OHIO LEGISLATIVE SERVICE COMMISSION

Joseph Rogers

Fiscal Note & Local Impact Statement

Bill: H.B. 228 of the 132nd G.A. (L_132_0595-7)

Status: In House Federalism and Interstate Relations

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) the number of persons convicted of a felony offense of violence in self-defense cases, and (2) certain felony level violations relative to the concealed handgun law, which could yield, all other conditions remaining the same, some 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 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, which 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 create an increase in the number of civil actions filed in common pleas, municipal, and county courts for damages stemming from restrictions imposed by local firearms ordinances and from restrictive rental agreements for subsidized housing that prohibit or otherwise limit firearm ownership as a rental condition. 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.

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.

Duty to retreat

The bill expands circumstances under which a person has no duty to retreat before using force in self-defense, defense of another, or defense of the person's residence. This change will likely reduce to some degree the number of cases in which a person is charged with, and subsequently convicted of, a castle doctrine-related shooting that occurred either in the person's residence or in a place in which the person has a lawful right to be, when they had some means of escape or retreat.

Penalty reduction

The bill reduces certain concealed handgun offenses to minor misdemeanors in circumstances where the offender does not commit a separate offense while carrying the concealed handgun. If the offender commits a separate offense, the reduction does not apply and the offender is subject to the same misdemeanor or felony penalties as would apply under current law for the offenses. The bill also reduces to a minor misdemeanor the penalty for a number of offenses related to carrying firearms in motor vehicles. Although, in general, the number of violations involving the concealed handgun law is relatively small, determining the net effect of these provisions on criminal cases in any given jurisdiction is very difficult to estimate. That said, one would expect the number of cases affected in any given local jurisdiction will be relatively small.

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.

Improper handling of firearms

The bill creates an affirmative defense to the charge of improperly handling firearms in a motor vehicle if the firearm is a handgun placed in the vehicle by someone other than the defendant, and the defendant did not know the handgun was in the motor vehicle. The availability of a new affirmative defense in and of itself has no immediate fiscal effect. If used successfully, it may reduce certain convictions for this type of offense. The number of cases likely to benefit from this affirmative defense would likely be fairly small statewide.

State fiscal effects

The bill's changes to the burden of proof and the duty to retreat 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 changes made to various provisions in the concealed handgun law will: (1) reduce, to a minor misdemeanor, certain concealed handgun-related convictions that under current law may be a first degree misdemeanor or a felony, and (2) reduce the number of potential convictions stemming from violating identification requirements or the improper handling of firearms in a motor vehicle in certain circumstances.

To the extent that the reduction in convictions noted in the immediately preceding paragraph 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 50,000 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, which are collected locally and forwarded for deposit in the state treasury to the credit of 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.

Posting of prohibited carry signs

The bill eliminates a requirement that specified persons, boards, and entities post in a conspicuous place on the premises a sign with a statement prohibiting the carrying of concealed handguns. This provision would appear to authorize the removal of required signs in places where carrying a concealed weapon has recently been authorized and would not likely have any state or local fiscal effects.

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.

Subsidized residential housing

The bill specifies that a rental agreement for subsidized residential premises may not contain a provision or impose a rule that requires a person to agree, as a condition of tenancy in the residential premises, to a prohibition or restriction on the lawful ownership, use, or possession of a firearm, firearm component, or ammunition within the tenant's specific rental dwelling unit. A landlord may impose reasonable restrictions related to the possession, use, or transport of a firearm, a firearm component, or ammunition within common areas of the rental property.

Civil action

If a landlord brings forth legal action to enforce a provision that is barred under the above-described restriction, a tenant, tenant's household member, or tenant's guest affected by the enforcement action may recover actual damages sustained by that tenant, household member, or guest, and, additionally, court costs and reasonable attorney's fees.

It would be reasonable to expect that the landlords who rent the subsidized residential properties as specified in the bill will be fully aware of the new requirement that rental agreements for the specified properties may not contain restrictions for lawful firearm ownership. Updated rental agreements will conform to the change in the law. The landlords for these properties would have no reason to file a civil action to enforce provisions that are no longer in the rental agreements. To the extent that such

civil actions to enforce firearms restrictions in rental agreements are being filed under current law, the bill will either reduce their numbers or expedite the resolution and dismissal of any such actions.

Civil immunity

Except in cases of willful, wanton, or reckless misconduct or grossly negligent conduct of the landlord, a landlord is not liable in a civil action for injury, death, or loss to person or property or other damages resulting from or arising out of an occurrence involving a firearm, a firearm component, or ammunition that the landlord is required under the bill's provisions to allow on the property. This provision may prevent some lawsuits from being filed against a landlord in the wake of a firearm-related tragedy, or expedite the resolution of any such suit, thereby creating a savings effect.

Synopsis of Fiscal Effect Changes

Provisions in the As Introduced version of the bill related to self-defense and the duty to retreat would potentially reduce the number of prosecutions and convictions that may otherwise occur under current law. Provisions in the substitute bill (L_132_0595-7) pertaining to the removal of the requirement to carry valid identification and the improper handling of firearms in a motor vehicle will likely further contribute to the general fiscal effect of reducing the number of criminal convictions. Although the overall magnitude of the reduction in prosecutions and convictions is uncertain, it is likely to be relatively small in the context of any given county or municipal criminal justice system's workload.

The substitute bill also creates the potential for more civil actions to be filed in the common pleas, municipal, and county courts for damages stemming from restrictions imposed by local firearms ordinances that are subsequently preempted by state law and from restrictive rental agreements for subsidized housing that prohibit or otherwise limit firearm ownership by law-abiding renters. The number of new civil actions filed in any given local jurisdiction is likely to be relatively small and absorbed into a court's daily operations with no discernible ongoing fiscal effect.