



H.B. 761

123rd General Assembly

(As Introduced)

Reps. DePiero, Ford, Grendell, Schuck, Tiberi, Goodman, Olman, Gooding, Bender, Vesper, Sullivan, Trakas, Clancy, Stevens, Evans, Allen, O'Brien, Netzley, Terwilleger, Clancy, Hartnett, Jerse, Damschroder, Amstutz, Robinson

BILL SUMMARY

- Requires a court to impose an additional, mandatory seven-year prison term on an offender who is convicted of a specification charging the offender with discharging a firearm at a peace officer while committing a felony that includes as an essential element causing the death of or physical harm to another, attempting to cause the death of another, or attempting to cause physical harm to another.
- Permits a juvenile judge to impose a three-year period of institutionalization in the custody of the Department of Youth Services for a juvenile who discharges a firearm at a peace officer while committing an act that would be a felony if committed by an adult.
- Requires that a written report and psychological evaluation be prepared for foster parents who provide foster care for a juvenile who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and who discharged a firearm at a peace officer while committing the act.

CONTENT AND OPERATION

Discharge of a firearm at a peace officer by an adult

Existing law

R.C. 2929.14(A) specifies the possible terms of imprisonment for felonies. R.C. 2929.14(D) specifies additional prison terms for using or possessing a firearm during the commission of a felony. It specifies: (1) a mandatory prison term of one year for having a firearm on or about the offender's person or under the offender's control while committing the felony, (2) a mandatory prison term of three years for having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense, (3) a mandatory prison term of five years for committing a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and committing the offense by discharging a firearm from a motor vehicle, and (4) a mandatory prison term of six years for having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the offender's person or under the offender's control while committing the felony.

Operation of the bill

The bill requires a sentencing judge to impose a mandatory, seven-year additional prison term on an adult offender who discharges a firearm at a peace officer while committing a felony that includes, as an essential element, causing death or physical harm to another, attempting to cause death to another, or attempting to cause physical harm to another. If an offender pleads guilty to or is convicted of a felony of the type described above and pleads guilty to or is convicted of a specification that charges the offender with committing the offense by discharging a firearm at a peace officer, then the judge is required to impose the additional prison term but may impose only one such additional prison term for felonies committed as part of the same act or transaction. The judge, however, is required to impose an additional sentence on the offender as described above in clause 1, 2, or 4 of "*Existing law*" if the applicable criteria for the sentence is met. This sentence is in addition to the seven-year sentence imposed under the bill. (R.C. 2929.14(D)(1)(e).)

In order for the mandatory seven-year prison term to be imposed on an offender, the indictment or information charging the offender with committing the felony must specify that the offender discharged a firearm at a peace officer while

committing the felony. The bill prescribes the form of that specification (R.C. 2929.1412(A).)

Discharge of a firearm at a peace officer by a child

Existing law

If a child is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and if the juvenile court has committed the child to the custody of the Department of Youth Services for that act, existing law permits the juvenile court to commit the child to the custody of the Department for institutionalization in a secure facility for the following periods of time under the following conditions (R.C. 2151.355(A)(7)):

(1) An additional period of one year for having a firearm on or about the child's person or under the child's control while committing the act;

(2) For a period of three years for: (a) having a firearm on or about the offender's person or under the child's control while committing the act and displaying the firearm, brandishing the firearm, indicating that the child possessed the firearm, or using it to facilitate the act, (b) for committing an act that would be a felony if committed by an adult and that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another and also committing the act by discharging a firearm from a motor vehicle, or (c) for having a firearm that is an automatic firearm or that was equipped with a firearm muffler or silencer on or about the child's person or under the child's control while committing the act.

Operation of the bill

The bill authorizes a juvenile court to commit a delinquent child to the custody of the Department of Youth Services for a three-year period of institutionalization in a secure facility for discharging a firearm at a peace officer while committing an act that would be a felony if committed by an adult (R.C. 2151.355(A)(7)(a)(ii)).

If the court adjudicates a child to be a delinquent child for committing an act that would be a felony if committed by an adult, if the court commits the child to the Department of Youth Services for that act, and if the court also determines that the juvenile would be guilty of a specification charging the juvenile with discharging a firearm at a peace officer while committing that act, then the court may commit the child for up to three years of institutionalization in a secure facility with the Department of Youth Services. The discharging of the firearm at the peace officer

must be in relation to the underlying act for which the juvenile was adjudicated a delinquent child (R.C. 2151.355(A)(7)(a)).

If a child is adjudicated a delinquent child and if the adjudicating court determines that the child, if an adult, would be guilty of a specification charging the child with discharging a firearm at a peace officer during the commission of the delinquent act, then a public children services agency, private child placing agency, private noncustodial agency, court, the Department of Youth Services, or other private or government entity may not place the child in a foster home until it provides the foster caregivers with written reports describing the child's social history, detailing all of the acts the child committed that resulted in the child being adjudicated a delinquent child and the relevant disposition, describing any other violent acts committed by the child, and describing any substantial and material conclusions and recommendations of any psychiatric or psychological examination conducted on the child or of any other examination to detect mental and emotional disorders. The entity that places the child in the foster home also must conduct a psychological evaluation of the child if none has been conducted within one year prior to placement. (R.C. 2151.62(B)(1) and (C).)

Similar requirements exist under existing law for a child adjudicated a delinquent child for an act that would be any one of certain specified violent offenses or for an act that would be a felony if committed by an adult when the child also would be guilty of a firearm specification if an adult (R.C. 2151.62(A)).

Definitions

As used in the bill:

Firearm

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 (R.C. 2923.11(B)(1)--not in the bill).

Peace Officer

Peace Officer includes, except as provided in section 2935.081 of the Revised Code, a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract; member of a police force employed by a metropolitan housing authority; member of a police force employed by a regional transit authority; state university law enforcement officer; enforcement agent of the

Department of Public Safety; employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a forest officer, a preserve officer, a wildlife officer, a park officer, or a state watercraft officer; individual designated to perform law enforcement duties under section 511.232, 1545.13, or 6101.75 of the Revised Code; Ohio veterans' home police officer; special police officer employed by a port authority; police constable of any township; police officer of a township or joint township police district; and, for specified purposes and areas the Superintendent and troopers of the State Highway Patrol (R.C. 2935.01(B)--not in the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-23-00	p. 2211

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