



# Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

## House Bill 252 Opponent Testimony

Zachary Miller, Legislative Policy Manager

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 opponent testimony on House Bill 252 (“HB 252”). As the provider of legal representation for indigent Ohioans accused crimes, the OPD has significant concerns with the bill’s removal of “force, stealth, or deception” as an element of aggravated burglary, burglary, trespass in a habitation where a person is present or likely to be present, and breaking and entering. This proposed change is a significant departure from established legal precedent and would broaden the scope of these offenses far beyond their historical and intended meaning, leading to potentially unjust outcomes.

The requirement of “force, stealth, or deception” is a fundamental and historical element of burglary. It is not, as some suggest, an “artificial” or “unnecessary” requirement. This element defines the nature of the unlawful entry that distinguishes burglary from other offenses like criminal trespass. It ensures that a person is charged with burglary only when they have actively employed forcible or covert means to gain unauthorized entry with criminal intent, rather than merely entering a property without permission.

Case law in Ohio clearly demonstrates that the element of “force, stealth, or deception” is not difficult for the state to prove. For example, the element of “force” can be satisfied by simply opening an unlocked door, as established in *State v. Lane* (1976)<sup>1</sup>, and reiterated in cases like *State v. Tichaona*, which stated “the force element of an aggravated burglary charge can be accomplished through the opening of a closed but unlocked door.”<sup>2</sup> “Stealth” has been defined

---

<sup>1</sup> *State v. Lane* (1976), 50 Ohio App. 2d 41, 45-46.

<sup>2</sup> *State v. Tichaona*, 11th Dist. Portage No. 2010-P-0090, 2011-Ohio-6001, ¶ 35.



614.466.5394 | 800.686.1573  
TTY 800.750.0750



250 E. Broad Street, Suite 1400  
Columbus, OH 43215



OPD.Ohio.gov

as “any secret, sly or clandestine act to avoid discovery and to gain entrance into or to remain within a residence of another without permission.” This includes actions such as entering through an open door if it constitutes a secret or sly effort to gain entrance, as seen in *State v. Butler*.<sup>3</sup> Ducking and not leaving when a horn is sounded can be construed as stealth, as in *State v. Dowell*.<sup>4</sup>

The argument that the “danger isn't created by the means of entry but by the entry itself” misconstrues the purpose of the current law. If someone leaves their door unlocked and another person enters with criminal intent, that scenario still constitutes burglary under current law due to the broad interpretation of “force.” The concern about someone entering an unlocked home and stealing something is already addressed by existing statutes, which would allow for charges of burglary and theft.

The recent Ohio Supreme Court decision in *State v. Bertram*<sup>5</sup> is particularly relevant here. In that case, the court unanimously held that Bertram did not commit the specific offense of burglary because he did not gain access by force, stealth, or deception when he entered the open garage in plain view of the owner. However, the court did not suggest that the elements of “force, stealth, or deception” should be eliminated. Instead, the Court clarified that while the evidence was insufficient for a burglary conviction, Bertram's conduct sufficiently included the offenses of criminal trespass and misdemeanor theft. This case was not about a loophole that needs to be solved, but rather a clear application of the existing law.

Without the “force, stealth, or deception” element, the line between a felony burglary and lesser misdemeanor offenses will be blurred. This is particularly concerning in cases where a person enters a habitation with criminal intent but without any forcible or covert action. The change would lead to a dramatic expansion of felony charges for acts that are currently, and appropriately, classified as lesser offenses like criminal trespass or theft.

The OPD urges the committee to consider the potential for over-criminalization and the erosion of a historically significant element of these offenses that HB 252 represents. The current statutes, as interpreted by Ohio courts, adequately address unlawful entry and criminal intent. Eliminating “force, stealth, or deception” is an unnecessary alteration to Ohio's criminal code

---

<sup>3</sup> *State v. Butler*, 19 Ohio App. 3d 623, 2011-Ohio-1233, ¶128-31.

<sup>4</sup> *State v. Dowell*, 166 Ohio App. 3d 773, 2006-Ohio-2296.

<sup>5</sup> *State v. Bertram*, 173 Ohio St.3d 186, 2023-Ohio-1456, 229 N.E.3d 8.



that will not make communities safer, it will only lead to the imposition of harsher penalties that are disproportionate to the conduct. For these reasons, the OPD opposes HB 252.

Respectfully,



Zachary J. Miller

Legislative Policy Manager

Office of the Ohio Public Defender

[Zachary.miller@opd.ohio.gov](mailto:Zachary.miller@opd.ohio.gov)



614.466.5394 | 800.686.1573  
TTY 800.750.0750



250 E. Broad Street, Suite 1400  
Columbus, OH 43215



[OPD.Ohio.gov](http://OPD.Ohio.gov)