



Dennis M. Papp

Bill Analysis
Legislative Service Commission

Sub. H.B. 130*

124th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Reps. DePiero, Hughes, Jones, Hartnett, Olman, Britton, Allen, Goodman, Sullivan, Redfern, Rhine, Distel, Womer Benjamin, Krupinski, Seaver, Cirelli, Jerse, Flowers, Lendrum, Evans, Latta, Seitz, Callender, Reidelbach, Young, Faber, Perry, Sulzer, Grendell, Ogg, G. Smith, Husted, McGregor, Flannery, Brinkman, Metzger, Cates, Niehaus, Sferra, Blasdel, Wilson, Otterman, Reinhard, Carmichael, Kilbane, Roman, Core, Latell, Gilb, Collier, Webster, Buehrer, Coates, Fedor, Salerno, Schmidt, Patton, Clancy, Fessler, Hagan, Driehaus, D. Miller, Hollister, Beatty, Boccieri, Kearns

BILL SUMMARY

- Requires a court to impose an additional, mandatory seven-year prison term on an offender who is convicted of or pleads guilty to a violation of R.C. 2923.161 or 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 and also a specification charging the offender with committing the felony by discharging a firearm at a peace officer or a corrections officer.
- Requires that the mandatory seven-year prison term be served consecutively to and prior to any prison term imposed for the underlying felony.
- Permits a juvenile judge to impose a three-year period of institutionalization in the custody of the Department of Youth Services upon a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult and who discharges a firearm at a peace officer or a corrections officer while committing that act.

* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

CONTENT AND OPERATION

Discharge of a firearm at a peace officer or a corrections officer by criminal offender

Existing law

R.C. 2929.14(A) specifies the possible prison terms for felonies. A court sentencing a person convicted of a felony generally has discretion in determining whether to impose these terms. In addition to these terms, R.C. 2929.14(D) specifies prison terms that must be imposed 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 violation of R.C. 2923.161 or 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. R.C. 2929.14(D)(1)(d) and (I) specify prison terms that must be imposed in specified circumstances on offenders who commit a felony during gang activity or while wearing body armor.

Operation of the bill

The bill enacts a new mandatory prison term that requires a sentencing judge to impose a seven-year additional prison term on an offender who is convicted of a felony that includes, as an essential element, causing the death of or physical harm to another or attempting to cause the death of or physical harm to another and who also 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 or a corrections officer. The judge is required to impose the prison term "after imposing a prison term on the offender" for the felony offense under other sentencing provisions, but may impose only one such additional prison term for felonies committed as part of the same act or transaction. If the additional prison term is imposed upon an offender, the judge is prohibited from imposing an additional sentence on the offender as described above in clause 1, 2, 3, or 4 of "*Existing law*" relative to the same offense. (R.C. 2929.14(D)(1)(f).)

The offender must serve the mandatory, seven-year prison term consecutively to and prior to any prison term imposed for the underlying felony and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender (R.C. 2929.14(E)(1)(c)).

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

Existing law

Under R.C. 2151.355 as it appears in the bill (note that these provisions have been relocated to R.C. 2152.17, which is included in the bill--see below) 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, the juvenile court may 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) A 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) A period of three years for: (a) having a firearm on or about the child'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) committing a violation of R.C. 2923.161 or 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) 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 expands the commitment provisions described above to also authorize 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 if the court adjudicates the 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 or a corrections officer while committing that act. The discharging of the firearm at the peace officer or the corrections 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)).

The bill also contains R.C. 2152.17(A)(3), which replaced R.C. 2151.355(A)(7) on January 1, 2002, and makes similar changes to that section. Under the bill, R.C. 2152.17(A)(3) authorizes a juvenile court to commit a delinquent child to the custody of the Department of Youth Services for a definite period of not less than one and not more than five years for discharging a firearm at a peace officer or a corrections officer while committing an act that would be a felony if committed by an adult (R.C. 2152.17(A)(3)). R.C. 2151.355, as it appears in the bill, has been repealed and should be removed from the bill.

Definitions

As used in the bill:

Corrections officer

"Corrections officer" means a person employed by a detention facility as a corrections officer (R.C. 2941.1412(B)(3)).

Detention facility

"Detention facility" means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States (R.C. 2941.1412(B)(4) by reference to R.C. 2921.01(F)--not 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. 2941.1412(B)(1) by reference to 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. 2941.1412(B)(2) by reference to R.C. 2935.01(B)--not in the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-27-01	p. 188
Reported, H. Criminal Justice	06-06-01	p. 632
Passed House (89-0)	06-19-02	pp. 1945-1956
Reported, S. Judiciary on Criminal Justice	---	---

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