

State Veterans and Public Safety Committee
December 12, 2021
Testimony against SB215 by Douglas Rogers

Chair Hoagland, Vice Chair Johnson and Ranking Member Thomas. Thank you for the opportunity to testify against SB215, which is anti-police and anti-public safety.

Conservatives rightly recognize the importance of human life. In 2002 President George Bush proclaimed that the “care of human life ... is the first and only legitimate object of good government.” Justice Scalia wrote, “Government is not meant for saving souls, but for protecting life ...” However, SB215 turns the government’s back on protecting life by permitting untrained adults with criminal convictions to sneak up and endanger others. Statistics show that adopting permitless carry for Ohio will increase gun violence and deaths (see last 3 pages).

1. Proposed R.C. §2923.111 would endanger Ohioans, because it would permit Ohioans to carry concealed weapons without any training in the use of firearms or any background check.

Some proponents argue that law-abiding people will get the needed training to use guns and will have nothing in their records prohibiting them from owning guns, so the requirement for training and background check is unnecessary. That argument is naïve and disregards the importance of setting standards in society for the rule of law.

“The rule of law is a set of principles, or ideals, for ensuring an orderly and just society,” and “clear and fair processes for enforcing laws...”

https://www.americanbar.org/groups/public_education/resources/rule-of-law/ .

Government sets standards of conduct to encourage everyone to comply with those standards and then punishes those who do not follow those standards. There can be no rule of law without standards.

We know people will disobey speed limits, but the existence of speed limits will cause some to slow down the speed they are driving and save lives (even though I have a right under the 14th Amendment to use my car). Those who do not obey the speed limits can then be caught and punished. Think about what our highways would be like without any speed limits.

No one believes that the standard for carrying a concealed gun should be less than 8 hours of training, and Attorney General Yost this year praised Ohio’s current concealed handgun law. Yet the extreme gun lobby is asking the General Assembly remove the existing standard on concealed handguns that law enforcement supports - 8 hours of training and a background check.

[“By any measure, Ohio’s concealed carry licensing system has succeeded in combining safeguards that protect the public and provisions that uphold Americans’ right to bear arms and protect themselves.”] ([https://www.ohioattorneygeneral.gov/Files/Reports/Concealed-Carry-Annual-Reports-\(PDF\)/2020-CCW-Annual-Report](https://www.ohioattorneygeneral.gov/Files/Reports/Concealed-Carry-Annual-Reports-(PDF)/2020-CCW-Annual-Report)).

[Hamilton County Sheriff Charmaine McGuffey testified this year against HB227 and said, “Allowing virtually anyone in Ohio to conceal weapons on their person without training or background checks will make Ohio less safe. More than that, it will make the job of law enforcement even more stressful. It is already very difficult to find individuals willing to make the sacrifice to serve their communities in this profession. I urge you to reflect on how you can make the working conditions of those of us in law enforcement more, not less, safe.” @ <https://ohiohouse.gov/legislation/134/hb227/committee> .

The Toledo Police Patrolman’s Association testified, “We don’t let our 16-year old children behind a wheel without a minimum amount of training involved, so why would we allow someone to carry a gun without the same due diligence?” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178).

The Ohio Patrolmen’s Benevolent Association testified, “There must be a minimum training requirement for someone ... with the awesome right of carrying a weapon that can deprive another person of their life.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178).

The Sheriff of Van Wert County testified, “We believe training and background checks have been an important part of the Concealed Handgun License process, and ask that they remain in place.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178).

The Chief of Orange Village Police Department testified, “Allowing an untrained person with no background checks to carry a deadly weapon is asking for tragedy to occur whether by accident or by bad decisions.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178)]

2. Proposed R.C. §2923.111(B) would even allow persons convicted of misdemeanor assault on a police officer to legally carry a concealed handgun, even though now such individuals cannot legally carry a concealed handgun under R.C. §2923.125.

The prohibitions on who can carry a concealed handgun under R.C. §2923.125 are broader than the prohibitions on possessing a firearm under both Federal law (18 U.S.C. §922) and Ohio law (R.C. §2923.13). Proposed 2923.111(B), however, says if you are over 21 in Ohio you can carry a concealed weapon unless federal or state law prohibits you from possessing such weapon, “Notwithstanding any other Revised Code section to the contrary” (see lines 275-276 of SB215).

