TO: Senator William Coley, Esq

FROM: Sean Maloney, Esq.

RE: SB 237 written testimony

SB 237 Removing the Duty to Retreat when faced with eminent death or serious bodily injury.

What seems to be lost in the rhetoric surrounding removing the duty to retreat, for a person forced to use lethal force to save their lives or the lives of another, is that the use of lethal force and the duty to retreat is not even a consideration until a victim is faced with imminent death or serious bodily injury.

That’s the line, imminent death, imminence ready to take place right now, I am about to be killed right now; then and only then does the use of lethal force even become a consideration.

I am about to be killed right now, what further reflection is necessary other than the action necessary in self-defense to save my life, right now.

That is the line, it is one of the few areas of the law that you can point to a distinct legal line, I am in fear of imminent death. My attacker has the ability to kill me; has the opportunity to kill me he is 3 feet away with a knife raised overhead screaming I am going to kill you; and I am jeopardy. As an innocent victim, to require me to act a certain way when faced with imminent death does nothing but increase my risk of death.

Why did you shoot “because I was in fear of imminent death, or serious bodily injury.” The only reason a good gal or good guy with a gun, the only reason someone’s grandmother legally uses lethal force is because they are in immediate fear of death or serious bodily injury. The good law-abiding victim already waits too long to use lethal force because we are the good person; why do we in Ohio subject our citizens to the uncertainty of protecting our lives?

Removing the duty to retreat does not change the criteria for claiming legitimate self-defense or the use of lethal force. Subjectively the criteria my attacker has the **ability** to kill me; has the **opportunity** to kill me he is 3 feet away with a knife raised overhead screaming I am going to kill you; and I am **jeopardy**. Again, to require me to act a certain way when faced with imminent death does nothing but increase my risk of death.

Keep in mind that my actions in self-defense will be judged by the reasonable person standard; this reasonable person will be sitting in a comfortable chair, far away from danger, and dispassionately considering my use of self-defense in a jury box. When threatened with immediate death to it makes no sense to dictate a victim’s actions in defending their life.

The use of force is not without limitations, the use of force must be proportional in most cases. If someone is simply threatening you with their words and gestures, you can’t shoot them no matter how scared you are. “Because I was in fear of imminent death” is the standard

The basis for no duty to retreat goes back well over 100 years. The best-known example of this is Brown v. United States (1921) where the U.S Supreme Court held that there was no duty to retreat in a legitimate self-defense case.  Justice Holmes stated in 1921, “if a man reasonably believes that he is in immediate danger of death or grievous bodily harm from his assailant he may stand his ground and that if he kills him, he has not exceeded the bounds of lawful self-defense.” Holmes used the term “stand your ground” in 1921.

Further, Justice Oliver Wendell Holmes wrote “Detached reflection cannot be demanded in the presence of an uplifted knife. Therefore, in this Court, at least, it is not a condition of immunity that one in that situation should pause to consider whether a reasonable man might not think it possible to fly with safety or to disable his assailant rather than to kill him.”

In simple terms we need to remove the duty to retreat from Ohio laws because all too often in my experience, prosecutors in self-defense cases ended up doing exactly what Justice Holmes warns against, using their own detached reflection outside the presence of that uplifted knife to judge the legitimacy of the actions of another.

The law-abiding citizen shouldn’t be the one that fears the law.