwise) submitted or presented to this committee are records that may be requested by the public and may be published online.

Rep 31 @ OhioHouse.gov
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House State & Local Govt.

Testimony Opposing House Bill 89
House State and Local Government Committee
Submitted by:
Andrea R. Yagoda

Chair Wiggam, Vice Chair, John, Ranking Member Kelly, and members of the House State and Local Government Committee, thank you for affording me the opportunity to testify in opposition to this bill. I regret that I cannot attend personally but I gave testimony twice in December and learned that the one hearing had been canceled while I was on the way driving down, a 45 minute drive for me and only learned of the cancellation once I arrived. The other two times I waited approximately three (3) hours to testify as the legislative body was in session and individuals were unmasked. I am awaiting my second vaccine and do not want to risk, at this juncture, catching covid and do not feel safe at the Statehouse.

As a concealed carry permit holder I cannot think of any reason why this body would delete the requirement that an individual approached by a law enforcement officer not be required to advise said officer of the presence of a firearm. I have been a permit holder since the inception of the law. Every time a police officer stops a vehicle and/or individual s/he is at risk. While officers may never know what awaits them when they approach a vehicle or an individual at least they are alerted, at present, that the occupant/driver of the vehicle or individual has a carry conceal permit and that the occupant/driver may have a weapon, one small measure to insure the safety of our law enforcement officers.

Once again, when gun legislation is before this body, proponents of gun legislation offer absolutely no data on how many Ohioans have been unreasonably

charged under ORC 2923.12 (B)(1) or 2923.16 (E)(1). Why is it when opponents of gun bills make what is taken as “overly broad” assertions they are asked to point to data and the gun lobby and their advocates are not? Although I cannot say I have discovered every case wherein someone has been charged under ORC 2923.12 (B)(1), and/or 2923.16 (E)(1) I have gone back to 2008 and have found short of a handful of **reported** cases wherein an individual was charged under either of these statutes.

The definition of “promptly notify” is not very difficult nor ambiguous.

In State v. Brown, 2006-Ohio-4174, 859 N.E.2d 1017, (Trumbull County, 11th Dist.), the defendant challenged former R.C. 2923.16(E)(3) now (E)(1) as unconstitutionally vague. Citing Black's Law Dictionary, the Eleventh District determined that to do something "promptly" is to do it "without delay and with reasonable speed." Therefore, a person of common intelligence would readily understand "promptly inform" as requiring the CHL holder to inform the officer about the firearm "as soon as possible" and found “promptly” was not ambiguous nor vague. In Brown, *supra*¹ the defendant was stopped for speeding. After returning to his patrol car to check on defendant’s record, the officer was advised Brown had a concealed carry license. When he returned to Brown’s vehicle the officer asked Brown if he was carrying. A loaded firearm was found in an unlocked glove compartment and Brown was charged. The appellate court sustained the conviction holding that Brown had ample opportunity to advise the officer that he had a loaded weapon in the vehicle.

¹ At the time of Brown, it was illegal to carry a loaded firearm in an unlocked glovebox

In State v. Griffin, (1st Dist Hamilton Conty, 2020) 2020-Ohio-3707 in holding that usage of the word “promptly” contained in ORC 28923.16 (E(1)) was not vague the court stated:

The critical question in all cases as to void for vagueness is whether the law affords a reasonable individual of ordinary intelligence fair notice and sufficient definition and guidance to enable him to conform his conduct to the law. *City of Norwood v. Horney* (2006) , 2006-Ohio-3799. The void for vagueness doctrine does not require statutes to be drafted with scientific precision. *State v. Anderson* , 57 Ohio St.3d 168, 174, 566 N.E.2d 1224 (1991). When examining a statute for vagueness, it should be measured against three values: 1.) to provide fair warning to the ordinary citizen so their behavior may comport with the statute, 2.) to preclude arbitrary, capricious, and generally discriminatory enforcement by officials, and 3.) to ensure fundamental constitutionally protected freedoms are not unreasonably impinged or inhibited. *State v. Tanner* , 15 Ohio St.3d 1, 3, 472 N.E.2d 689 (1984).

In Griffin, *supra* the defendant was stopped for excessive tinting of his car windows. When defendant pulled his wallet to show identification, the officer thought he may have seen a concealed carry permit. He then asked if Griffin had such a license. Griffin answered in the affirmative. The officer then asked Griffin if he had a weapon in the car. Only then did Griffin disclose the weapon, however, another weapon was located in the vehicle which had not been disclosed until after the arrest. The appellate court upheld the conviction for failing to disclose both weapons promptly.

In State v Lloyd, (2018 Warren County, 12th Dist) 2018-Ohio-4320, 121 NE 3d 840 the defendant was stopped for running a red light. He was then asked to exit the vehicle. The officer asked if he could do a pat down and then asked Lloyd if he had a weapon. At this point Lloyd did advise the officer that he had a weapon. The appellate court found that at any point from when defendant was stopped, gave his identification,

or exited the vehicle he could have advised the officer of the weapon and his failure to do so was enough to sustain his conviction.

The duty to "promptly inform" is for officer safety, so that during an interaction between an officer and a CHL holder, the officer is aware that there is a loaded firearm in the vehicle. Brown, supra.

Representative Wiggam states in his proponent testimony: " Strike the vague language to clarify officers are no longer forced to determine whether the individual "promptly" informs them of their legal concealed handgun. This acknowledges the fact that CHL holders have already informed law enforcement through the thorough CHL application process." This presumes that law enforcement can do a record check and learn of the CHL however, if stopped on the street, that is not the case. Further, unless all active members of the military on active duty are required to register, an officer could not know s/he is an active member of the military when in a vehicle nor when approached. A law enforcement officer would have no idea if they are carrying a firearm as they would not necessarily have a CHL and now are exempt from making this disclosure prior to an inquiry. Where is the notice via the CHL application process?

Some fear individuals will be charged for failing to give notice because under certain circumstances, they forget. I have been involved with officers three times since having my license. The first for speeding. I automatically put my hands on the wheel and advised the officer that I was carrying. The second when I was involved in an automobile accident when struck in the rear while stopped at a red light. Although dazed and hurt, I still advised the officer of the presence of my firearm although it was in the rear of my

vehicle and not anywhere near me. The third time was again when I was struck by a vehicle. I put my hands on the wheel and advised the officer that a firearm was not in the vehicle. This reaction came to natural to me. I can honestly say that no matter what happens to this bill, I will automatically put my hands on the wheel and notify any officer of the presence of a firearm or absence thereof in my vehicle for my safety and that of the officer.

Honestly I do not understand the grave concern about this. Where are the statistics to establish this is problematic? Did you ever leave a grocery store and forget to pay for an item on the bottom of your cart? Every day citizens are involved in situations where they do something or fail to do something. Some officers exercise their discretion and do not charge, some do and it works its way through the system and most times the cases work out equitably. We cannot indulge ourselves in every “what if” scenario. Safety first.

Furthermore, this bill provides absolutely no incentive for individuals to advise law enforcement that they are armed. Law enforcement is a dangerous profession. Why make it even harder by placing additional burdens on them in doing their jobs?

I would ask this committee for the safety of permit holders and those in law enforcement charged with protecting us, to vote no on this bill.

Thank You,

Andrea R. Yagoda