The Ohio Legislative Service Commission correctly concluded this year, “ the bill [the companion HB227 with the same language] allows the following categories of persons who are not eligible for a concealed weapons license to carry a concealed deadly weapon: ... A person

who has been convicted of ...misdemeanor assault of a peace officer.” <https://www.legislature.ohio.gov/download?key=16289&format=pdf> (interpreting the companion HB227).

There is no valid reason for the Senate to give a person already convicted of violence against a police officer the right in the future to approach and endanger police officers and other citizens with a concealed weapon? Keep in mind that there is a long history of states imposing restrictions - including outright prohibitions – on carrying concealed weapons to avoid surprise attacks, and the Ohio Supreme Court has ruled that “there is no constitutional right to bear concealed weapons.” *Klein v. Leis*, 99 Ohio St.3d 537(¶1 of syllabus).

[The Ohio Association of Chiefs of Police criticized such permitless carry legislation last term allowing convicted criminals to carry concealed handguns, saying “the categories of people who would be able to carry concealed ... includes[s] people with convictions for crimes of violence ... directed toward law enforcement” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178); and

The Fraternal Order of Police of Ohio similarly said such provision would “open the door to ... convicted criminals to carry a concealed weapon...” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178)].

[Adam Winkler, *Gunfight, The Battle over the Right to Bear Arms in America*, 2011, W.W. Norton & Company, Ltd., pp. 166-169. 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.” *Id.* at p. 167, citing Clayton Cramer, *Concealed Weapon Laws of the Early Republic* (1999), p. 7.

Indeed, the Buckeye Firearms Association (BFA) has explained that an advantage of carrying a concealed handgun (in contrast to open carry) is to surprise an opponent. BFA said, “you hope to have the element of surprise....You can ... avoid providing others with the same visual clues which may alert them that you are carrying concealed.” <https://www.buckeyefirearms.org/how-spot-concealed-handgun> . That surprise cannot happen if you are carrying openly.]

3. Proposed 2923.111(C) would shackle police and endanger the public by preventing the police from stopping and questioning suspicious individuals carrying a gun “no matter how temporary in duration” the detention was – (lines 295-302 of proposed SB215). Yet in *Terry v. Ohio*, 392 U.S. 1, 24 (1968), the U.S. Supreme Court upheld the actions of a Cleveland police officer patting down the outside of an individual’s clothing and removing the concealed weapon found. Proposed R.C. §2923.111(C), however, would improperly overrule the 50 year precedent of *Terry* and endanger the police as a result.

[The Ohio Prosecuting Attorneys Association said such provision “places the safety of law enforcement at greater risk” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178) (emphasis added);

The Toledo Police Patrolman’s Association said: “With the passage of this bill a person could feasibl[y] have a car load of ... AK-47’s and AR-15’s, and the officer initiating a traffic stop would not be able to question ... what they were looking at.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178)(emphasis added);

The Columbus City Attorney’s Office said the provision is “highly unworkable.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178)(emphasis added); and

The Fraternal Order of Police of Ohio said, “The bill practically eliminates the ability of an office to conduct a Terry Stop to check for weapons.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178)]

4. By eliminating the requirement for a concealed carry license, SB215 would effectively make it impossible for police to enforce the law against illegally carrying concealed weapons.

The Ohio Prosecuting Attorneys Association explained, “Without a concealed carry permit requirement, a law enforcement officer ... will have no way of determining whether that person is carrying a concealed weapon legally or illegally.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178)

5. SB215 would further endanger police by eliminating the current responsibility of a civilian carrying a concealed handgun who is stopped by the police to promptly notify police (lines 370-375, 1026-1030, and 1042-1057 of SB215) that the civilian is carrying a concealed firearm. The proposed amendment to SB215 for consideration on December 14 by the Committee would switch the duty to the police officer stopping a civilian to ask if that civilian is carrying a concealed weapon. Why make the already terribly difficult jobs of police officers even harder by imposing additional duties on them?

[The Fraternal Order of Police of Ohio said that eliminating the duty to notify and prohibiting police from taking into account whether a citizen was carrying a firearm “is a recipe putting officers unnecessarily in harm’s way.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178);

The Ohio Association of Chiefs of Police said, “To remove the duty to notify is setting us all up for confrontation and potentially tragic failure.”

