



Ohio Prosecuting Attorneys Association

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Substitute House Bill 51
Opponent Testimony
November 14, 2023

Chairman Peterson, Vice-Chair Thomas, Ranking Member Humphrey and members of the House Government Oversight Committee, I appreciate the opportunity to provide opponent testimony on Substitute House Bill 51. Despite changes to the bill since we last testified in opposition in March, the bill still lacks clear statutory guidance to us and to law enforcement about what we can and cannot do. Because of this, the bill will still negatively impact law enforcement's ability to work cooperatively with federal law enforcement partners to address gun violence and gun crimes and to promote the public's safety. Some continuing problems to consider:

2923.50(F)

The bill continues to prohibit knowingly employing an individual who is acting or previously acted as an official, agent, employee, or deputy of the government of the United States, or otherwise acting under the color of federal law and who after the effective date of the bill "Enforces, attempts to enforce, or participates in any way in the enforcement or implementation of any federal acts, laws, executive orders, rules, regulations, statutes, or ordinances regarding firearms, firearm accessories, or ammunition;" or "Gives material aid or support to the efforts of another in the enforcement or implementation of any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances regarding firearms, firearm accessories, or ammunition." The state or political subdivision remains subject to a \$50,000 civil penalty. For us, this will prevent cross designations of prosecutors as Assistant United States Attorneys. For law enforcement it will prevent cross designations to serve on federal task forces. It continues to present problems for our ability to hire former federal agents and employees.

2923.50(G)

The bill ostensibly allows referral of firearms cases to the United States Attorney "in an effort to enforce laws of the state or a political subdivision" if such case is a violent felony offense that entails prosecution of violations substantially similar to those in Chapters 2901 to 2911 of the Revised Code. It also ostensibly allows participation with federal law enforcement to enforce "laws of the state or a political subdivision in any national integrated ballistic information network."

This lacks clarity. Firearms cases aren't going to be referred to the United States Attorney "in an effort to enforce the laws of the state." They are going to be referred to the United States Attorney so that the United States Attorney can enforce federal law, which often provides harsher penalties than Ohio law, for the benefit of Ohioans. By participating in the National Integrated Ballistic Information Network (NIBIN) we are entering information into a database that is accessed and used by federal law enforcement in their own efforts

to enforce federal law. Participating in NIBIN necessarily provides support to federal law enforcement in their own efforts to address gun crime.

2923.50(I)(1)

The bill says ostensibly that it is not a violation to provide material aid to federal “prosecutions” for felony crimes against a person when such prosecution includes weapons violations similar to those in Ohio law and as long as the weapons violations are “merely ancillary” to that prosecution. Providing material aid to “prosecutions” is not the same as providing material aid to “investigations” and “merely ancillary” is a term that lacks clarity. At what point does a firearms offense become the main offense and a crime against the person become the ancillary offense. If there is one violent crime and two firearms offenses? If there is one violent crime and five firearms offenses? We’re left to guess when something is ancillary.

2923.50(I)(2)

The bill says ostensibly that it is not a violation to provide material aid to federal “prosecutions” for “class A or class B felony violations, as designated under federal law, substantially similar to those found in Chapter 2925” when such prosecutions include weapons violations similar to those in Ohio law and as long as the weapons violations are “merely ancillary.” Again, the same problems exist here regarding allowing “prosecutions” but not “investigations” and lack of clarity about when an offense is “merely ancillary.”

In addition, class A and class B felonies under federal law carry sentences of death, life, or 25 years or more. There are no equivalent penalties this high for violations of Chapter 2925. Since there are no “substantially similar” penalties for drug crimes in Ohio, does this mean that we can’t cooperate with federal law enforcement at all in this area? Even if we can theoretically cooperate regarding drug crimes we’re left to predict the future about what drug crimes will be discovered and hope that they rise to the Class A and Class B levels. If in hindsight they don’t, law enforcement will have violated this law. So this provision of the bill, that is intended to allow us to cooperate with federal law enforcement in the investigation of drug offenses, is for all intents and purposes meaningless because of the lack of clarity.

2923.50(J)

The bill says ostensibly that we can participate in inter-jurisdictional task forces as long as they are “for the purpose of enforcing laws not related to firearms, firearm accessories, or ammunition.” It is not clear when the purpose of a task force could become related to firearms. We could have a task force that sets out as a drug trafficking task force or gang violence task force that discovers a bunch of firearms offenses and now one of the purposes of the task force is to address those firearms offenses too. If it is jointly decided that federal law enforcement should enforce federal law it is possible that we will have violated this because we provided support for the purpose of enforcing a law related to firearms. If we wanted to create an interjurisdictional task force to investigate and prosecute people who have a history of violent crime and who are now in possession of weapons while under disability, it is not clear that we could do it without violating this bill. The end result is a chilling effect on all sorts of interjurisdictional task force work because we will have to take the course of action that avoids the lawsuit.

All of this lack of clarity will inevitably have a chilling effect on voluntary cooperative efforts between Ohio law enforcement and federal law enforcement in efforts to address a variety of types of crime. It will have a profound effect on cooperative efforts to keep firearms out of the hands of dangerous criminals and to get them off our streets. For these reasons we remain opposed to the legislation. I am happy to answer any questions.