



OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: H.B. 228 of the 132nd G.A.

Status: As Enacted¹

Sponsor: Reps. Johnson and LaTourette **Local Impact Statement Procedure Required:** No

Subject: Self-defense and concealed handguns

State Fiscal Highlights

- There may be some reduction in: (1) persons convicted of a felony offense of violence in self-defense cases, and (2) certain felony level violations relative to the concealed handgun law. These outcomes could yield, all other conditions remaining the same, a marginal decline in the size of the state prison population and a corresponding annual reduction in GRF incarceration-related expenditures.
- As a result of the potential reduction in certain criminal convictions in relation to the bill's various provisions, there could also be a corresponding reduction in state court cost revenues. If, as expected, the bill affects a relatively small number of criminal cases annually statewide, then any potential annual loss in court cost revenues that would otherwise have been collected and forwarded to the state treasury will likely be minimal.

Local Fiscal Highlights

- The most likely local effect of the bill's various provisions may be to reduce criminal cases involving claims of self-defense and other potential charges concerning violations of the concealed handgun law. This could create some level of savings in county and municipal criminal case processing and sanctioning costs, and a related loss in court cost, fee, and fine revenues that might otherwise have been collected. These potential changes in the magnitude of annual revenues and expenditures appear unlikely to exceed minimal for any given county or municipality.
- The bill may increase the number of civil actions filed in common pleas, municipal, and county courts for damages stemming from restrictions imposed by local firearms ordinances. The number of new civil actions filed in any given local jurisdiction is likely to be relatively small and absorbed into the court's daily operations with no discernible ongoing fiscal effect.

¹ The act was vetoed by the Governor on December 19, 2018, but on December 27, 2018, the House and Senate voted to override the Governor's veto.

Detailed Fiscal Analysis

Self-defense and concealed handgun law

Burden of proof

Under current law, if an accused person asserts the affirmative defense of self-defense, the burden is on the accused to establish by preponderance of the evidence that the accused acted in self-defense. The bill shifts to the state the burden to prove beyond a reasonable doubt that a person charged with an offense that involved the use of force against another did not use that force in self-defense, defense of another, or defense of that person's residence.

This change will likely reduce convictions to some degree, as it would be more difficult for prosecutors to prove beyond a reasonable doubt that a person did not use deadly force in self-defense. Prosecutors may have more incentive to plea such cases down or forego the filing of certain criminal cases altogether if the new burden of proof cannot be met.

Carrying valid identification

The bill eliminates the current law requirement that a concealed handgun licensee carry a valid form of identification in addition to the required valid concealed handgun license. This provision may reduce a few potential concealed handgun license suspensions, and possible misdemeanor criminal charges, in situations where a licensee with a concealed handgun is required to produce, but does not have a second valid form of identification.

Net effect of self-defense and concealed handgun provisions

The bill's changes to the burden of proof in self-defense related shootings may reduce the number of persons that would likely have been convicted under current law on homicide or assault charges when such an individual claimed the use of force was necessary and justified as an act of self-defense. Similarly, the change made to the concealed handgun law will reduce the number of potential convictions stemming from violating identification requirements or the improper handling of firearms in a motor vehicle in certain circumstances.

State fiscal effects

To the extent that the reduction in convictions noted in the immediately preceding paragraphs occurs, there may be a corresponding reduction in the number of individuals sentenced to prison for committing certain specified felony offenses. Given the current state prison population in excess of 49,000 inmates, the magnitude of any reduction in offenders sent to prison as a result of the bill will likely be comparatively small, and the overall annual incarceration cost savings likely no more than minimal.

As a result of the potential reduction in certain criminal convictions in relation to the bill's various provisions, there could also be a corresponding reduction in state court cost revenues. This revenue is collected locally and forwarded for crediting to the

Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0). The state court cost imposed for a felony offense is \$60, of which \$30 is credited to both Fund 4020 and Fund 5DY0. The state court cost imposed for a misdemeanor offense is \$29, of which \$9 is credited to Fund 4020 and \$20 to Fund 5DY0. If, as expected, the bill affects a relatively small number of criminal cases annually statewide, then any potential annual loss in court cost revenues that would otherwise have been collected and forwarded to the state treasury will likely be minimal.

Local fiscal effects

The various provisions in the bill regarding self-defense, the use of force, and the concealed handgun law will likely create some reduction in the number of persons prosecuted and sanctioned for an act of violence used in their own defense or the defense of another, or for various offenses related to the concealed handgun law. Such an outcome could create some level of savings in county and municipal criminal case processing and sanctioning costs and a related loss in court cost, fee, and fine revenues that might otherwise have been collected. The magnitude of the potential changes in annual county and municipal criminal justice system revenues and expenditures generally will be minimal.