(<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> on HB178);

The Ohio Prosecuting Attorneys Association said: removal of the duty to notify police “will make encounters between law enforcement and members of the public more tense and more dangerous for both the officer and stopped person” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178); and

The Buckeye State Sheriffs Association said, “To officers, regulating that people have a duty to report is very important.” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-HB-178> , on HB178)].

Conclusion

Proponents have suggested there has not been “blood in the streets,” so Ohio gun laws could be loosened further by passing SB215. Apparently proponents have not been looking at the streets or the news, since the FBI just reported that “Killings soared nearly 30 percent in 2020, with more slayings committed with guns.” https://www.washingtonpost.com/national-security/fbi-murders-2020-data-homicides/2021/09/27/062a1e4e-1f9c-11ec-9309-b743b79abc59_story.html

SB215 disrespects Ohio police officers and is dangerous to police officers and other citizens. The Ohio Senate should listen to law enforcement, act to save the lives of Ohioans and vote NO on SB215. The public should consider any legislator who votes in favor of SB215 to be anti-police and anti-public safety.

Thank you very much.

Douglas Rogers
Bexley, Ohio

P.S. A proposed amendment I have seen would eliminate the immunity provisions in SB215. If that amendment is not approved on December 14, my additional comments about unamended SB215 are below:

SB215 is hostile to victims of gun violence, since SB215 would improperly give immunity to shooters who falsely claimed self-defense (proposed R.C. §2307.601 in civil cases and R.C. §2901.05 in criminal cases), and favor defendants over the victims.

[Article I, section 10a(A) of the Ohio Constitution provides, “To secure for victims justice and due process throughout the criminal ... justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused.” (Emphasis added). These rights include the right “(3) to be heard in any public proceeding involving release ... disposition...or in any public proceeding in which a right of the victim is implicated

...”. Just this month, the Ohio Supreme Court enforced Marsy’s Law in *State ex rel Suwalski v. Peeler*, slip opinion 2021-Ohio-4061 (Nov. 18, 2021). The Court upheld the rights of a victim – even though she was not a party to the initial case - to enforce the federal statute prohibiting the defendant from possessing a gun.]

Proposed 2901.05 would allow a defendant to avoid a jury trial and have the court determine the defendant’s guilt or innocence by filing a pretrial motion claiming immunity, without any requirement that the defendant provide any evidence and then putting the burden on the prosecution – at the earliest stage of the criminal case - to prove beyond a reasonable doubt the defendant did not act in self-defense, when it is unreasonable to put that burden on the prosecution that early in a case (the killers of Ahmaud Arbery could have been set free if the outcome had been decided early in the case).

Proposed 2901.05, moreover, provides at lines 189-193 that the prosecution will have to prove beyond a reasonable doubt “the person did not use force in self-defense...” Such language would suggest that following two common law elements of self-defense are no longer at issue: (1) the defendant was not at fault in creating the violent situation, (2) the defendant had a bona fide belief that she was in imminent danger of death or great bodily harm and that her only means of escape was the use of force. See *State v. Thomas*, 77 Ohio St.3d 323, 326 (1997).

Eliminating these two common law elements of self -defense would allow vigilantes to shoot their victims without a jury having to take into account whether the shooter was initially at fault or was not in imminent danger of death or great bodily harm. Think about Travis McMichael.

Proposed R.C. §2901.05(B) would give the defendant an unfair advantage over the victim - the very purpose Marsy’s Law was enacted by the public to forestall. Last month the Ohio Judicial Conference, the Voice of Ohio Judges, criticized the immunity provisions in SB215. It argued that such immunity “certainly contradicts the spirit, if not the letter, of Marsy’s law, which is meant to protect the rights of victims.” (see attached Exhibit). The Ohio Prosecuting Attorneys Association said the provision “is unworkable and dangerous from the perspective of prosecutors At worst, a defendant whose actions were not justified will go free” (<https://www.legislature.ohio.gov/legislation/legislation-committee-documents?id=GA133-SB-237> , on SB237 last term).

