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Proponent Testimony of

David W. Phillips

Union County Prosecuting Attorney

Before the Ohio House Judiciary Committee

In Support of House Bill 252

June 4, 2025

Chairman Thomas, Vice-Chair Swearingen, Ranking Member Isaacsohn, and members of the House Criminal Justice Committee:

Thank you for the opportunity to testify today in support of House Bill 252, which proposes a necessary and overdue reform to Ohio's burglary statutes—specifically, the removal of the requirement that the State prove “force, stealth, or deception” to convict a person under R.C. 2911.11 (Aggravated Burglary), R.C. 2911.12 (Burglary), and R.C. 2911.13 (Breaking and Entering).

This bill addresses a dangerous gap in Ohio law—one that was exposed most clearly in the Ohio Supreme Court's decision in *State v. Bertram*, 2023-Ohio-1456. In that case, a man walked calmly and silently into a homeowner's open garage, stole a leaf blower, and left—ignoring the homeowner's demands to stop. A jury convicted him of burglary. But the conviction was later overturned because the Ohio Supreme Court held Bertram did not commit burglary under Ohio law because he did not gain access to the homeowner's garage by force, stealth, or deception.

Let me be clear: the offender *unlawfully entered an occupied residential structure with the intent to commit a theft offense*. The intrusion was real. The threat to the homeowner was real. And yet, under current Ohio law, the man could be charged only with criminal trespass, a misdemeanor. This bill does not eliminate the requirement that entry be unlawful. The state would still need to prove that the offender trespassed and had criminal intent. But it removes the artificial, unnecessary, and sometimes unprovable requirement that entry be by the means of force, stealth, or deception.

HB 252 corrects this dangerous result.



The historical purpose of burglary laws has been to protect the safety of people inside occupied structures, especially dwellings. The risk to the inhabitants does not depend on how the offender enters the home—whether he breaks down the door or walks in through an open one. The danger arises from the unlawful entry itself. And as *Bertram* shows, requiring prosecutors to prove a subjective element such as “stealth” gives rise to inconsistent and unjust outcomes that frustrate the public’s sense of justice and endanger public safety.

Other states have modernized their burglary laws. For example:

- Florida punishes unlawful entry with intent to commit a crime. Fla. Stat. 810.02
- Texas focuses on unlawful entry with criminal intent—regardless of the manner of entry. Texas Penal Code, Sec. 30.01.
- California, Kentucky, and Illinois similarly center their burglary laws on unlawful entry with intent to commit a crime. California Penal Code Sec. 459; Ky. Rev. Stat. 511.20; 720 ILCS 5/19-1.
- The Model Penal Code does not require proof of “force, stealth, or deception” for a burglary conviction. MPC Sec. 221.1.

Ohio is out of step with most states which do not require proof of the means of entry by force, stealth or deception as an element of a burglary offense.

After *Bertram*, prosecutors will be forced to tell victims that the man who openly walked into their garage, business or home to steal their property will face, at most, a misdemeanor trespass charge—so long as he didn’t sneak in or open a door.

This distinction is not meaningful to victims. It is not logical. And it does not reflect the threat posed by such intrusions.

HB 252 makes sure when a person unlawfully enters an occupied structure with criminal intent, the law will treat that act with the seriousness it deserves. The removal of this element from the breaking and entering statute will also ensure offenders caught red-handed inside a non-residential building or structure without permission can no longer avoid conviction simply because the State cannot prove the manner of entry satisfies one of the three narrow criteria.

This is a smart reform. It brings Ohio in line with common-sense burglary laws across the country. More importantly, it protects homeowners and occupants and reinforces the law’s role as a deterrent to people who would violate the sanctity of another’s home.

For these reasons, I urge you to support House Bill 252.

Thank you for your time and your commitment to justice in Ohio. I would be happy to answer any questions.

Respectfully,

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

David W. Phillips
Union County Prosecuting Attorney

Addendum to Testimony of David Phillips

- Legal research shows only a handful of states require similar elements. For example, Indiana Code 35-43-2-1 “A person who breaks and enters the building or structure of another person, with intent to commit a felony or theft in it, commits burglary.”

- The *Bertram* case is not an outlier in Ohio. For example, in *State v. Howard*, 2005-Ohio-5135, 2005 Ohio App. LEXIS 4639 (Ohio Ct. App., Cuyahoga County 2005) the court held:

There was insufficient evidence to support defendant’s conviction for aggravated burglary as it could not have been inferred from the trespass (he did not have permission to be in the home as there was a temporary protection order) that defendant used force to enter the house since there was no evidence indicating whether the door was open or closed. Nor did the victims’ surprise and fear prove stealth because there was no nexus between the surprise of the victims and the manner and means by which defendant gained entrance, which was unknown.

The court stated, “Force, stealth, or deception are separate and distinct elements of the crime of aggravated burglary and in order to sustain a conviction, one of them must be proved with evidence beyond a reasonable doubt. The question “How else could he have made entry?” is not evidence.” *Howard*, 2005-Ohio-5135, P1.

- Similarly, in *State v. Isom*, 2001 Ohio App. LEXIS 5312 (Ohio Ct. App. Cuyahoga County, 2001) the court held, “Because the State failed to prove that appellant entered Chappell’s garage by force, stealth or deception, an essential element of the offense of breaking and entering, there was insufficient evidence to support appellant’s conviction.”

In that case the homeowner testified that she did not know how Isom got into her garage. She testified that she did not know whether he simply walked up her driveway and into her garage and opined that he could have come from behind the garage. A neighbor testified she had seen Isom entering the garage through an open door.

- And, in *State v. Brooks*, 1998 Ohio App. LEXIS 1491 (Ohio Ct. App., Greene County Apr. 10, 1998) where defendant entered an apartment by means of an unlocked door during daylight hours and there was no evidence of force, stealth, or deception on defendant’s part, it was error for defendant to be convicted of burglary rather than criminal trespass.

Challenge to the proof of “force, stealth or deception” by convicted burglars is also frequent. See, *for example*:

State v. McCloskey, 1990 Ohio App. LEXIS 173, *1, Defendant claimed that there was no evidence of force, stealth, or deception in his entry into the home. The court held that opening an unlocked door was sufficient force to prove that element of the offense.