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Chairman Thomas, Vice Chair Mathews, Ranking Member Isaacsohn, Members of the Judiciary Committee. Thank you for the opportunity to testify on House Bill 252.

This bill was brought to me by prosecutors both in and outside of my district as a piece of common-sense legislation. It removes three significant words from the definition of burglary in the Ohio Revised Code. Those words are “force,” “stealth,” and “deception.”

In Scioto County Donald Bertram prowled a neighborhood Scioto County until he spotted an open garage door and calculated that he could stroll into the homeowner's open garage, steal a \$500 leaf blower, and get back into his car before being caught. He was right.

Despite the homeowner's protestation, he was unable to stop the burglar. However, the burglar was caught, arrested, tried, found guilty by a jury of his peers, and sentenced to 8-12 years. Justice served, right?

Not so fast. His attorney appealed based on the fact that the ORC states that burglary must include “force, stealth, or deception.” This case went all the way to the Ohio Supreme Court where a significant amount of time was devoted to whether the perpetrator's smile constituted stealth or deception. Because they determined that his smile did not constitute stealth or deception, the conviction was vacated, and the case was remanded to the trial court. The loss to the homeowner is the same whether the criminal has a stealthy and deceitful smile or not.

This requirement is unique to Ohio. Even California states “Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel ...with intent to commit grand or petit larceny or any felony is guilty of burglary.”

Please observe how other states define burglary:

- Florida: Defines burglary as entering a dwelling, structure, or conveyance with intent to commit an offense therein, unless the premises are open to the public or the defendant is licensed or invited to enter.
- Texas: Defines burglary as entering a habitation or building without the owner's consent with intent to commit a felony, theft, or assault, including situations where the person remains concealed inside with intent to commit a crime.
- Kentucky: Defines burglary as unlawfully entering a building with intent to commit a crime, with elevated charges if the offender is armed or causes injury.
- Illinois: Defines burglary as knowingly entering a building, vehicle, or structure without authority and with intent to commit a felony or theft.
- California: Defines burglary as entering any structure with intent to commit grand or petit larceny or any felony.

The Model Penal Code defines burglary in § 221.1 by stating, A person is guilty of burglary if they enter a building or occupied structure, or separately secured or occupied portion thereof, with a purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.

This is another one of those “only in Ohio” moments that just ought not to be. The fault does not lie with the justices of the Ohio Supreme Court. They rightfully interpreted the law. The fault is in the law itself, and we have the power to fix that.

Mr. Chairman, thank you for the opportunity to provide sponsor testimony today and I ask you to allow for proponent testimony soon to allow prosecutors and other legal minds to bring their knowledge and experience to bear on this significant piece of legislation.

At this time, I will yield to my joint sponsor, Representative Adam Bird. After his testimony, we will be happy to answer your questions.