INSERT -- INCREASE IN GUN VIOLENCE DUE TO PERMITLES CARRY

“Laws that weaken a state’s firearm permitting system have been a precursor to permitless carry legislation, and a substantial body of research shows that these laws have led to a rise in gun violence and violent crime more broadly. States that have weakened their firearm permitting system have experienced an 11 percent increase in handgun homicide rates¹² and a 13-15 percent increase in violent crime rates.¹³ Conversely, states that provided law enforcement discretion to issue carry permits saw 11 percent lower homicide rates compared to states that did not have that discretion.¹⁴

12. Michael Siegel et al., “Easiness of Legal Access to Concealed Firearm Permits and Homicide Rates in the United States,” *American Journal of Public Health* 107, no. 12 (December 1, 2017): 1923–29, <https://ajph.aphapublications.org/doi/>

13. John J. Donohue, Abhay Aneja, and Kyle D. Weber, “Right-To-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis,” NBER Working Papers (National Bureau of Economic Research, November 2018), <https://www.nber.org/papers/w23510.pdf>

14. Michael Siegel and Claire Boine, “What Are the Most Effective Policies in Reducing Gun Homicides?” (Rockefeller Institute of Government, March 29, 2019), <https://rockinst.org/wp-content/uploads/2019/08/8-13-19-Firearm-Laws-Homicide-Brief.pdf>.

Since many states have only recently passed permitless carry legislation, research is limited on the impact of these newer laws.¹⁵ But early signs are not good: States that have enacted permitless carry legislation are seeing increased violent gun crimes. States such as Alaska and Arizona (see table), have experienced an increase in the rate of aggravated assaults with a gun since the enactment of permitless carry legislation.¹⁶ This has resulted in hundreds more gun-related aggravated assaults in these states in 2017-2018 (the latest years for which data is available) compared to years prior to enactment.¹⁷

15. The following states currently require a person to obtain a permit to carry a concealed handgun in public: AL, AR, CA, CO, CT, DE, FL, GA, HI, IA, IL, IN, LA, MA, MD, MI, MN, MT, NC, NE, NJ, NM, NV, NY, OH, OR, PA, RI, SC, TN, TX, UT, VA, WA and WI.

16. Eleanor Dotomain, “Crime Reported in Alaska 2001,” Uniform Crime Reporting Program (Alaska Department of Public Safety), <https://bit.ly/2SQDEUt>; Kristi Johnson, “Crime Reported in Alaska 2002,” Uniform Crime Reporting Program (Alaska Department of Public Safety), <https://bit.ly/2wtDyZZ>; Christen L. Spears, “Crime in Alaska 2017,” Uniform Crime Reporting Program (Alaska Department of Public Safety, August 2018), <https://bit.ly/37OZagy>; Christen L. Spears, “Crime in Alaska 2018,” Uniform Crime Reporting Program (Alaska Department of Public Safety, September 2019), <https://bit.ly/2srLtoX>; “Crime in Arizona 2008” (Arizona Department of Public Safety, Access Integrity Unit), <https://bit.ly/2V6lChk>; “Crime in Arizona 2009” (Arizona Department of Public Safety, Access Integrity Unit), <https://bit.ly/2SQNRjP>; “Crime in Arizona 2017” (Arizona Department of Public Safety, Access Integrity Unit), <https://bit.ly/2PdLfdR>; “Crime in Arizona 2018” (Arizona Department of Public Safety, Access Integrity Unit), <https://bit.ly/2ZsFlce>. Rates were calculated using population data from the United States Census Bureau. The percent increase in rates was calculated using the average rate per 100,000 for two years prior to enactment (2001-2002 for Alaska and 2008-2009 for Arizona) and the average rate per 100,000 for the two latest years for which data is available (2017-2018). The average rate of aggravated assaults with

a gun per 100,000 people in Alaska was 80.0 for the years 2001-2002 and 132.0 for 2017-2018. In Arizona, the average rate of aggravated assaults with a gun per 100,000 people was 68.9 in 2008-2009 and 74.1 in 2017-2018.

17. See note 16 for data sources. The increase in the number of aggravated assaults with a gun was calculated using the average number for two years prior to enactment (2001-2002 for Alaska and 2008-2009 for Arizona) and the two latest years for which data is available (2017-2018). The average number of aggravated assaults with a gun in Alaska was 511 for the years 2001-2002 and 975 for 2017-2018. In Arizona, the average number of aggravated assaults with a gun was 4,347 in 2008-2009 and 5,267 in 2017-2018.”

<https://everytownresearch.org/report/permitless-carry-carrying-a-concealed-gun-in-public-with-no-permit-and-no-training/>