



H.B. 637

123rd General Assembly
(As Introduced)

Reps. Young, Mottley, Van Vyven, Clancy, Trakas, Vesper, Tiberi, Evans, Calvert, Willamowski, Mettler, Cates, Grendell, Buehrer, Austria, Taylor, Allen, Logan, Olman, Callender, Goodman, Coughlin, Schuring

BILL SUMMARY

- Enhances to a felony of the third degree in all circumstances the penalty for "having weapons while under disability" for a person who has been convicted of a felony of the first or second degree or a felony offense of violence or has been adjudicated a delinquent child for committing an act that, if committed by an adult, would have been a felony of the first or second degree or a felony offense of violence; establishes a presumption for a prison term for the violation; and, if a prison term is imposed for the violation, requires the offender to serve that prison term consecutively to any other prison term imposed on the offender.
- Removes from eligibility to be relieved of the disability to have a weapon a person who has been convicted of a felony of the first or second degree or a felony offense of violence or has been adjudicated a delinquent child for committing an act that, if committed by an adult, would have been a felony of the first or second degree or a felony offense of violence.
- Provides that if an offender's conduct constitutes a violation of more than one prohibition included within the offense of having weapons while under disability, the offender may be prosecuted, convicted, and sentenced for a violation of any of those prohibitions.

CONTENT AND OPERATION

Having weapons while under disability

Existing law

Existing law specifies a list of circumstances in which a person is under a disability and may not possess or use a firearm or dangerous ordnance. Specifically, existing law prohibits a person, unless relieved from the disability, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, if any of the following apply (R.C. 2923.13(A)):

- (1) The person is a fugitive from justice.
- (2) The person is under indictment for or has been convicted of any felony offense of violence or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been a felony offense of violence.
- (3) The person is under indictment for or has been convicted of any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse or has been adjudicated a delinquent child for the commission of an offense that, if committed by an adult, would have been an offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.
- (4) The person is drug dependent, in danger of drug dependence, or a chronic alcoholic.
- (5) The person is under adjudication of mental incompetence.

A person who violates this prohibition is guilty of having weapons while under disability and is guilty of a felony of the fifth degree (R.C. 2923.13(C)).

Existing law also prohibits a person who has been convicted of a felony of the first or second degree from violating the above prohibition within five years of the date of the person's release from imprisonment or from post-release control that is imposed for the commission of a felony of the first or second degree. A person who violates this prohibition also is guilty of having weapons while under disability, but a violation of this prohibition is a felony of the third degree. (R.C. 2923.13(B) and (C).)

Operation of the bill

The bill revises the second prohibition discussed under "**Existing law**" so that it prohibits a person who has been convicted of a felony of the first or second degree or a felony offense of violence or has been adjudicated a delinquent child for committing an act that, if committed by an adult, would have been a felony of the first or second degree or a felony offense of violence from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance under any circumstances, unless the person has been relieved of that disability. A person who violates this prohibition is guilty of having weapons while under disability and is guilty of a felony of the third degree, and there is a presumption for a prison term for the violation. If a prison term is imposed for the violation, the offender must serve that prison term consecutively to any other prison term imposed on the offender. The bill removes from the first prohibition discussed under "**Existing law**" the references to a person who has been convicted of a felony offense of violence or has been adjudicated a delinquent child for committing an act that, if committed by an adult, would have been a felony offense of violence. (R.C. 2923.13(A), (B), and (C)(3), and conforming changes in R.C. 2929.13(D) and 2929.19(B)(2)(b).)

The bill also provides that if the offender's conduct constitutes a violation of more than one prohibition, the offender may be prosecuted, convicted, and sentenced for a violation of any of those prohibitions (R.C. 2923.13(C)(1)).

Relief from disability

Existing law

Under existing law, not in the bill, any person who, solely by reason of the person's disability under paragraphs (2) and (3) of the first prohibition described in "**Existing law**" under "**Having weapons while under disability**," is prohibited from acquiring, having, carrying, or using firearms, may apply to the court of common pleas in the county where the person resides for relief from the prohibition. The application must recite all indictments, convictions, or adjudications upon which the applicant's disability is based, the sentence imposed and served, and probation, parole, or partial or conditional pardon granted, or other disposition of each case. The application also must recite facts showing the applicant to be a fit subject for relief under this section.

A copy of the application must be served on the county prosecutor. The county prosecutor must cause the matter to be investigated and raise before the court the objections to granting relief as the investigation reveals. Upon hearing, the court may grant the applicant relief from the prohibition, if all of the following apply: (1) the applicant has been fully discharged from imprisonment, probation,

and parole, or, if the applicant is under indictment, has been released on bail or recognizance, (2) the applicant has led a law-abiding life since the applicant's discharge or release, and appears likely to continue to do so, and (3) the applicant is not otherwise prohibited by law from acquiring, having, or using firearms. Costs of the proceeding are charged as in other civil cases and taxed to the applicant. (R.C. 2923.14(A) through (E).)

Relief from disability granted pursuant to this provision (R.C. 2923.14(F)):

(1) Applies only with respect to indictments, convictions, or adjudications recited in the application;

(2) Applies only with respect to firearms lawfully acquired, possessed, carried, or used by the applicant;

(3) Does not apply with respect to dangerous ordnance;

(4) May be revoked by the court at any time for good cause shown and upon notice to the applicant;

(5) Is automatically void upon commission by the applicant of any offense embraced by paragraph (2) or (3) under the first prohibition described in "Existing law" under "Having weapons while under disability," or upon the applicant's becoming one of the class of persons named in paragraphs (1), (4), or (5) of the first prohibition described in "Existing law" under that part of the analysis.