Unlawful transaction in weapons

The bill expands the current law offense of unlawful transactions in weapons to include the following prohibitions:

- Knowingly soliciting, persuading, encouraging, or enticing a federally licensed firearms dealer or a private seller to transfer a firearm or ammunition in a manner prohibited by state or federal law.
- Knowingly providing "materially false information" to a federally licensed firearms dealer or private seller such that it would portray an illegal transaction as legal.
- Knowingly procuring, soliciting, persuading, encouraging, or enticing another person to commit the above offenses.

A violation of any of the above-described acts is a third degree felony. Under current law, unchanged by the bill, the penalty includes a definite prison term of 1, 2, 3, 4, or 5 years, a fine of up to \$10,000, or both.

It is likely that this prohibited conduct generally is related to other criminal acts for which a person can already being charged, successfully prosecuted, and sentenced to a term of incarceration. This suggests that the number of new felony cases generated for county criminal justice systems to process will be relatively small and the associated costs will not be significant. There may be a few additional offenders sentenced to a prison term, the costs of which the Department of Rehabilitation and Correction will be able to absorb with existing staffing levels and appropriated funds.

Preemption of local firearm regulations

The bill specifies that any local firearm regulation that constrains the right to bear arms is preempted by the state of Ohio. Any person or group adversely affected by such a local ordinance or law may bring forth a civil action seeking damages, declaratory relief, and/or injunctive relief against the political subdivision responsible for the law and its enforcement. If the person or group prevails in the civil action and is awarded damages, the damages must be paid by the political subdivision along with a separate award for reasonable expenses. The frequency of such an occurrence is indeterminate.

Carrying weapons on premises

The bill: (1) generally allows a law enforcement officer or Bureau of Criminal Identification and Investigation (BCII) investigator who is carrying validating information to carry a weapon on certain premises open to the public, and (2) provides a qualified immunity from civil liability for owners, operators, and employers of such premises for any related injury, death, or loss.

Officers

As a result of the bill's carrying a weapon on premises provision, there may be a slight decrease in violations of certain concealed handgun restrictions that, under current law, may lead to criminal prosecutions, and possibly the suspension and/or revocation of a concealed carry license by the county sheriff that issued the license.

The overall rate of suspensions and revocations for all violations of the Concealed Carry Law is small, between 1% and 2% statewide. It seems very probable that of these violations involving concealed carry in a restricted location, few involve a law enforcement officer or BCII investigator, as they are more likely to know what is prohibited and permitted while carrying a weapon on or off duty. The bill will likely eliminate cases involving such a person who unwittingly and unintentionally carries a handgun into a place that prohibits concealed carry.

It seems reasonable to conclude that the potential reduction in the number of violations statewide, and subsequent number of persons prosecuted and sanctioned for such violations would therefore be relatively few in number.² Presumably, county and municipal criminal justice systems realize an occasional expenditure savings as a result of having slightly fewer persons to prosecute and sanction for certain concealed carry violations.

The state, counties, and municipalities may occasionally lose revenue that might otherwise have been collected from certain concealed carry violators pursuant to the order of the sentencing court. The state's potential loss would be in the form of court costs that, if collected, are then credited to Fund 5DY0 and Fund 4020. Counties and

² Depending upon the circumstances of the violation, the conduct can be classified as either a misdemeanor or a felony.

municipalities would lose locally retained fine and court cost and fee revenue that such a violator would have been required to pay.

Qualified immunity

The bill's qualified immunity provision may have one or both of the following effects on the common pleas, municipal, and county courts that have subject matter jurisdiction over civil cases: (1) prevent actions from being filed against owners, operators, and employers of certain premises for injury, death, or loss to person or property, or (2) expedite their resolution subsequent to the finding of the court that such persons in the circumstances at hand are protected from being sued for damages.

There are likely to be few civil cases affected by this immunity provision annually statewide. This is because injury, death, or loss is expected to be a relatively infrequent outcome from a law enforcement officer or BCII investigator carrying a weapon on certain premises open to the public. This suggests that there will be no discernible ongoing effect on the daily operations and related operating expenses of the courts.

Municipal and county courts have limited civil jurisdiction, and may only hear cases in which the amount of money in dispute does not exceed \$15,000. Common pleas courts hear all cases in which the amount of money in dispute is more than \$15,000.