



Ohio Prosecuting Attorneys Association

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House Bill 5
Opponent Testimony
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Chair Thomas, Vice-Chair Mathews, Ranking Member Isaacsohn and members of the House Judiciary Committee, thank you for the opportunity to provide opponent testimony on House Bill 5. While our Association supports increasing the penalties for those who illegally possess and use firearms in Ohio, we cannot support House Bill 5 due to three provisions of the bill.

Court-Initiated Record Sealing

First, the legislation establishes a court-initiated record sealing process for misdemeanors and fourth- and fifth- degree felonies. The court must identify records that will be eligible for sealing and notify the offender, prosecutor, and victim. The bill allows the prosecutor or victim to object to the sealing. If there is no objection, however, and the court finds that the records are otherwise eligible for sealing, the court must seal the records. This is likely unconstitutional under *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029 in which the Ohio Supreme Court found the automatic record sealing provision in R.C. 2151.356 to be an unconstitutional violation of the open courts provision of the Ohio Constitution which they said provides a presumption of public access to proceedings and to the records of those proceedings. The court said that proceedings cannot be closed and records cannot be sealed without making an individualized determination that balances the interests at stake. Under House Bill 5, records can be sealed without a hearing and without any individualized assessment of the public's interest in having access to the records.

We are also opposed to the policy of eliminating the record sealing/expungement application process. Ohio already has one of the most expansive record sealing/expungement statutes in the United States – allowing people to seal an unlimited number of misdemeanors, fourth-degree felonies, and fifth-degree felonies. Applications to seal/expunge records are granted routinely. Requiring people to apply, however, is important because it demonstrates that the person cares enough about their future to come forward and it provides at least some objective evidence that the person might actually be rehabilitated.

Under House Bill 5, judges and prosecutors will be forced to use already limited staff time and resources to review the records of individuals who might not care if their records are sealed and some who could very well still be engaged in criminal activity that we don't know about. This is time that will be taken away from prosecuting current criminal matters. This is dangerous for victims and for the public. The State has created a mechanism for relief for individuals convicted of these offenses. People should have to demonstrate some personal responsibility in seeking that relief. Requiring them to do so helps ensure that the right people receive relief and the wrong people remain known to the public and to law enforcement.

Reduced Accountability for First Time Weapons Under Disability Offenses

Second, the legislation reduces most first-time weapons under disability offenses from an F3 to an F4. Under the bill, anyone who is (1) a fugitive from justice, (2) under indictment for or has been convicted of a felony drug possession or trafficking offense, (3) drug dependent, or (4) found to be mentally incompetent or to be a danger to themselves or others due to mental illness will receive reduced accountability for illegally possessing a weapon.

Weapons under disability exists to keep guns out of the hands of dangerous individuals who are more likely to use and possess weapons in ways that put public safety at greater risk. Many of the people who would receive the benefit of a lower penalty under this bill are offenders who have already been convicted of one or more felony offenses for being engaged in the drug trade and/or who are on the run in hopes of escaping accountability. We should not be reducing criminal accountability for these individuals. By reducing the penalty from an F3 to an F4 the legislation makes it more likely that dangerous individuals will be placed in diversion programs where they can walk away with no record of conviction, be sentenced to probation rather than prison if they are convicted, and be eligible to seal more records of conviction and wait shorter periods of time before they do so. All of this places the public at greater risk from individuals who are already demonstrating that they cannot abide by the law.

Automatic Weapon Specification

Third, the bill modifies the firearm specification relating to an automatic firearm or muffler or suppressor to require that the offender displayed the firearm, brandished the firearm, indicated that the offender possessed the firearm, or used the firearm to facilitate the offense.

Under current law, the offender must only have such a firearm under the offender's control while committing the offense. This discourages people from possessing firearms that can injure or kill multiple individuals in a short period of time indiscriminately. Automatic firearms are more likely to injure or kill innocent bystanders. Some prosecutors have successfully used this automatic weapon specification on offenders in possession of what is known as a "glock switch," a device that turns a standard 9mm handgun into an automatic weapon. House Bill 5 would needlessly make this more difficult, requiring that we wait until an offender has used or threatened the use of such a weapon, and placing the public at greater risk.

It should be the policy of the State of Ohio to discourage *possession* of an automatic weapon in the commission of a crime and to provide for higher penalties for possession of these weapons due to the heightened dangerousness compared to standard firearms. Current law should be maintained.

Conclusion

Our Association supported a prior version of this legislation that was sponsored by then Rep. Koehler during the 134th General Assembly. That legislation increased penalties for repeat weapons under disability offenses. It recognized that small groups of repeat weapons offenders are responsible for outsized portions of crime and sought to remove those offenders from our communities for longer periods of time. We stand ready to support such legislation again. We cannot, however, support House Bill 5 which will help hold some repeat offenders accountable while making it more difficult for law enforcement and prosecutors identify, prosecute and hold others accountable. We are not willing to make these types of trade-offs when it comes to public safety and the General Assembly shouldn't either.

I'd be happy to answer any questions.