

## OPAA Priority Issue Talking Points

### House Bill 228/Senate Bill 180 (Stand Your Ground)

- Proposes to shift the burden to the prosecution to prove beyond a reasonable doubt that an accused person did not act in self-defense if the accused produces evidence that “tends to support” that they acted in self-defense. Proposes to eliminate the duty to retreat from any place in which a person lawfully has a right to be.
- The OPAA supports current law on both the affirmative defense of self-defense and the duty to retreat. Both policies have served Ohioans well, have prevented needless deaths, and promote public safety. The bill does not respond to any legitimate concerns about the law of self-defense in Ohio. Given this, the OPAA is opposed to this legislation.
- If the General Assembly must take action, however, we encourage you to consider two changes that will somewhat address our concerns about public safety.
- First, the standard for shifting the burden to the prosecution – evidence that “tends to support” – is not a recognized legal standard and is much too low a burden. Evidence that tends to support could be just about anything. We request that this be changed to “evidence upon which a factfinder could rationally find.” This places at least some burden on the defendant to show that they were in fact acting in self-defense. Further, proving “beyond a reasonable doubt” that a person did not act in self-defense is practically insurmountable. We request that this be changed to a preponderance of the evidence standard.
- Second, if the duty to retreat must be changed, we suggest a narrowing of the duty only so that an individual would still have a duty to retreat unless the attacker displays or uses a deadly weapon, the person has a right to be in the place where attacked and was not engaged in criminal activity, and the force was necessary to protect against serious physical harm, kidnapping, or sexual assault.

### House Bill 365/Senate Bill 201 (Indefinite Sentencing)

- Proposes to reinstitute indefinite sentencing for qualifying felonies (first, second, and specified third degree felonies). The maximum sentence under the bill would be 150% of the minimum term imposed. For consecutive sentences, the maximum would be 150% of all minimum terms imposed for qualifying felonies. For concurrent sentences, the maximum would be 150% of longest minimum term imposed. Mandatory terms are served but not included in the above calculations.
- The OPAA is supportive of the indefinite sentencing model as long as offenders continue to serve at least their minimum sentence. Indefinite sentencing promotes public safety by keeping dangerous offenders in prison for longer periods of time.
- We are, however, concerned with a provision in this legislation that would allow ODRC to grant a 5-15% reduction from an offender’s minimum sentence for “exceptional conduct while incarcerated” or “adjustment to incarceration.”
- This “good time” provision in the bill is an affront to truth in sentencing, likely violates the separation of powers by allowing an executive branch agency to modify a judicial branch order, disregards the interest of victims in seeing that justice is served, and will undermine public confidence in the criminal justice system because what the public sees in the courtroom will differ from what they actually get.

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- In addition to removing the “good time” provision of the bill we would like to see the possible maximum sentence increased to 20 years for F1s, 15 years for F2s, and 10 years for F3s. This will allow ODRC to keep the truly unreformed offenders off the streets, and the public safer, for an even longer period of time.

### House Bill 81 (Death Penalty – Serious Mental Illness)

- Proposes to prohibit a sentence of death on a defendant who can obtain a diagnoses that he or she suffered from a serious mental illness at the time of committing the offense. The prosecution is provided an opportunity to rebut. “Serious mental illness” includes schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, and delusional disorder. The bill would also apply to anyone currently on death row.
- The bill is unnecessary to address any legitimate concerns about application of the death penalty to the mentally ill or disabled because both Federal and Ohio law already protect defendants suffering a mental disorder in several ways (e.g. incompetence, NGRI, as a mitigating factor).
- This expands mental illness far beyond what is necessary and will bar consideration of the death penalty in inappropriate circumstances and could eliminate it entirely as almost anyone accused of such a crime will be able to obtain a diagnosis of a serious mental illness.
- Because the bill applies retroactively, it could require prosecutors and courts to relitigate the cases of every individual who is currently on death row.
- Ultimately, it would be a clear miscarriage of justice for a defendant who has been convicted beyond a reasonable doubt of a horrendous crime and on whom the judge and jury are ready to impose a death sentence to escape that penalty because of a mere diagnoses of mental illness.

### House Bill 394 (Elimination of Mandatory Juvenile Bindovers)

- Proposes to eliminate mandatory and reverse bindovers, modify the procedures for discretionary bindovers, provide special parole eligibility dates for certain juveniles sentenced as adults, revise the procedures for determining delinquent child confinement credit, and create a separate restitution disposition for juveniles.
- **Mandatory Bindovers.** 16 – 17 year olds are subject to mandatory bindover for agg. murder, attempted agg. murder or murder on a first offense, or for voluntary manslaughter, kidnapping, rape, aggravated arson, aggravated robbery, aggravated burglary, or F1 involuntary manslaughter if they were previously committed to DYS for any of the aforementioned offenses.
- 14 – 15 year olds are subject to mandatory bindover only if they have previously been adjudicated delinquent for one of the aforementioned offenses and are now charged with agg. murder, murder or attempted agg. murder or murder.
- These are all murder offenses or first degree felonies, with the exception of kidnapping where the victim is released in a safe place unharmed. They are the 10 most serious felonies in our criminal code. The rate of juvenile felony adjudications and commitments to the Department of Youth Services have declined precipitously since the enactment of the mandatory bindover law in 1996.

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- While we recognize that juveniles deserve some special consideration in the justice system, for these most serious offenses we believe public safety should be paramount.