



Ohio Prosecuting Attorneys Association

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House Bill 51
Opponent Testimony
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Chairman Peterson, Vice-Chair Thomas, Ranking Member Forhan and members of the House Government Oversight Committee, I appreciate the opportunity to come before you today to provide opponent testimony on the provisions of House Bill 51 enacting the Second Amendment Preservation Act, a policy that we feel will negatively impact Ohio law enforcement's ability to address gun violence and gun crimes across Ohio and that presents a number of constitutional problems.

Public Safety Concerns

The primary concern with the bill is the negative impact it will have on cooperation between local, state, and federal law enforcement in efforts to address gun violence and gun crimes in Ohio. Two provisions in particular are key to understanding this concern. The legislation:

- (1) Prohibits Ohio law enforcement officers, including prosecutors, from enforcing or attempting to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms. R.C. 2923.50(F).
- (2) Prohibits the state or any political subdivision of the state from employing an individual who is acting or previously acted as an official, agent, employee, or deputy of the government of the United States, or who is otherwise acting under color of federal law from enforcing or attempting to enforce any of the listed infringements or from giving material aid or support to the efforts of another who enforces or attempts to enforce any of the listed infringements. R.C. 2923.50(G).

In Ohio, like in other states, law enforcement engage in a variety of joint task forces with the federal government that are made up of local, state, and federal law enforcement officers. Local and state officials can be deputized as federal law enforcement officials. Because House Bill 51 prohibits employing anyone who enforces or attempts to enforce certain federal laws, or who provides material aid or support to the efforts of another who enforces or attempts to enforce federal law, the legislation will negatively impact the ability of Ohio law enforcement to participate in joint task forces where gun crimes and gun violence are under investigation. The cooperation and information sharing that takes place on these task forces is critical to law enforcement's ability to remove violent firearms offenders from the street and to protect the public from violent crime.

In addition, the bill could negatively impact the work of Ohio's Crime Gun Intelligence Centers and the use of the National Integrated Ballistics Information Network or NIBIN. The Bureau of Justice Assistance, which provides funding for Crime Gun Intelligence Centers across the country describes them as:

An interagency collaboration focused on the immediate collection, management, and analysis of crime gun evidence, such as shell casings, in real time in an effort to identify shooters, disrupt criminal activity, and prevent future violence. The primary outcome of these centers is identifying armed violent offenders for investigation and prosecution. CGICs require an intensive, ongoing collaboration between the ATF, local police department, the local crime laboratory, probation and parole, local police gang units, prosecuting attorneys, U.S. Attorney's Office, crime analysts, community groups, and academic organizations.¹

CGICs bring these people together, even under one roof, to pool resources, share information and collaborate to identify armed violent offenders for investigation and prosecution.

One of the key components of these CGICs and a key tool generally in the investigation of gun crimes is the National Integrated Ballistic Information Network or NIBIN, a database of ballistics information maintained by the ATF and populated with information from partner law enforcement agencies at the local, state, and federal level. NIBIN automates ballistics evaluations and allows law enforcement to search the database for evidence from their jurisdiction, neighboring jurisdictions, and other jurisdictions across the country. In March 2022, Governor Dewine and Attorney General Yost announced the Ohio Ballistics Testing Initiative to increase the number of NIBIN units in Ohio from 7 to 16. Governor DeWine said that "By more than doubling the number of NIBIN units in Ohio, we'll give our local law enforcement partners easier access to this crime-solving technology to help develop investigative leads that result in arrests. With the help of this initiative, we are confident that more gunmen will be brought to justice, future shootings will be prevented, and lives will be saved."

According to the ATF, four and half million pieces of ballistic evidence are currently stored in NIBIN. In 2020, 472,948 pieces of evidence were acquired and 104,206 leads were generated.² This is vital technology for violent crime reduction in Ohio.

House Bill 51 puts these collaborations at risk. The bill prohibits providing material aid or support to the efforts of another who enforces or attempts to enforce any of the infringements identified in this section. Material aid or support includes "giving or allowing others to make use of lodging, communications equipment or services including social media accounts, facilities, weapons, personnel, transportation, clothing, or other physical assets." It also lists as an infringement "Any registration or tracking of firearms, firearm accessories, or ammunition." Law enforcement will be left guess what conduct is prohibited and when. Ultimately, this will have a chilling effect on collaborative efforts to address gun violence because most people are going to err on the side of not being sued.

Another public safety issue is the bill's definition of "law-abiding citizen." Federal law prohibits possession of a firearm by a person who has committed misdemeanor domestic violence. 18 U.S.C. 922(g)(9). Ohio law does not. Federal law prohibits possession of a firearm by a person subject to a certain type of restraining order preventing the stalking or harassment of an intimate partner. 18 U.S.C. 922(g)(8). Ohio law does not. Under the bill's definition of "law-abiding citizen" misdemeanor domestic violence offenders and individuals subject to qualifying protection orders will be allowed to continue to purchase and possess guns in Ohio. According to the Ohio Domestic Violence Network's 2021-2022 Fatality Report, there were 112 intimate

¹ <http://cgici.wpengine.com/cgic-concept/>

² <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-integrated-ballistic-information-network>

partner relationship fatalities between July 1, 2021 and June 30, 2022. Ninety-one percent of these fatalities involved a gun.³

Constitutional Concerns

Finally, there are a variety of possible constitutional issues with the framework of this legislation. While the legislation is ostensibly anti-commandeering legislation, it goes beyond that in several respects. Most notably, R.C. 2923.50(E) creates an affirmative duty for courts and law enforcement to protect law-abiding citizens from the infringements defined under the bill. So not only, is Ohio law enforcement not allowed to cooperate with federal law enforcement, we are duty bound to stand in the way of the federal government in their efforts to enforce federal law. This goes beyond anti-commandeering and is an express attempt to constrain the operations of the federal government.

Second, the bill purports to dictate to state courts in Ohio how they should rule on constitutional right-to-bear arms claims. Proposed R.C. 2923.50(C) says that certain federal acts, laws, executive orders, rules and regulations shall be considered infringements on the people's right to keep and bear arms and division (E), again, creates an affirmative duty for courts to protect law-abiding citizens from those infringements, barring state courts from enforcing federal law. It is far from clear that the infringements listed in division (C) are actual violations of the constitution. Federal supremacy would compel the state courts to apply actual Second Amendment law in determining whether a federal law infringes on Second Amendment rights. The General Assembly cannot purport to declare what constitutional provisions mean and then impose its own conception of constitutional law on the courts.

I would be happy to answer any questions that the committee has.

³ https://www.odvn.org/wp-content/uploads/2022/10/ODVN_FatalityReport_2021-2022.pdf