Operation of the bill

Because the bill removes from paragraph (2) of the first prohibition described in "Existing law" under "Having weapons while under disability" the references to a person who has been convicted of a felony offense of violence or has been adjudicated a delinquent child for committing an act that, if committed by an adult, would have been a felony offense of violence, these persons are no longer eligible for relief from the disability to acquire, have, carry, or use a firearm. (See **COMMENT**.)

It also appears that, under the bill, a person who commits a first or second degree felony drug offense would be under disability under R.C. 2923.13(B) as well as R.C. 2923.13(A)(3). While the R.C. 2923.13(A)(3) disability could be relieved, the person would still appear to be under a R.C. 2923.13(B) disability.

Definitions

Firearm

Under existing law, as used in the Weapons Control Law, "firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. "Firearm" includes an unloaded firearm, and any firearm that is inoperable but that can readily be rendered operable. When determining whether a firearm is capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant, the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm. (R.C. 2923.11(B)--not in the bill.)

Dangerous ordnance

Under existing law, as used in the Weapons Control Law, "dangerous ordnance" means any of the following, except as provided in the next paragraph: (1) any automatic or sawed-off firearm, zip-gun, or ballistic knife, (2) any explosive device or incendiary device, (3) nitroglycerin, nitrocellulose, nitrostarch, PETN, cyclonite, TNT, picric acid, and other high explosives; amatol, tritonal, tetrytol, pentolite, pecretol, cyclotol, and other high explosive compositions; plastic explosives; dynamite, blasting gelatin, gelatin dynamite, sensitized ammonium nitrate, liquid-oxygen blasting explosives, blasting powder, and other blasting agents; and any other explosive substance having sufficient brisance or power to be particularly suitable for use as a military explosive, or for use in mining, quarrying, excavating, or demolitions, (4) any firearm, rocket launcher, mortar, artillery piece, grenade, mine, bomb, torpedo, or similar weapon, designed and manufactured for military purposes, and the ammunition for that weapon, (5) any firearm muffler or silencer, or (6) any combination of parts that is intended by the owner for use in converting any firearm or other device into a dangerous ordnance.

"Dangerous ordnance" does not include any of the following: (1) any firearm, including a military weapon and the ammunition for that weapon, and regardless of its actual age, that employs a percussion cap or other obsolete ignition system, or that is designed and safe for use only with black powder, (2) any pistol, rifle, or shotgun, designed or suitable for sporting purposes, including a military weapon as issued or as modified, and the ammunition for that weapon, unless the firearm is an automatic or sawed-off firearm, (3) any cannon or other artillery piece that, regardless of its actual age, is of a type in accepted use prior to 1887, has no mechanical, hydraulic, pneumatic, or other system for absorbing recoil and returning the tube into battery without displacing the carriage, and is

designed and safe for use only with black powder, (4) black powder, priming quills, and percussion caps possessed and lawfully used to fire a cannon of a type defined in clause (3) during displays, celebrations, organized matches or shoots, and target practice, and smokeless and black powder, primers, and percussion caps possessed and lawfully used as a propellant or ignition device in small-arms or small-arms ammunition, (5) dangerous ordnance that is inoperable or inert and cannot readily be rendered operable or activated, and that is kept as a trophy, souvenir, curio, or museum piece, or (6) any device that is expressly excepted from the definition of a destructive device pursuant to the "Gun Control Act of 1968," 82 Stat. 1213, 18 U.S.C. 921(a)(4), as amended, and regulations issued under that act. (R.C. 2923.11(K) and (L)--not in the bill.)

Felony offense of violence

Under existing law, as used in the Revised Code, an offense of violence is any of the following offenses (R.C. 2901.01(A)(9)--not in the bill):¹

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault (a misdemeanor in certain circumstances), permitting child abuse, aggravated menacing (always a misdemeanor), menacing by stalking (a misdemeanor in certain circumstances), menacing (always a misdemeanor), kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson (a misdemeanor in certain circumstances), aggravated robbery, robbery, aggravated burglary, certain acts constituting burglary, inciting to violence (a misdemeanor in certain circumstances), aggravated riot, riot (always a misdemeanor), inducing panic (a misdemeanor in certain circumstances), endangering children in certain circumstances (a misdemeanor in certain circumstances), domestic violence (a misdemeanor in certain circumstances), intimidation, intimidation of an attorney, victim, or witness in a criminal case (a misdemeanor in certain circumstances), escape (a misdemeanor in certain circumstances), improperly discharging a firearm at or into a habitation or in a school safety zone, or the former offense of felonious sexual penetration;

(2) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any offense listed in (1), above;

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States,

¹ *Unless noted otherwise, the offense listed is a felony.*

committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense under (1), (2), or (3), above.

COMMENT

The meaning of the bill's reference in R.C. 2923.13(B) to "unless the disability is removed under R.C. 2923.14" is unclear, because the relief from disability is available only to a person under disability by reason of R.C. 2923.13(A)(2) and (3).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-29-00	pp.

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