



House Bill 108 Interested Party Testimony

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House Judiciary Committee

June 11, 2025

Chair Thomas, Vice Chair Swearingen, Ranking Member Isaacsohn, and members of the House Judiciary Committee:

On behalf of the Office of the Ohio Public Defender (“OPD”), thank you for the opportunity to submit interested party testimony regarding House Bill 108 (“HB 108”), known as the Self-Defense Protection Act. The OPD supports the intent of this bill, which aims to protect individuals who act in self-defense, defense of another, or defense of their residence. However, we have concerns that the bill may inadvertently create additional burdens for defense counsel and provide prosecutors with multiple opportunities to challenge a self-defense claim, potentially undermining its well-intentioned goals.

Current Ohio law already permits individuals to act in self-defense, defense of another, or defense of their residence. Under existing law, if a person asserts self-defense at trial and presents evidence supporting it by a preponderance of the evidence, the state must prove beyond a reasonable doubt that the person did not use force in self-defense. This framework appropriately places the ultimate burden of disproving self-defense on the state at trial.

HB 108 introduces a new pretrial procedure that allows an accused person to file a pretrial motion requesting a rebuttable presumption of self-defense. If this motion is filed, the court is required to hold a pretrial hearing. At that hearing, if the accused presents evidence supporting by a preponderance of the evidence that the accused acted in self-defense, the court must grant the pretrial motion. If the motion is granted, a rebuttable presumption of self-defense is established at trial, and the state then has the burden to rebut this presumption by proving beyond a reasonable doubt that the accused did not use defensive force in self-defense.

While we commend the intent to establish an earlier presumption in favor of those that act in self-defense, there are concerns that the new pretrial procedure introduces unnecessary



complexity and additional work for defense counsel. Instead of focusing resources on preparing for trial, defense attorneys will now need to prepare for and litigate an entirely separate pretrial hearing to establish a presumption that already exists, in effect, a trial under current law regarding the prosecution's burden of proof. This pretrial hearing could require the need to subpoena parties or expert testimony not once, but twice, which could also place a financial strain on Ohio's indigent defense system.

If the pretrial motion is denied, or if the accused person chooses not to file one, the bill states that there is no rebuttable presumption at trial. However, the accused is still not precluded from asserting self-defense at trial. In this scenario, if the accused presents sufficient evidence that supports self-defense by a preponderance of the evidence, the prosecution must still prove beyond a reasonable doubt that the force was not used in self-defense. This means that regardless of the pretrial motion's outcome, the burden on the state at trial remains the same: to disprove self-defense beyond a reasonable doubt once the defense has met its initial evidentiary threshold.

This pretrial procedure might appear beneficial, although it risks giving prosecutors multiple opportunities to litigate a self-defense claim. They will first have an opportunity at the pretrial hearing to challenge the defense's evidence, potentially gaining insight into the defense's strategy and arguments before trial even begins. If the motion is denied, the prosecution then gets a second bite at the apple during the trial itself. This could result in increased pretrial litigation, placing a greater burden on courts to conduct additional hearings, potentially lengthening the pretrial processes and delaying justice. It could also lead to inconsistent outcomes across different jurisdictions, depending on how different courts interpret the "preponderance of the evidence" standard in this new context.

While the bill's aim to strengthen self-defense protections is appreciated, the OPD believes that the current judicial framework, which places the burden on the prosecution to disprove self-defense beyond a reasonable doubt at trial after the defense has met its initial evidentiary burden, is largely sufficient. The added pretrial procedure has the potential to introduce unnecessary procedural hurdles and strategic disadvantages for the defense without meaningfully enhancing the rights of those who legitimately act in self-defense.

The OPD respectfully requests this body to consider these potential unintended consequences and perhaps explore alternative approaches to achieve the bill's intended goals without



creating additional layers of litigation that may ultimately burden the accused and the judicial system.

Respectfully,



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